

Schedule 1 – Contract Particulars

1. FACS Representative

The FACS Representative for the purpose of clause 1 (*Definitions*) of this Agreement is:

| | |
|---------------------|---------------------|
| FACS Representative | Eleri Morgan-Thomas |
|---------------------|---------------------|

| | |
|---------|--------------------------------------|
| Address | 2 Cavill Avenue, Ashfield, NSW, 2131 |
|---------|--------------------------------------|

| | |
|-------|------------------------------------|
| Email | eler.morgan-thomas@facs.nsw.gov.au |
|-------|------------------------------------|

| | |
|-----------|----------------|
| Telephone | (02) 9716 2917 |
|-----------|----------------|

2. ServiceCo Representative

The ServiceCo Representative for the purpose of clause 1 (*Definitions*) of this Agreement is:

[REDACTED]

| | |
|---------|---|
| Address | Suite 1/44 Beaumont Street, Hamilton, NSW, 2303 |
|---------|---|

[REDACTED]

[REDACTED]

3. Consortium

The Consortium for the purpose of clause 1 (*Definitions*) of this Agreement is:

Name of Consortium Member Compass Housing Services Co Ltd

Role ServiceCo

4. **Accommodation Services Provider**

The Accommodation Services Provider(s) for the purpose of clause 1 (*Definitions*) of this Agreement is:

Accommodation Services Provider Not used as at the date of this Agreement, it being intended as at that date that ServiceCo will undertake this role itself.

Address [Not used]

Email [Not used].

Telephone [Not used]

5. **Asset Management Services Provider**

The Asset Management Services Provider(s) for the purpose of clause 1 (*Definitions*) of this Agreement is:

Asset Management Services Provider Not used as at the date of this Agreement, it being intended as at that date that ServiceCo will undertake this role itself.

Address [Not used]

Email [Not used]

Telephone [Not used]

6. **Performance and Data Reporting Provider**

The Performance and Data Reporting Provider(s) for the purpose of clause (*Definitions*) of this Agreement is:

Performance and Data Reporting Provider Not used as at the date of this Agreement, it being intended as at that date that ServiceCo will undertake this role itself.

Address [Not used]

Email [Not used]

Telephone [Not used]

7. Tailored Support Coordination Services Provider

The Tailored Support Coordination Services Provider(s) for the purpose of clause 1 (*Definitions*) of this Agreement is:

| | |
|--|--|
| Tailored Support Coordination Services Provider | Not used as at the date of this Agreement, it being intended as at that date that ServiceCo will undertake this role itself. |
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Address [Not used]

Email [Not used].

Telephone [Not used]

8. Tenancy Management Services Provider

The Tenancy Management Services Provider(s) for the purpose of clause 1 (*Definitions*) of this Agreement is:

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| Tenancy Management Services Provider | Not used as at the date of this Agreement, it being intended as at that date that ServiceCo will undertake this role itself. |
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Address [Not used]

Email [Not used]

Telephone [Not used]

9. [Not used]

10. [Not used]

11. Employee Checks

| Employee Check | Employees and volunteers of ServiceCo and Subcontractors to whom it applies | Frequency of update |
|--|--|---|
| A 'national police check' conducted through the NSW Police. | Those who are reasonably likely to have access to Tenants or Household Members, whether supervised or unsupervised, and are not exempt. | At a minimum: <ul style="list-style-type: none">• prior to the Service Commencement Date in accordance with the Service Readiness Schedule; and• every four years after the last check (or every three years for individuals involved in aged care work in accordance with the <i>Aged Care Act 1997</i> (Cth)). |
| A 'working with children check' conducted through the NSW Office of the Children's Guardian in accordance with the <i>Child Protection (Working with Children) Act 2012</i> (NSW). | Those who are conducting child-related work and are not exempt under Part 4, regulation 20 of the <i>Child Protection (Working with Children) Regulation 2013</i> (NSW). | At a minimum: <ul style="list-style-type: none">• prior to the Service Commencement Date in accordance with the Service Readiness Schedule; and• every five years after the last check. |

12. Employee Requirements

| Employee Requirements | Employees of ServiceCo and Subcontractors to whom it applies |
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| Appropriate qualifications or appropriate experience for the Tailored Support Coordination Services role. | Those who deliver any of the Tailored Support Coordination Services. |

13. Other Service Package details

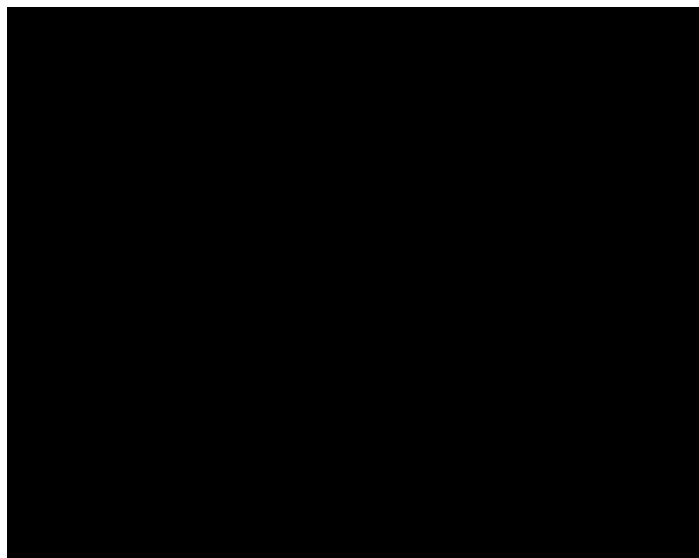
Service Package Objectives

- **Increase supply of Social and Affordable Housing:** The Service Package will deliver access to an additional [REDACTED] Social and Affordable Dwellings for Tenants in locations which best balance supply and demand across NSW and are best located to achieve the Target Outcomes.
- **Innovation through partnerships:** The Service Package will, through a cooperative and partnered approach between ServiceCo and FACS, deliver innovative Services that build on the strengths of each Consortium Member.
- **Quality Services:** The Service Package will deliver quality Accommodation Services, Asset Management Services and Tenancy Management Services that meet or exceed FACS' specifications, coupled with Tailored Support Coordination Services for Tenants.
- **Drive social outcomes:** The Service Package will be provided in a manner which best contributes to the achievement of the Target Outcomes.
- **Delivery and value for money:** The Service Package will seek to achieve its objectives within the value for money parameters, appropriate risk profile and timeframe set by the NSW Government.
- **Unlock contributions:** The Service Package will unlock non-government land and in-kind contributions.
- **Evidence building and continued reform:** The Service Package will support evidence building and data collection to help drive continued reform and an investment approach to service delivery in the sector.
- **Strategic alignment:** The Service Package will align with and contribute to the NSW Government's ten year strategy for social housing reforms.

Conditions Precedent Deadline

2pm on the date that is 10 Business Days after the date of this Agreement.

Key Planning Approvals



- [insert].

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- | | |
|--------------------------|--|
| Tier of CHP Registration | <ul style="list-style-type: none">• in respect of ServiceCo, Tier 1;• in respect of the Tenancy Management Services Provider, Tier 1; and• in respect of the Asset Management Services Provider, Tier 1. |
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14. [Not used]

15. [Not used]

16. Details for notices

The notice details for the purpose of clause 1 (*Definitions*) of this Agreement are as follows:

FACS

| | |
|-----------|---------------------|
| Attention | Eleri Morgan-Thomas |
|-----------|---------------------|

| | |
|---------|--------------------------------------|
| Address | 2 Cavill Avenue, Ashfield, NSW, 2131 |
|---------|--------------------------------------|

| | |
|-----------|----------------|
| Telephone | (02) 9716 2917 |
|-----------|----------------|

| | |
|-------|------------------------------------|
| Email | eler.morgan-thomas@facs.nsw.gov.au |
|-------|------------------------------------|

ServiceCo

[REDACTED]

| | |
|---------|---|
| Address | Suite 1/44 Beaumont Street, Hamilton, NSW, 2303 |
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[REDACTED]

[REDACTED]

Schedule 2 – Conditions Precedent Schedule

| Item | Condition Precedent |
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| 1. | FACS Service Package Documents The valid execution, delivery and provision to FACS of each of the FACS Service Package Documents, each in form and substance satisfactory to FACS and at least one original counterpart of each of those documents has been provided to FACS. |
| 2. | Other Service Package Documents The valid execution, delivery and provision to FACS of a certified copy of each other Service Package Document, each in form and substance satisfactory to FACS, together with evidence that all conditions precedent to such Service Package Documents have been satisfied or waived (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this Agreement). |
| 3. | [Not used] |
| 4. | Legal opinions FACS receiving legal opinions given for the benefit of FACS, each in form and substance satisfactory to FACS, from: <ul style="list-style-type: none">(a) solicitors acting for each Consortium Member and Equity Investor as to:<ul style="list-style-type: none">(i) the legal capacity and corporate power of that Consortium Member or Equity Investor to enter into and perform its obligations under the FACS Service Package Documents to which it is a party;(ii) the enforceability against the relevant Consortium Member or Equity Investor of the FACS Service Package Documents to which it is a party; and(iii) due execution by the Consortium Member or Equity Investor of the FACS Service Package Documents to which it is a party; and(b) <i>[not used]</i>. |
| 5. | Corporate structure FACS receiving evidence that the corporate structure is in accordance with the Ownership Schedule and the information provided to FACS prior to the execution of this Agreement. |
| 6. | Authorised officers FACS receiving names and specimen signatures of the authorised officers of ServiceCo, including the ServiceCo Representative and any other person authorised to take action |

| Item | Condition Precedent |
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| | or give notices for or on behalf of ServiceCo under the FACS Service Package Documents. |
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| 7. | [Not used] |
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| 8. | Insurances |
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| | ServiceCo delivering to FACS in respect of the Insurances referred to in, and required to be taken out prior to Commercial Close and maintained as detailed in, clause 30 (<i>Insurance</i>) and the Insurance Schedule: |
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- | | |
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| | (a) certified copies of the fully subscribed and executed policies relating to such Insurances in form and substance satisfactory to FACS; and |
| | (b) certificates from an insurance broker as to the currency of all such Insurances and confirming that FACS or its Associates are insureds under the policy (to the extent this is required under this Agreement), |

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| | or such other evidence as is required by FACS. |
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| 9. | [not used] |
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| 10. | Commercial Close Financial Model and Model Output Schedule |
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| | FACS receiving: |
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- | | |
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| | (a) an electronic copy of the Commercial Close Financial Model and the Model Output Schedule, in form and substance satisfactory to FACS; |
| | (b) a letter, in form and substance satisfactory to FACS, confirming that the Commercial Close Financial Model is identical to the Base Case Financial Model except as updated in accordance with the Commercial Close Adjustment Protocol or as otherwise set out in the letter; and |
| | (c) an audit report on the Commercial Close Financial Model, in form and substance satisfactory to FACS, from an auditor acceptable to FACS. |

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| 11. | Stamp duty |
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| | FACS receiving evidence that any stamp duty payable in connection with the entry into each of the Service Package Documents has been or will, contemporaneously with Commercial Close, be paid. |
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| 12. | [Not used] |
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| 13. | Other requirements |
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| | ServiceCo delivering to FACS any other opinion, certificate or other document that FACS reasonably requests. |
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Schedule 3 – Payment Schedule

1. Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Agreement will apply as supplemented by the following definitions:

Abatement means any or all of the following:

- (a) Service Compliance Abatement;
- (b) Service Provision Abatement;
- (c) Tenant Mix Abatement; and
- (d) Service Quality Abatement.

Annual Reporting Compliance Failures means the occurrence of a 'Performance Incident' in respect of KPI 402, 404 or 405.

Annual Service Activity Compliance Failures means the occurrence of a 'Performance Incident' in respect of KPI 301, 302, 306, 307 or 308.

CRA means the rent assistance payable by the Commonwealth pursuant to the *Social Security Act 1991* (Cth) and the *A New Tax System (Family Assistance) Act 1999* (Cth).

Excess Subsidy Rebate means the rebate calculated in accordance with section 6.

Indexed Non-Reviewable Services Payment means, in respect of an Operating Month and a Stage, the amount set out for that Stage in Annexure A to this Schedule, as indexed in accordance with the Indexes Schedule.

Indexed Reviewable Services Payment means, in respect of an Operating Month and a Stage, the amount set out for that Stage in Annexure A to this Schedule, as indexed in accordance with the Indexes Schedule.

Interim Survey has the meaning given in section 7.

Key Performance Indicator and **KPI** means the Key Performance Indicators in Appendix C of the Services Specification.

Major Default Service Failure means the occurrence of:

- (a) subject to Section 7(d) and (e), in ■■■ consecutive Operating Years any ■■■ Service Quality Performance Incidents in each Operating Year;
- (b) in ■■■ consecutive Operating Years:
 - (i) any Quarterly Reporting Compliance Failures in ■■■ consecutive Operating Quarters; and
 - (ii) the same Annual Reporting Compliance Failure on ■■■ occasions; or
 - (iii) the same Annual Service Activity Compliance Failure on ■■■ occasions; or

- (iv) the same Quarterly Service Activity Compliance Failure on [REDACTED] occasions; or
- (c) a Service Reporting Compliance Failure occurs in respect of KPI 403 (Quarterly Data Report) in respect of [REDACTED] consecutive Operating Quarters.

Market Rent has the meaning given in the Services Specification.

Maximum Turnaround Times has the meaning given in the Services Specification.

Non-Indexed Non-Reviewable Services Payment means, in respect of an Operating Month and a Stage, the amount set out for that Stage in Annexure A to this Schedule.

Non-Indexed Reviewable Services Payment means, in respect of an Operating Month and a Stage, the amount set out for that Stage in Annexure A to this Schedule.

Non-Reviewable Services means any Services other than the Reviewable Services.

Operating Quarter means each Quarter during the Service Delivery Phase.

Quality Areas means the categories identified as such in Table 1 in section 3.3.

Quarterly Reporting Compliance Failures means the occurrence of a Performance Incident in respect of KPI 401 or 403.

Quarterly Service Activity Compliance Failures means the occurrence of a Performance Incident in respect of KPI 303, 304, 305 or 309.

Service Activity Compliance KPIs means the KPIs so described in Appendix C of the Services Specification.

Service Activity Performance Incident has the meaning given to 'Performance Incident' in Appendix C of the Services Specification in respect of Service Activity Compliance KPIs.

Service Compliance Abatement means, in respect of an Operating Month, the Abatement calculated in accordance with section 4.

Service Compliance Performance Incident means:

- (a) Service Activity Performance Incident; and
- (b) Service Reporting Performance Incident.

Service Failure means:

- (a) Service Compliance Performance Incident;
- (b) Service Provision Performance Incident; and
- (c) Service Quality Performance Incident.

Service Provision Abatement means an Abatement calculated in accordance with section 3.2.

Service Provision Performance Incident has the meaning given in Appendix C of the Services Specification in respect of KPI 101.

Service Quality Abatement means an Abatement calculated in accordance with section 3.3.

Service Quality KPIs means the KPIs so described in Appendix C of the Services Specification.

Service Quality Performance Incident has the meaning given to 'Performance Incident' in Appendix C of the Service Specification in respect of Service Quality KPIs.

Service Reporting Compliance KPIs means the KPIs so described in Appendix C of the Services Specification.

Service Reporting Performance Incident has the meaning given to 'Performance Incident' in Appendix C of the Services Specification in respect of Service Reporting Compliance KPIs.

Tenancy Policy Supplement has the meaning given in the Services Specification.

Tenant Mix Abatement means an Abatement made to the total Monthly Service Payment amount calculated in accordance with section 5.

Tenant Mix Performance Incident means a failure by ServiceCo to provide services in respect of the agreed proportion of Social Housing Tenants.

Tenant Satisfaction Survey has the meaning given in the Services Specification.

Tenant Survey has the meaning given in the Services Specification.

Tenantable has the meaning given in the Services Specification.

Untenantable has the meaning given in the Services Specification.

2. Monthly Services Payment

- (a) The Monthly Service Payment in respect of an Operating Month will be calculated as follows:

$$\text{MSP} = ((\sum \text{MSP}_{\text{stage}} \times (1 - \text{ServiceKPI}_{\text{stage}})) - \text{SurveyKPI} - \sum \text{COMKPI}_i) \times \text{TMA} - \text{EXA}$$

where:

$\text{ServiceKPI}_{\text{stage}}$ = the Service Provision Abatement calculated based on the previous 3 Operating Month's Service Provision Failures for Stage stage

SurveyKPI = the Service Quality Abatement based on the results of the most recent Tenant Satisfaction Survey

COMKPI_i = the Service Compliance Abatement

$\text{MSP}_{\text{stage}}$ = the monthly service payment for Stage stage = $\text{ICSP}_{\text{stage}} + \text{NCSP}_{\text{stage}} + \text{IRSP}_{\text{stage}} + \text{NRSP}_{\text{stage}}$

$\text{ICSP}_{\text{stage}}$ = the Indexed Non-Reviewable Services Payment for Stage stage

$\text{NCSP}_{\text{stage}}$ = the Non-Indexed Non-Reviewable Services Payment for Stage stage

$\text{IRSP}_{\text{stage}}$ = the Indexed Reviewable Services Payment for Stage stage

$\text{NRSP}_{\text{stage}}$ = the Non-Indexed Reviewable Services Payment for Stage stage

TMA = Tenant Mix Abatement applying during the Operating Month

EXA = Excess Subsidy Rebate applying during the Operating Month

IRTA = the Interest Rate Adjustment applying during the Operating Month

N_{Stage} = Total number of Stages during the Operating Month

- (b) Payments that are subject to indexation will be adjusted each calendar quarter. The relevant indices will be defined in the Indexation Schedule and the base value set at financial close.

3. Performance Regime

3.1 Monthly Service Payment Abatement

- (a) If at any time during the Service Delivery Phase, a Service Failure occurs, FACS may make Abatements from any Monthly Service Payment, in respect of:
- (i) that Service Provision Performance Incident, in accordance with section 3.2;
 - (ii) that Service Quality Performance Incident, in accordance with section 3.3;
 - (iii) that Service Compliance Performance Incident, in accordance with section 4; and
 - (iv) that Tenant Mix Performance Incident, in accordance with section 5.
- (b) No reduction in Abatements shall be permitted where the same event causes more than one type of Service Failure.
- (c) Abatements will be applied at the time FACS becomes aware of a Service Failure and FACS will be entitled to apply Abatements retroactively.
- (d) ServiceCo may submit additional information which FACS may take into consideration when determining whether to apply the relevant Abatement.
- (e) A Tenant Mix Abatement under section 5 will not be applied by FACS prior to the Date of Service Readiness of the final Stage where ServiceCo can demonstrate that it has made reasonable endeavours to comply with the social and affordable tenant mix by Stage as set out in the SAHF Pro forma Schedules.

3.2 Service Provision Abatement

- (a) In respect of each Dwelling used to provide the Accommodation Services for a given Operating Quarter, ServiceCo will report the following information to FACS on a quarterly basis:
- (i) the number of vacancies that the Dwelling experienced;
 - (ii) the number of consecutive days the Dwelling was vacant for during each vacancy; and

- (iii) for each vacancy, whether the Dwelling was considered to be Tenantable or Untenantable.

(b) The Service Provision Abatement will be calculated as follows:

- (i) If the current Operating Month immediately succeeds the submission of the Quarterly Performance Report then, the Service Provision Abatement is calculated as:

$$\text{ServiceKPI}_{\text{stage}} = (\text{SPF}_t + \text{SPF}_u) / (\text{NOD}_q * \text{NOP}_{\text{stage}})$$

where:

NOD_q = Number of days in the last Operating Quarter

$\text{NOP}_{\text{stage}}$ = Number of Dwellings in Stage $_{\text{stage}}$

SPF_t = the Service Provision Performance Incident in respect of Tenantable Dwellings, where,

$\text{SPF}_t = \sum (\max(\text{DV}_{\text{upn}} - \text{DV}_{\text{th}}), 0)$ where:

DV_{upn} is the number of days Dwelling P was vacant for in respect of vacancy n . There may be more than one period of vacancy in a quarter

DV_{th} is the Maximum Turnaround Time for Tenantable Dwellings

SPF_u = the Service Provision Performance Incident in respect of Untenantable Dwellings, where,

$\text{SPF}_u = \sum \max((\text{DV}_{\text{upn}} - \text{DV}_{\text{uth}}), 0)$ where:

DV_{upn} is the number of days Dwelling P was vacant for in respect of vacancy n . There may be more than one period of vacancy in a quarter

DV_{uth} is the Maximum Turnaround Time for Untenantable Dwellings

- (c) If the current Operating Month is not the Operating Month immediately succeeding the submission of a Quarterly Performance Report, then, the Service Provision Abatement is calculated as:




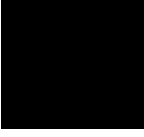

ServiceKPI_{stage} = the ServiceKPI_{stage} applied in the previous Operating Month

- (d) The maximum aggregate Abatement that can be made in respect of Service Provision Performance Incidents is the total Monthly Service Payment amount in respect of the services not provided.

3.3 Service Quality Abatement

- (a) The Service Quality Abatement is calculated, in respect of an Operating Month and the 'Service Quality Compliance KPIs' in Appendix C of the Services Specification, having regard to Table 1 below.

Table 1: Service Quality Failures

| Quality Area | Satisfaction % | \$ Abatement applied (p.a.) | Offset for High Performance allowed |
|---|--|---|-------------------------------------|
| Maintenance Services (in accordance with the survey metrics) | $\geq \text{AMT}_1$ AMT_2 AMT_3 |  | Yes |
| Condition of Dwelling (in accordance with the survey metrics) | $\geq \text{AMT}_1$ AMT_2 AMT_3 |  | Yes |
| Tenancy Management Services (in accordance with the survey metrics) | $\geq \text{TMT}_1$ TMT_2 TMT_3 |  | Yes |
| Tailored Support Coordination Services |  |  | No |

where:

AMT_1 = the threshold set in the National Regulatory System for Community Housing Registration Return Guide Housing Asset Metrics in respect of the Tenant Satisfaction Survey (green traffic light)

AMT_2 = the first tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Asset Metrics in respect of the Tenant Satisfaction Survey (amber traffic light)

AMT_3 = the second tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Asset Metrics in respect of the Tenant Satisfaction Survey (red traffic light)

TMT_1 = the threshold set in the National Regulatory System for Community Housing Registration Return Guide Housing Tenancy Management Metrics in respect of the Tenant Satisfaction Survey (green traffic light)

TMT_2 = the first tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Tenancy Management Metrics in respect of the Tenant Satisfaction Survey (amber traffic light)

TMT_3 = the second tolerance band set in the National Regulatory System for Community Housing Registration Return Guide Housing Tenancy Management Metrics in respect of the Tenant Satisfaction Survey (red traffic light)

- (b) Where a Quality Area has 'Yes' in the column titled 'Offset for High Performance allowed', ServiceCo will be permitted to allocate % points above the AMT_1

threshold in one Quality Area to Quality Areas with performance below the threshold. For example if:

- (i) the AMT_1 for Maintenance Services was [REDACTED] and ServiceCo's survey result was [REDACTED] and
- (ii) the AMT_2 for Condition for Dwelling was [REDACTED] and ServiceCo's survey result was [REDACTED]

then ServiceCo would be able to allocate [REDACTED] of the Maintenance Services Satisfaction %, raising it above the Abatement threshold.

- (c) The non-submission of valid results for any Quality Area will result in a satisfaction score of zero being applied to the relevant Quality Area.
- (d) The Abatements applied for a failure in any individual Quality Area are cumulative based on the lowest Satisfaction % achieved.
- (e) The Service Quality Abatement for the succeeding 12 Operating Months will be calculated as follows:

$$\text{SurveyKPI} = (\text{MS} + \text{PC} + \text{TMS} + \text{TSC}) / 12$$

where:

MS = The annual abatement for Maintenance Services Service Quality Abatement is calculated based on ServiceCo's 'Satisfaction' results in respect of Maintenance Services in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

PC = The annual abatement for Property Conditions Service Quality Abatement is calculated based on ServiceCo's 'Satisfaction' results in respect of Condition of Dwelling in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

TMS = The annual abatement for Tenancy Management Services Service Quality Abatement is calculated based on ServiceCo's 'Satisfaction' results in respect of Tenancy Management Services in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

TSC = The annual abatement for Tailored Support Coordination Service Quality Abatement is calculated based on ServiceCo's 'Satisfaction' results in respect of Tailored Support Services in the most recent Tenant Satisfaction Survey in accordance with the thresholds identified in Table 1

4. Service Compliance Abatement

- (a) The Service Compliance Abatement is calculated, in respect of an Operating Month in accordance with the 'Service Activity Compliance KPIs' and 'Service Reporting Compliance KPIs' in Appendix C of the Services Specification.
- (b) The next Monthly Service Payment will be abated by the sum of all individual dollar Abatements accrued (defined as $COMKPI_i$ in section 2).

5. Tenant Mix Abatement

- (a) FACS will assess the level of ServiceCo's performance in respect of its obligations to provide the Service Package to the Social Housing Tenant percentage set out in the Services Specification by reviewing the "Assistance Type" data provided in accordance with Appendix D of the Services Specification and the Quarterly Data Report.
- (b) FACS will calculate the Tenant Mix Abatement as follows:
 - (i) $TMA = 1$, if the current Quarter is the first quarter since the Service Commencement Date; or
 - (ii) $TMA = 1$ if the current Quarter is within a 12 month period after a Partial Termination has occurred; or
 - (iii) Otherwise $TMA = 1 - (0.75 \times (1 - \text{Min}(\text{CSP}/\text{BSP}, 1)))$

where:

TMA = Tenant Mix Abatement

CSP is the calculated Social Housing Tenant percentage and equals $100 \times \text{NAS}/\text{TD}$ where:

NAS = is the sum over all Dwellings of NDW_h

where:

NDW_h is the number of days Dwelling P would have the "Assistance Type" equal to "General" in the previous two quarters

$TD = \text{NOD}_h \times \text{NOP}$

where:

NOD_h = Number of days in the previous two quarters

NOP = Number of Dwellings

BSP is the bid minimum Social Housing percentage set out in section 2.3 of the Services Specification.

6. Excess Subsidy Rebate

- (a) FACS will assess the level of rentals charged to a Retained Social Housing Tenant. The maximum Social Housing income eligibility limit and weekly income allowances for Tenants and Household Members must be determined in accordance with the Tenancy Policy Supplement. ServiceCo will be required to repay to FACS a percentage of the rental charged to a Retained Social Housing Tenant calculated in accordance with section 6(b).
- (b) FACS will calculate the Excess Subsidy Rebate as follows:

$$EXA = (\text{NOD}_m/\text{NOD}_{qc}) \times EXA_{pq}$$

NODm = number of days in the current Operating Month

NODqc = number of days in the current Operating Quarter

EXA_{pq} = the Excess Subsidy Rebate calculated at the end of the previous Operating Quarter as follows:

$$EXA_{pq} = \sum ERPC_n \times \text{Max} ((RSet_p - RUpper - CCRA_p), 0) \times NODqc/7$$

where:

ERPC_n is the percentage Rebate applied based on Table 2 below.

RSet_p is the weekly rent charged to the Tenant for Dwelling P set by ServiceCo for the last week of the reporting period.

RUpper is the weekly rent that would be charged to the Tenant for Dwelling P had Tenant P household's assessable income been equal to the household's income eligibility limit for the last week of the reporting period. RUpper must be equal to 25% of Tenant P household's income eligibility limit.

RMarket_p is the weekly Market Rent for Dwelling P.

CCRA_p is the change in Tenant P's weekly household CRA entitlement and equal to

$$CCRAB_p - CCRA_{Cp}$$

where:

CCRAB_p is Tenant P's weekly household CRA entitlement that would have applied to Tenant P at the residential tenancy agreement commencement date (CCRAB_p can be zero) if the thresholds and rates for the payments of CRA applicable at the date of this Agreement were applied adjusted for any then applicable indexation.

CCRA_{Cp} is Tenant P's weekly household CRA entitlement that would have applied to Tenant P on the week end immediately preceding the most recent rent and income review (CCRA_{Cp} can be zero) on the assumption that the thresholds and rates for the payments of CRA applicable at the date of this Agreement were applied adjusted for any then applicable indexation.

Table 2: Percentage Rebate Levels

| Rebate (ERPC_n) | Applicable Threshold Range (RMarket_p – RSet_p) / RMarket_p |
|--------------------------------------|--|
| 20% | > 80% |
| 40% | > 60% and ≤ 80% |
| 60% | > 40% and ≤ 60% |
| 80% | > 20% and ≤ 40% |
| 100% | ≤ 20% |

7. Interim Survey

- (a) If a Service Quality Performance Incident occurs in respect of a Tenant Satisfaction Survey or a Tenant Survey, ServiceCo may undertake another survey during the following Operating Year in accordance with this section 8 (Interim Survey).
- (b) ServiceCo must conduct the Interim Survey in accordance with the following requirements in the Services Specification, as if the Interim Survey were a Tenant Satisfaction Survey or a Tenant Survey (as applicable):
 - (i) sections 4.13(a)(ii), 4.13(a)(iii) and 4.13(b) (for the Quality Areas relating to 'Maintenance Services', 'Condition of Dwelling' and 'Tenancy Management Services'); and
 - (ii) sections 5.7(a)(i), 5.7(b)(ii), 5.7(c) and 5.7(d) (for the Quality Area relating to 'Tailored Support Coordination Services'),and report the results to the FACS Representative by the third quarter of that Operating Year in accordance with section 6.3 of the Services Specification.
- (c) If, in respect of a Quality Area:
 - (i) ServiceCo achieves a satisfaction % in the Interim Survey that is equal to or exceeds the relevant satisfaction threshold set out in Table 1; and
 - (ii) a Service Quality Performance Incident occurred in relation to that Quality Area in the preceding Tenant Satisfaction Survey or Tenant Survey (as applicable),then the Interim Survey is deemed to be successful (**Successful Interim Survey**).
- (d) If a Successful Interim Survey is conducted in accordance with this section 7, the Service Quality Performance Incidents in the initial Operating Year will be deemed to be zero for the purpose of determining whether a Major Default Service Failure has occurred.
- (e) A failure by ServiceCo to achieve a satisfaction threshold set out in Table 1 in an Interim Survey will not constitute a second Service Quality Performance Incident for the purposes of paragraph (a) of the definition of Major Default Service Failure.

8. Removed Dwellings and adjustments

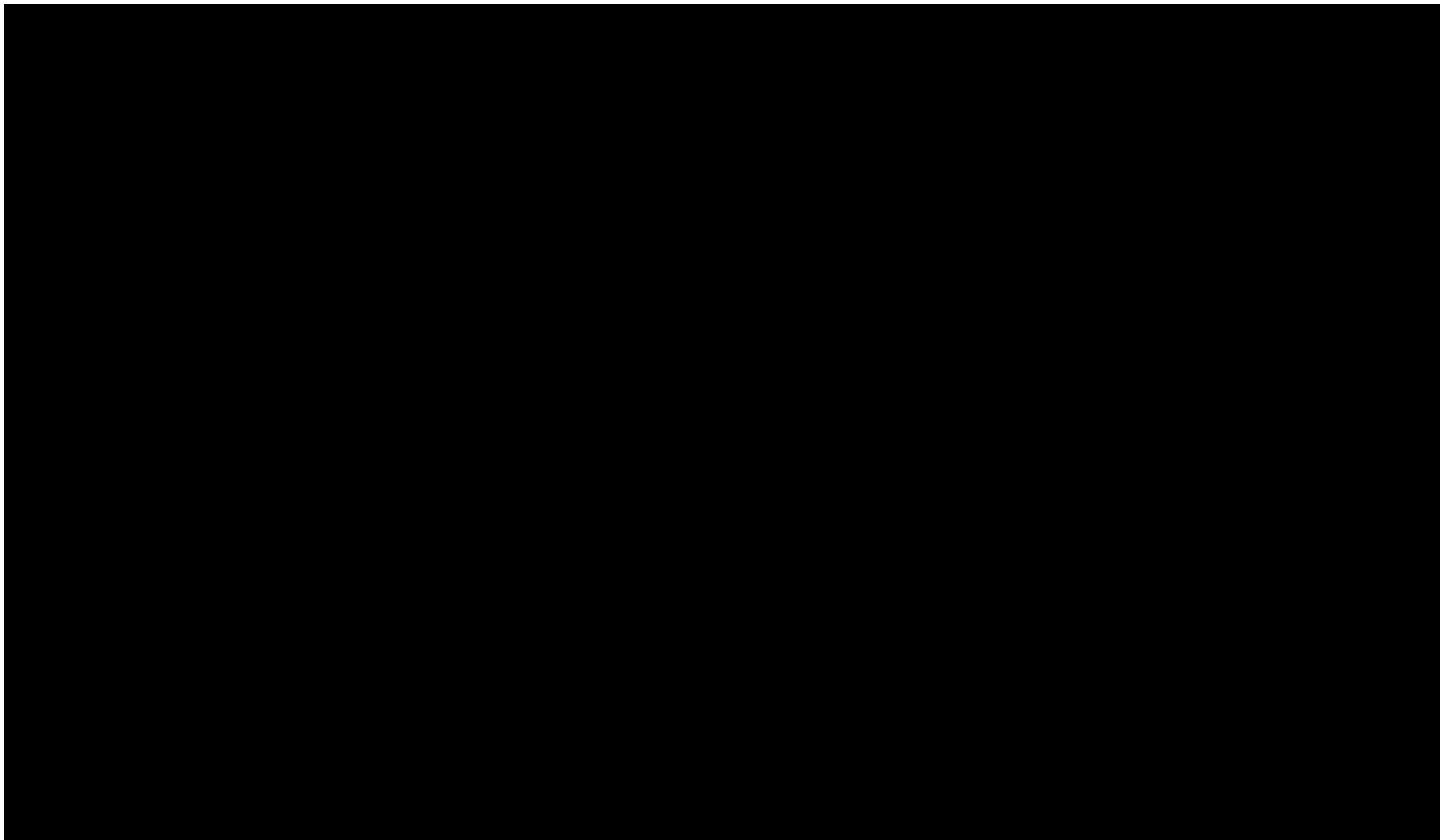
The parties acknowledge and agree that this Schedule is subject to:

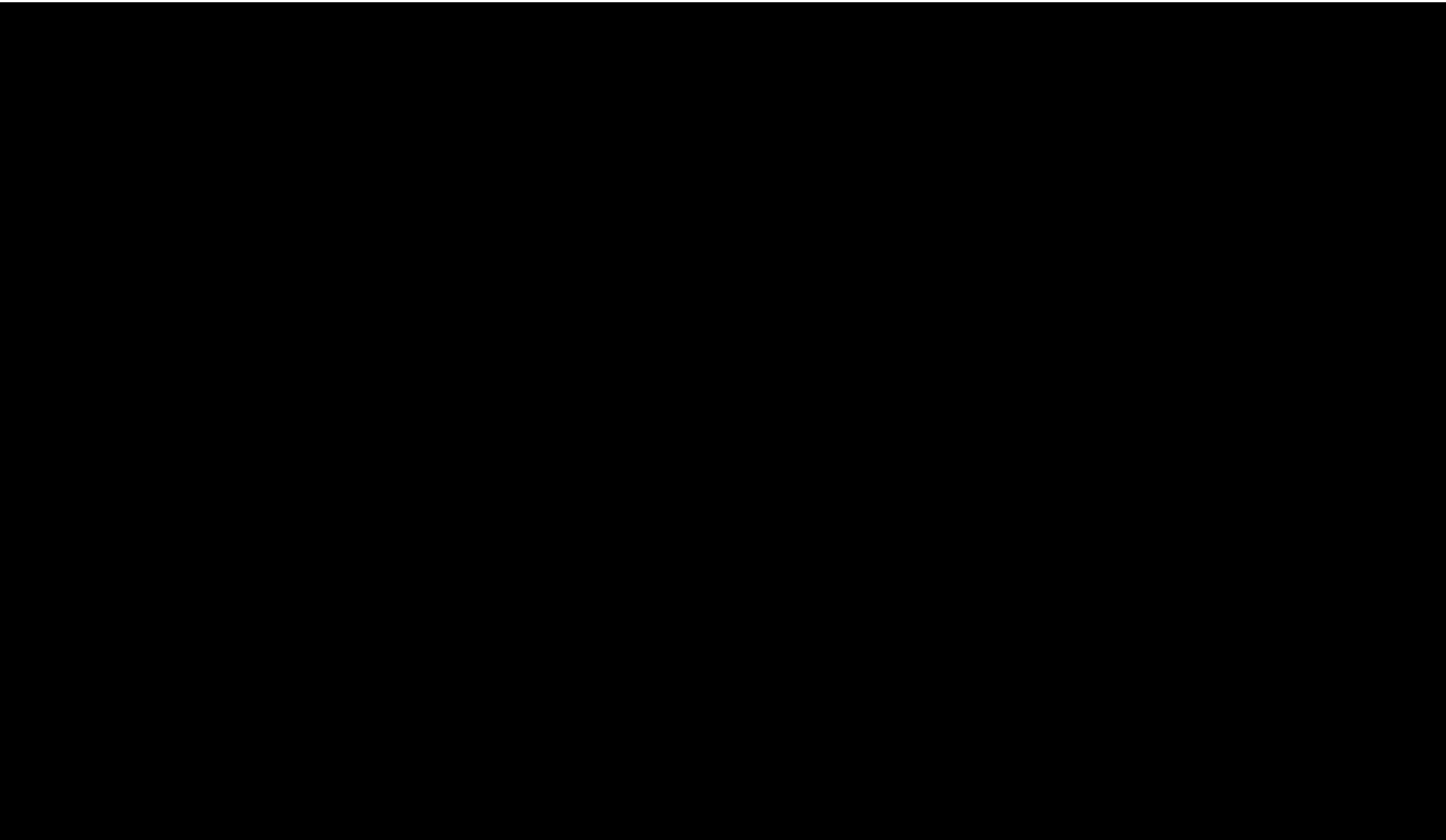
- (a) clause 22.4 (*Removal of Dwellings*) of the Services Agreement in respect of any Removed Dwellings; and
- (b) section 4.5(f) and 4.5(g) of the Services Specification in respect of any Appropriate Applicants.

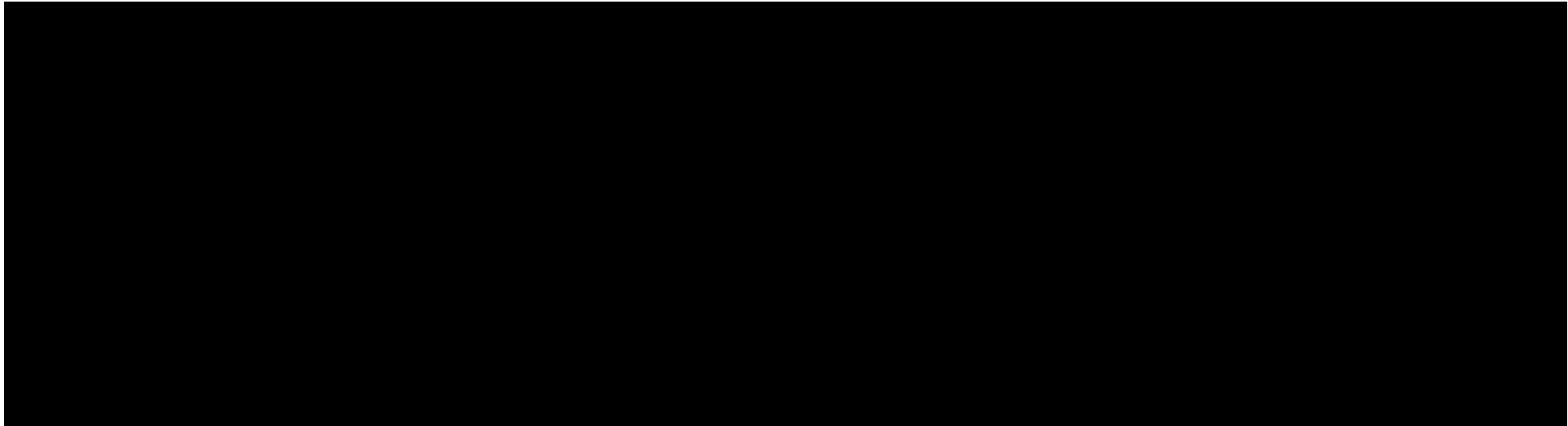
Confidential

Annexure A

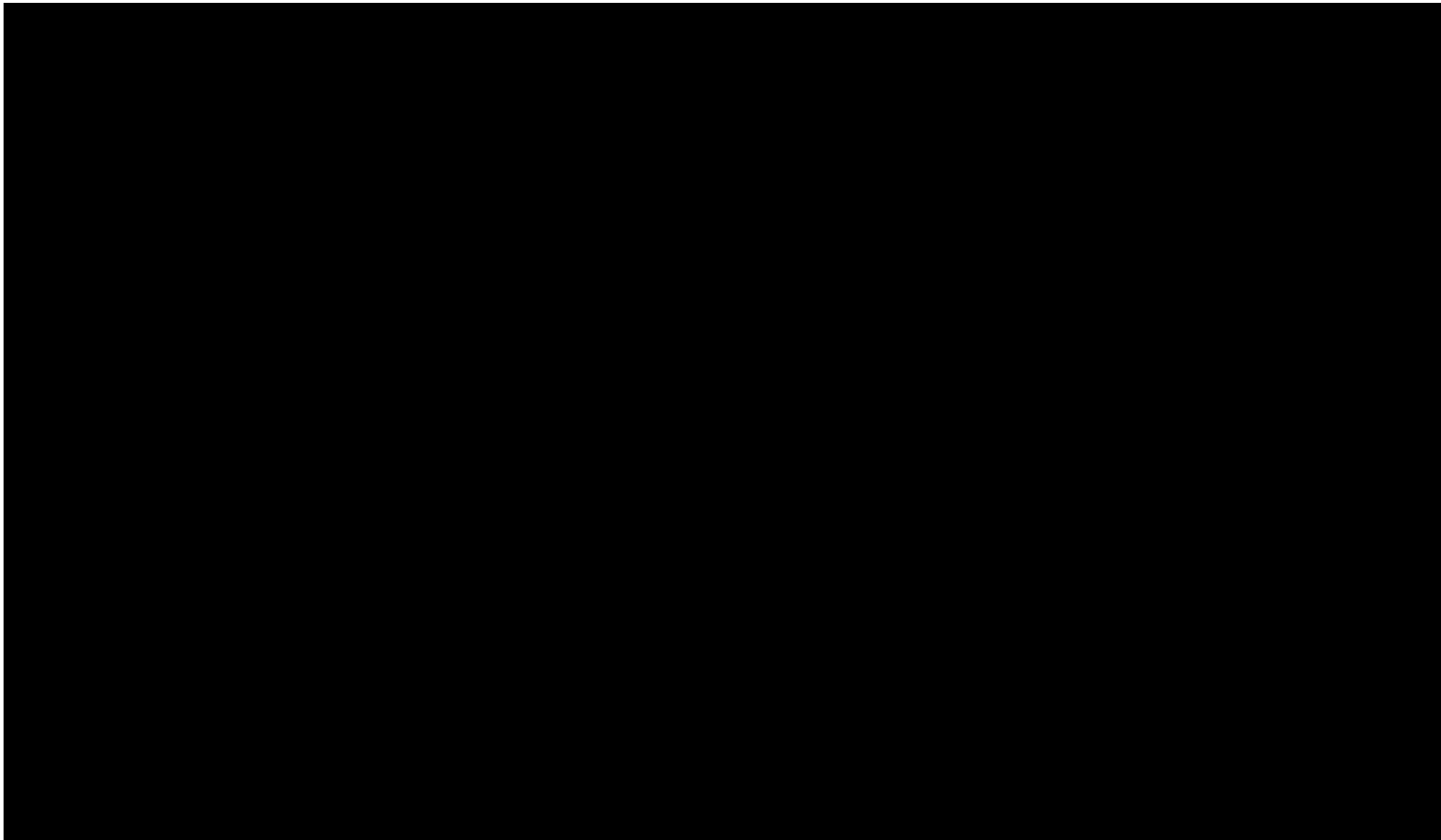
Schedule 3

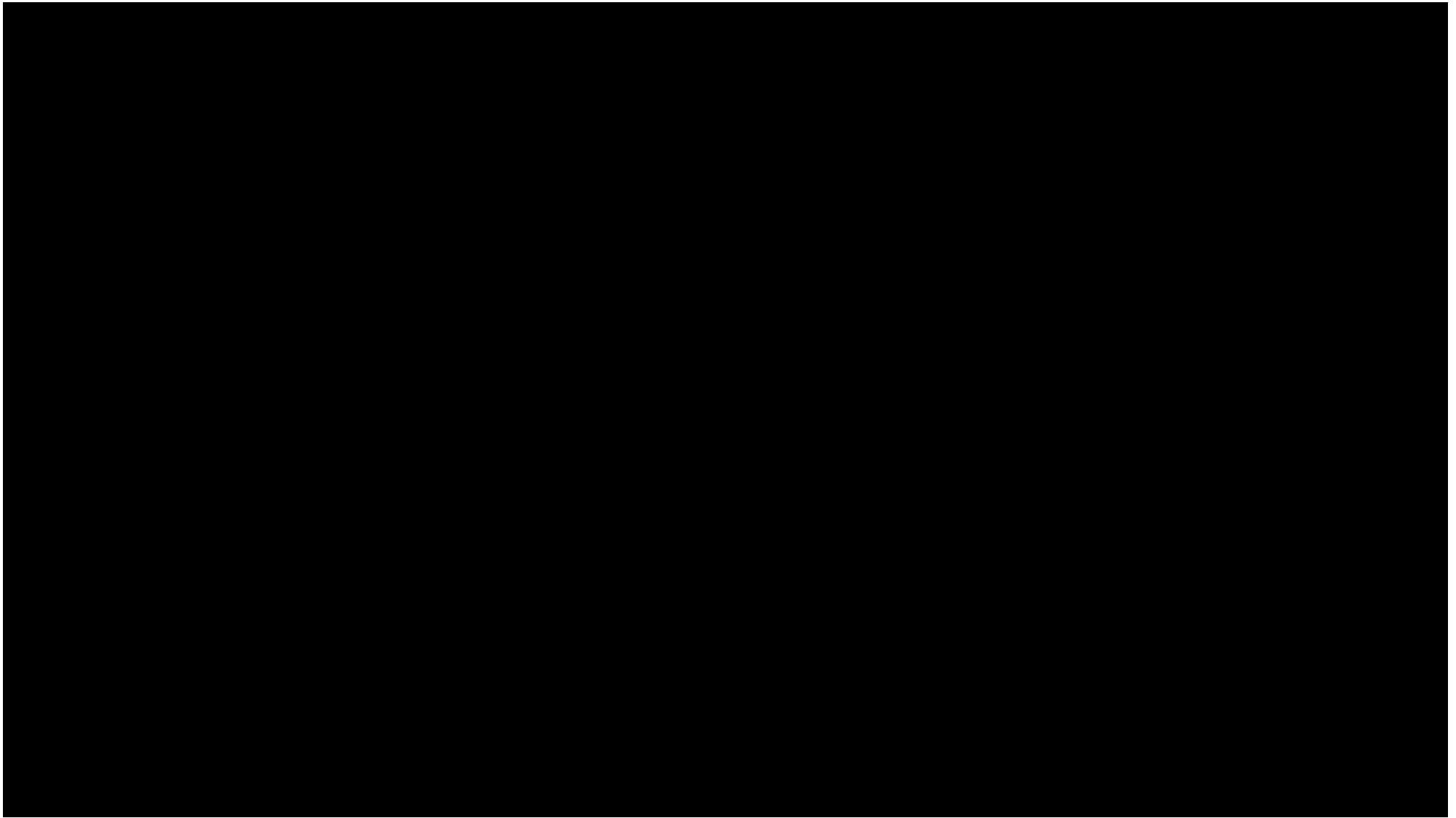


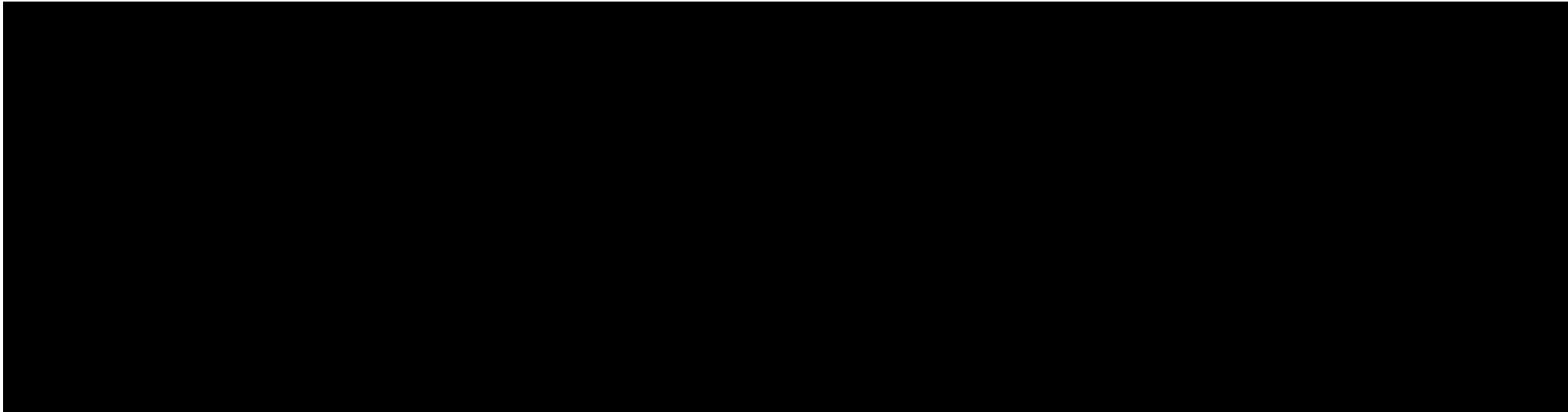




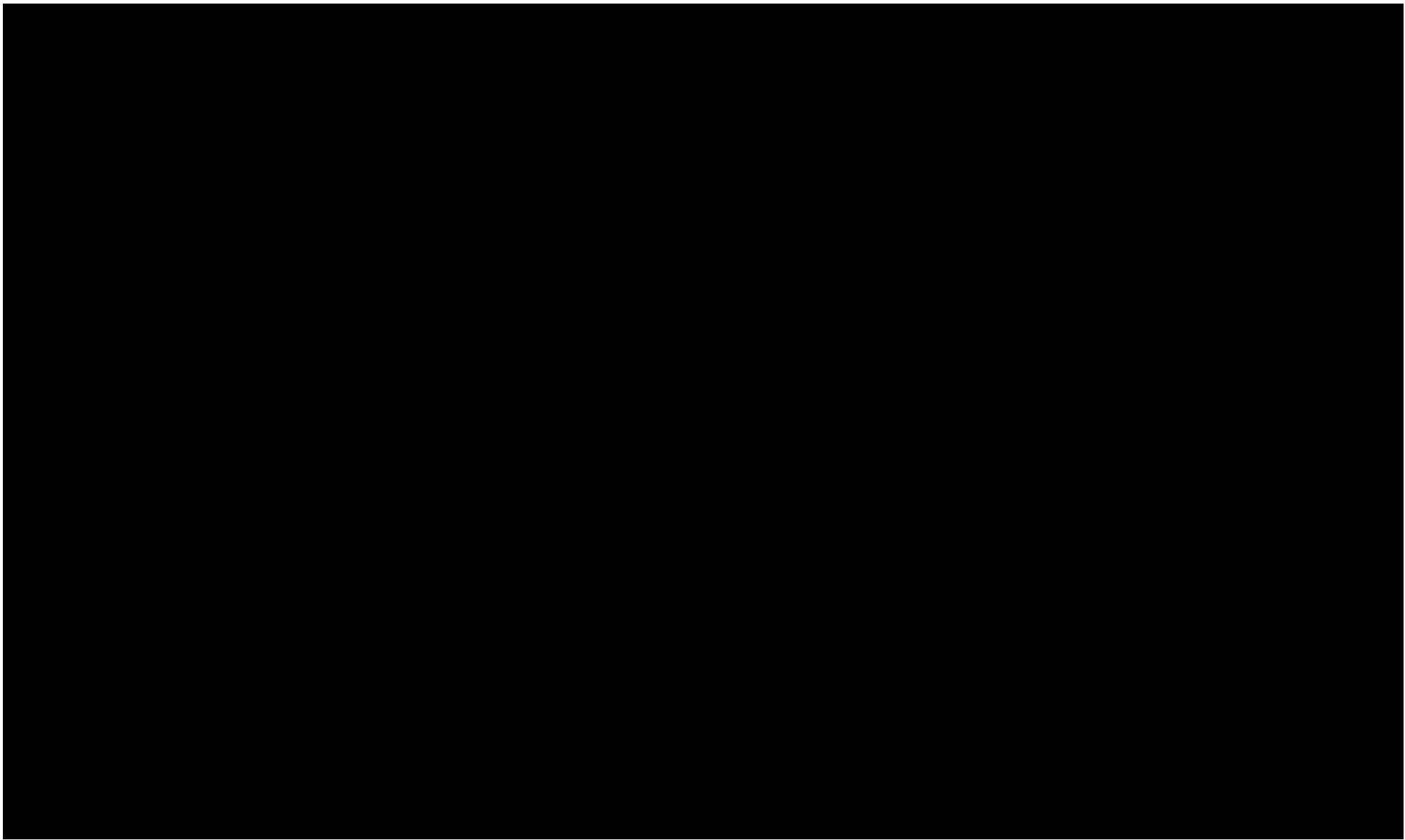
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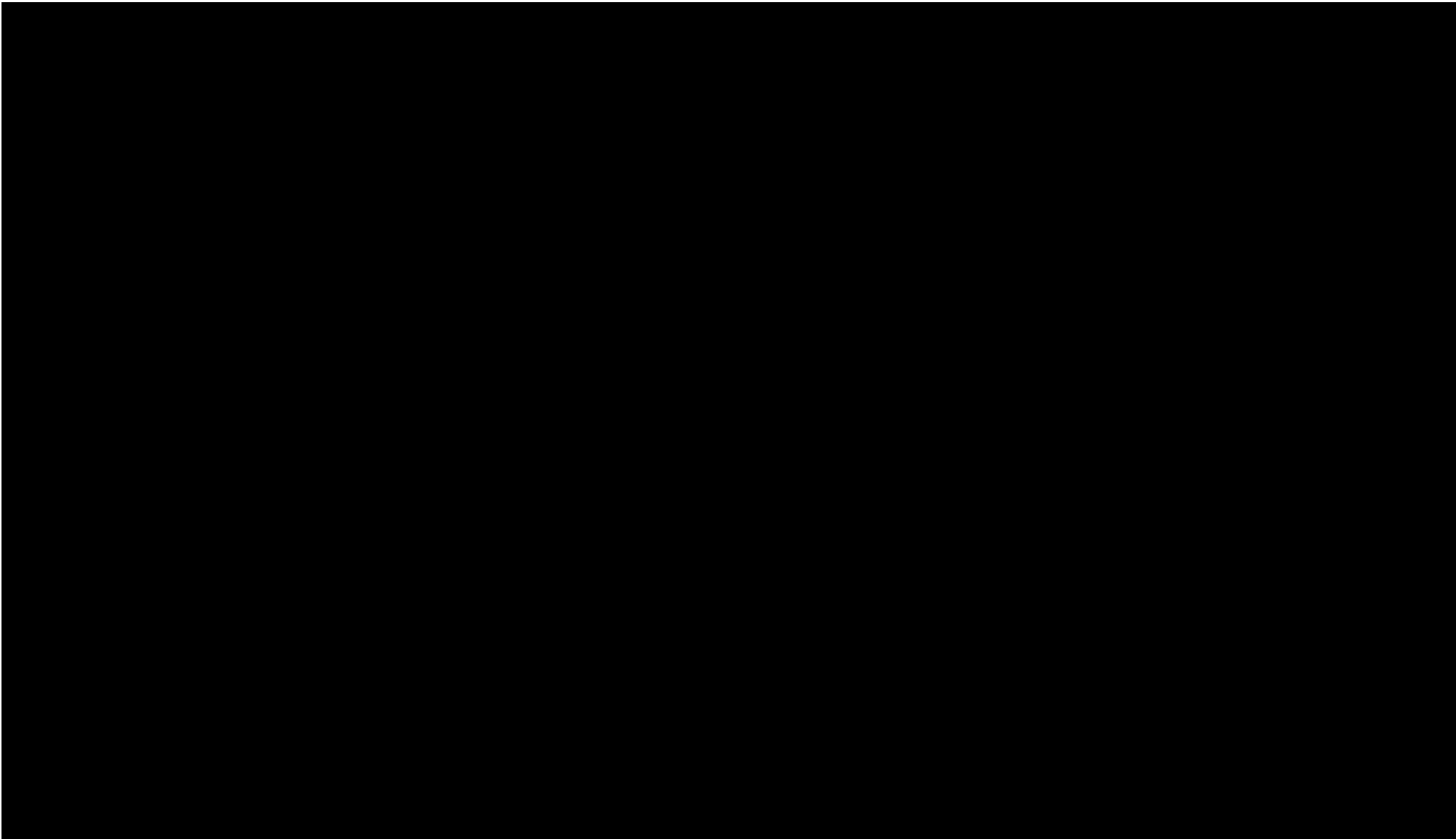


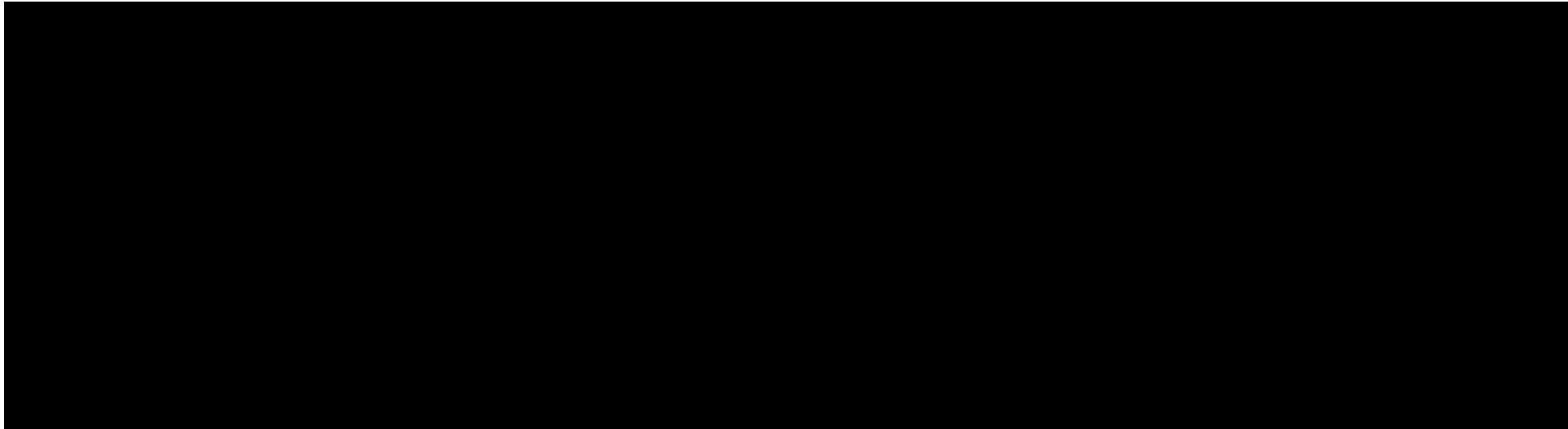




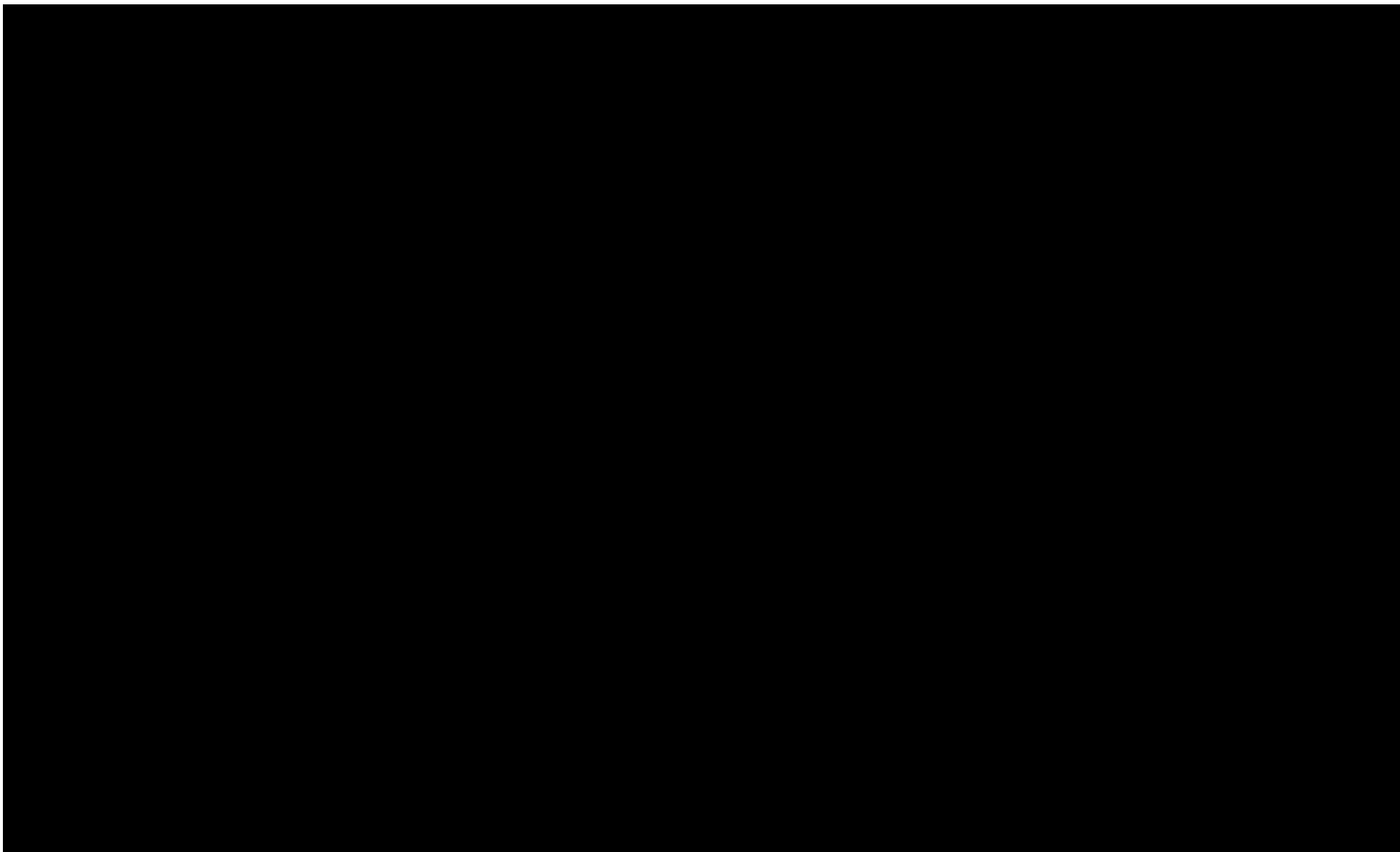
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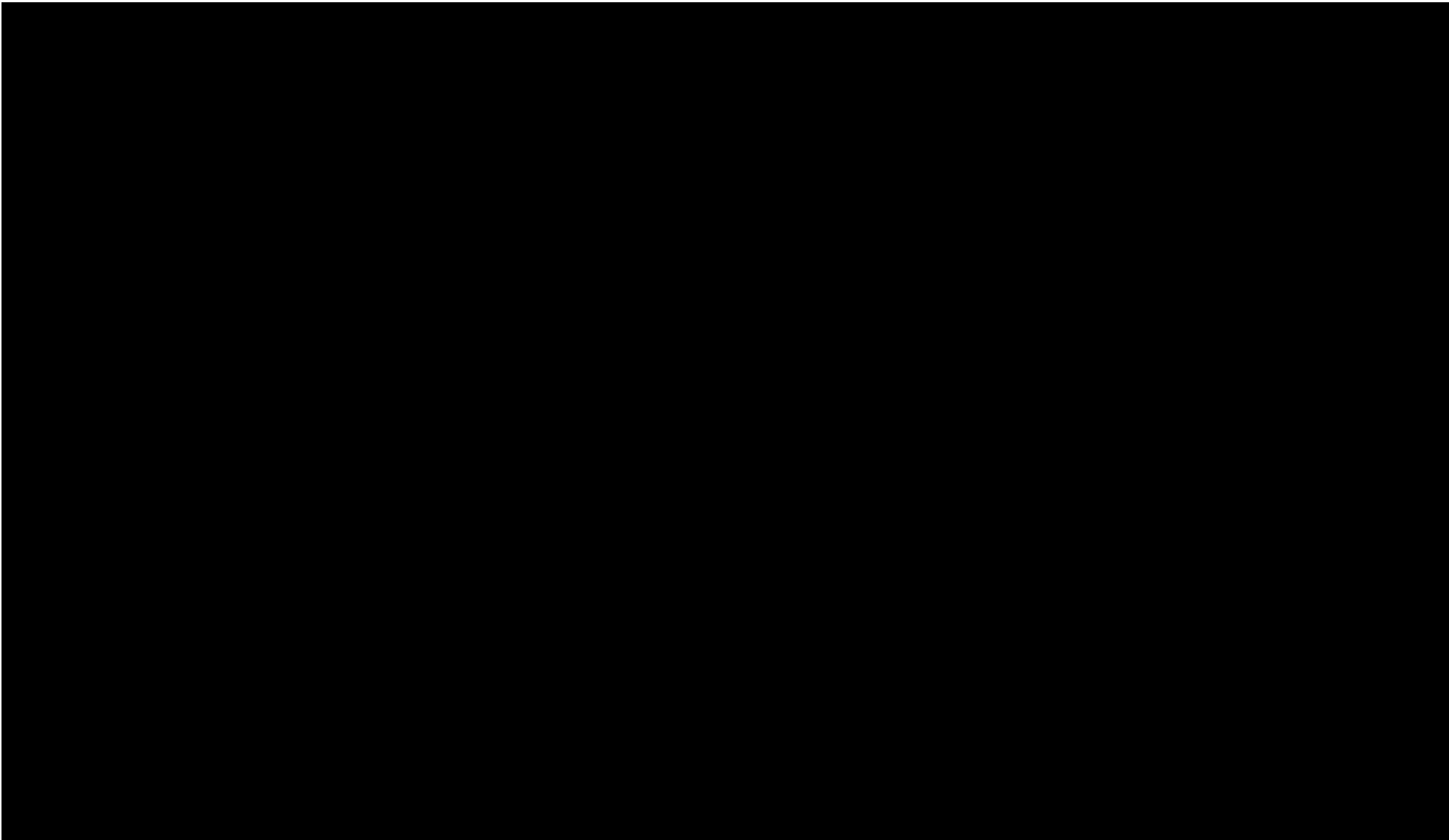


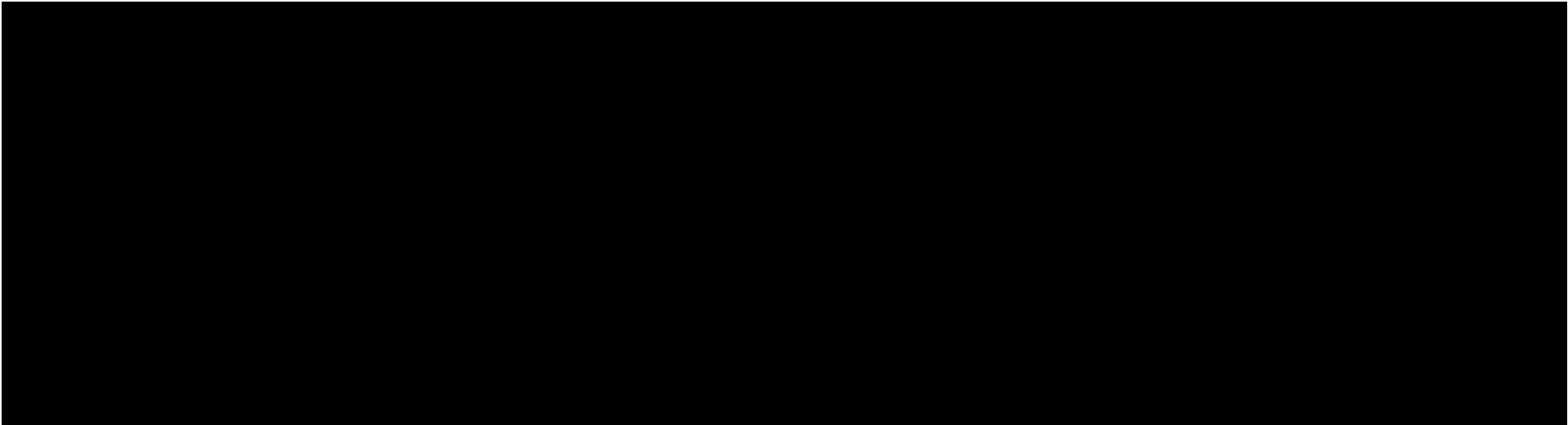




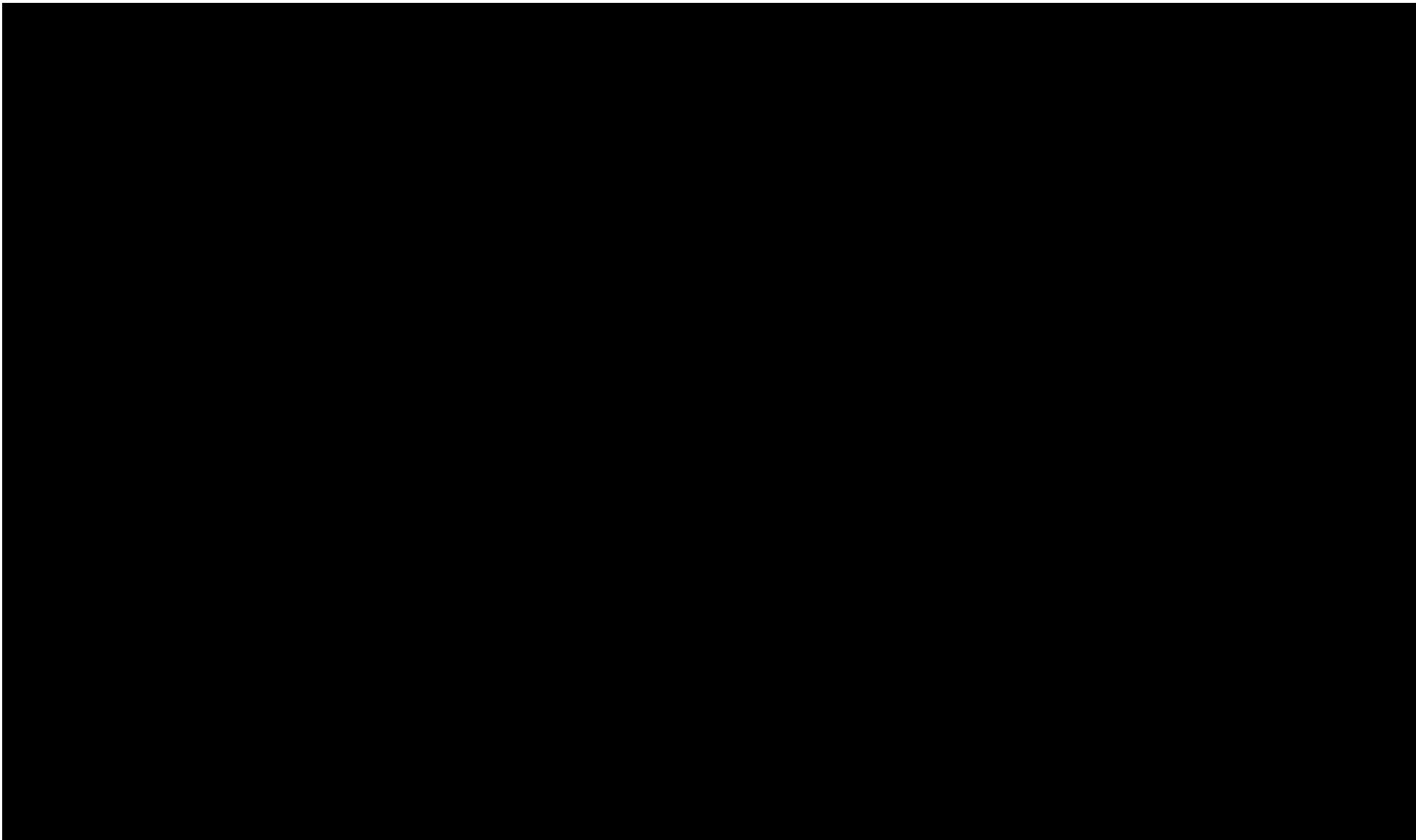
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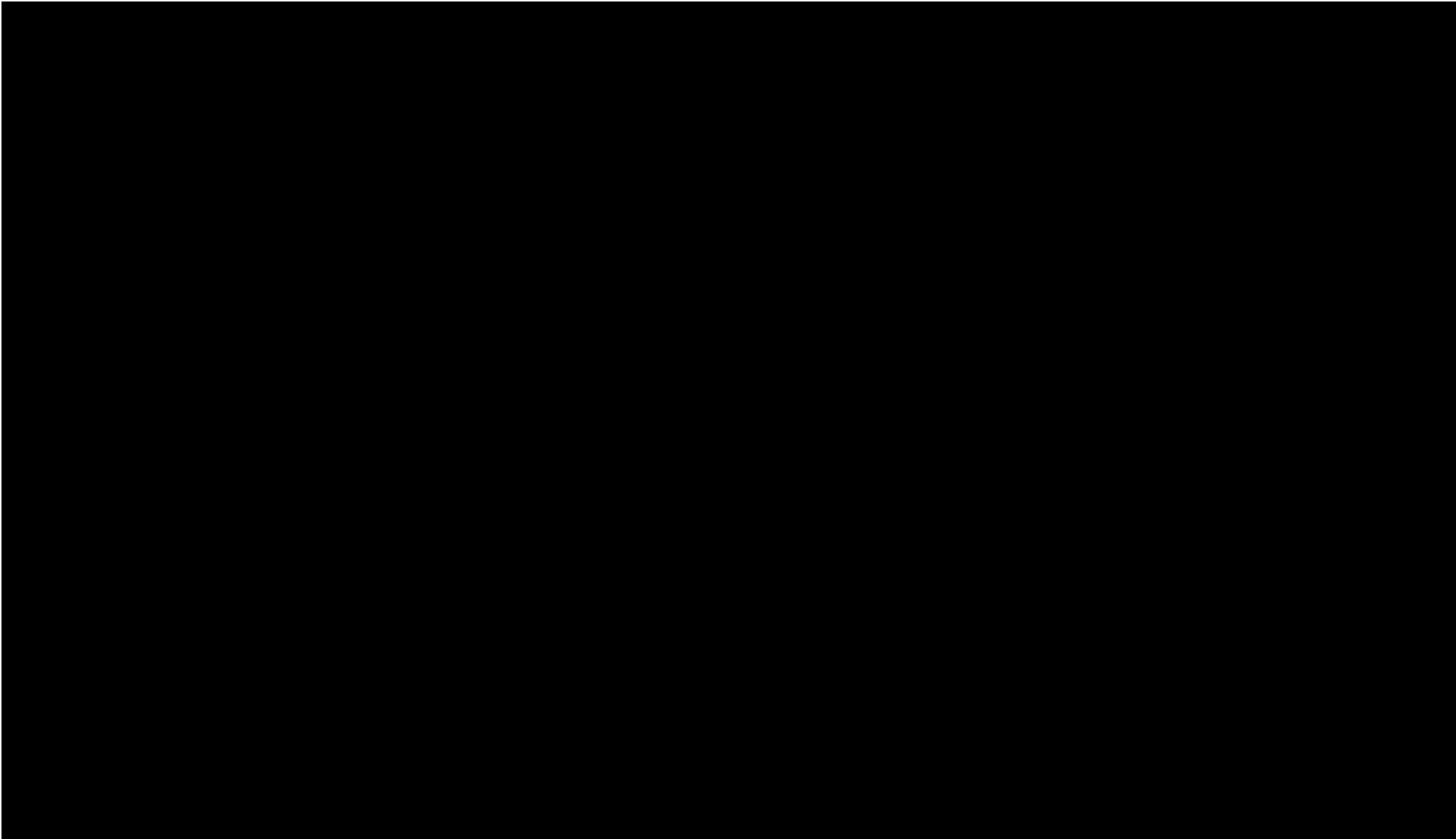






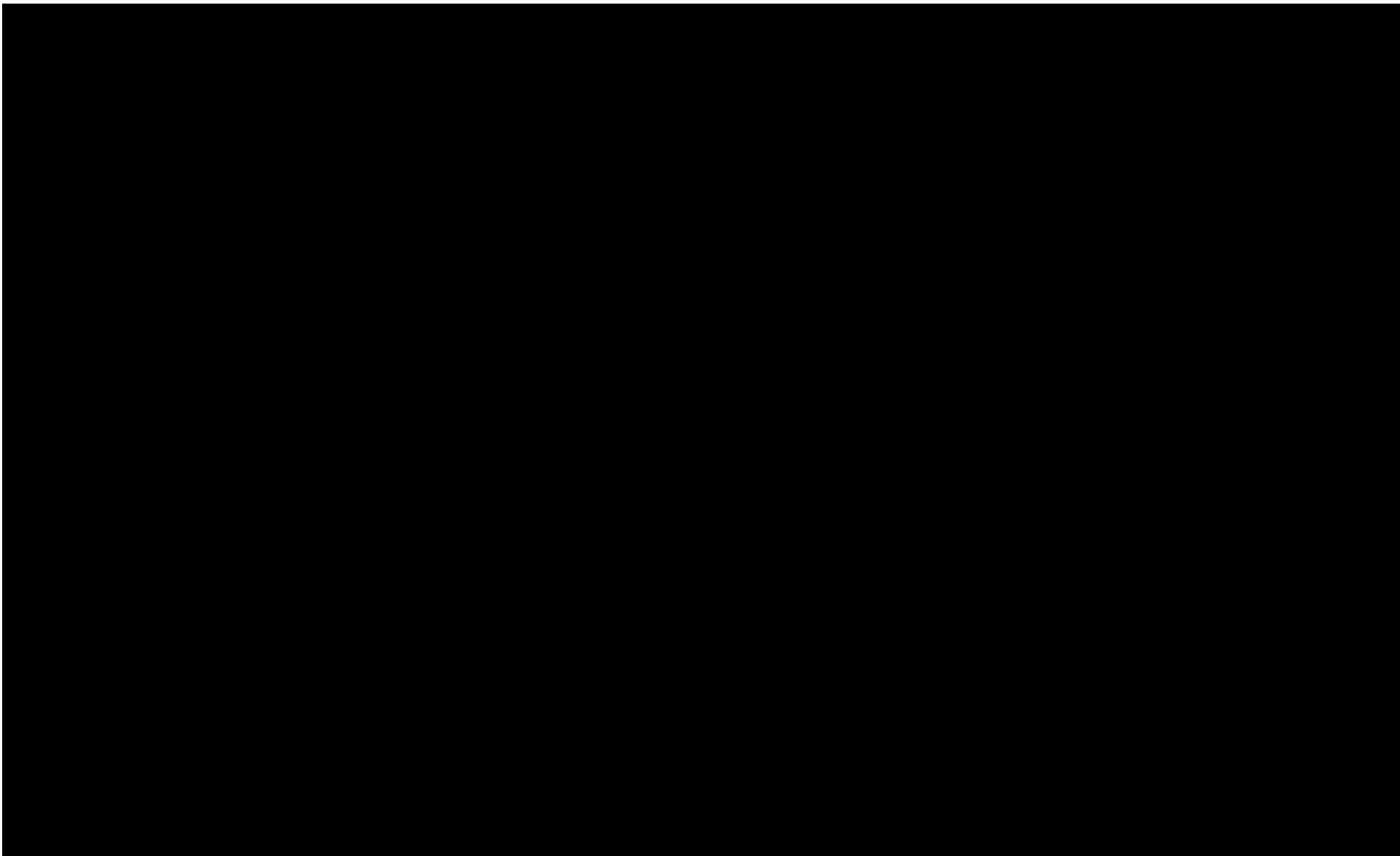
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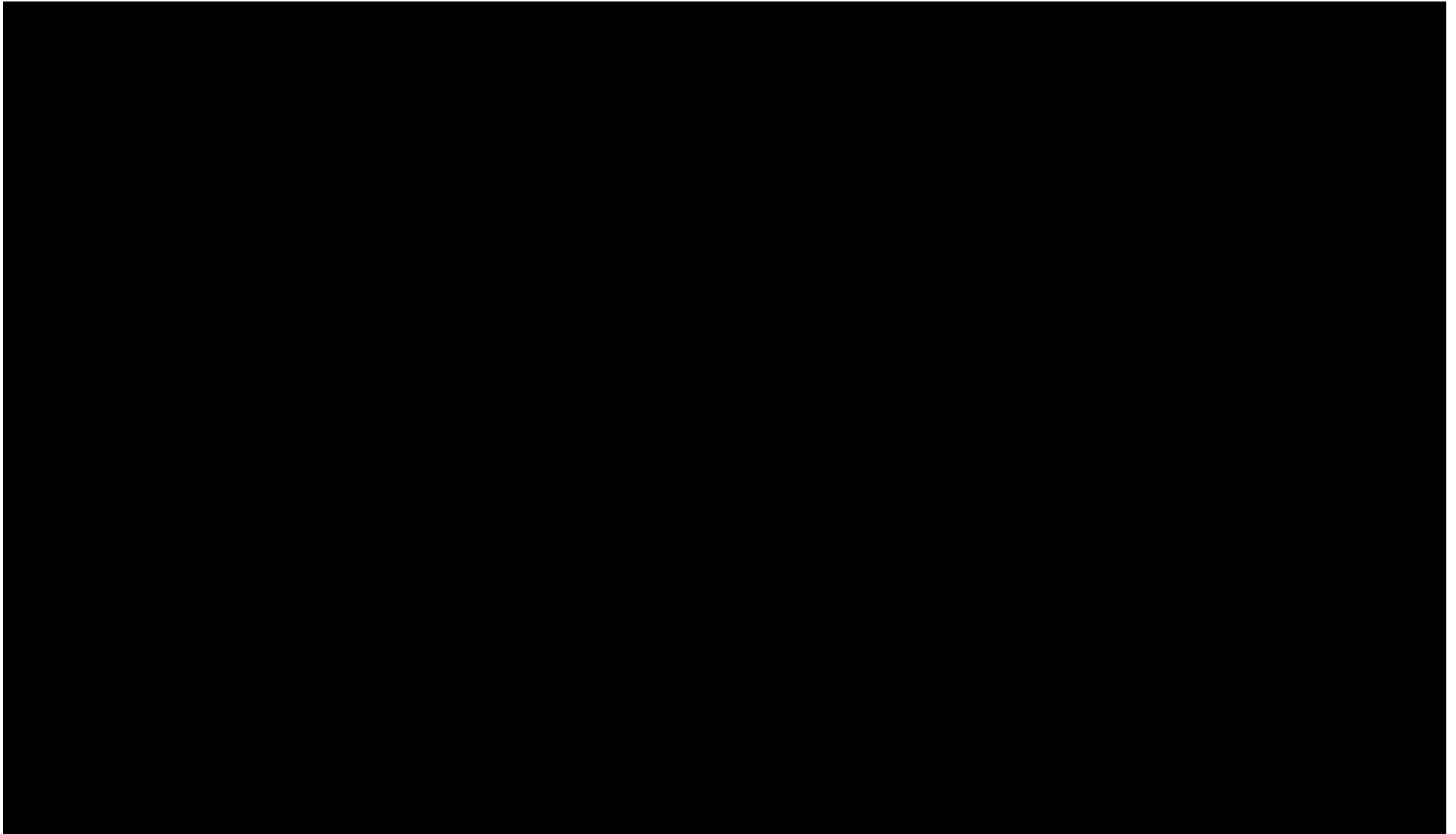


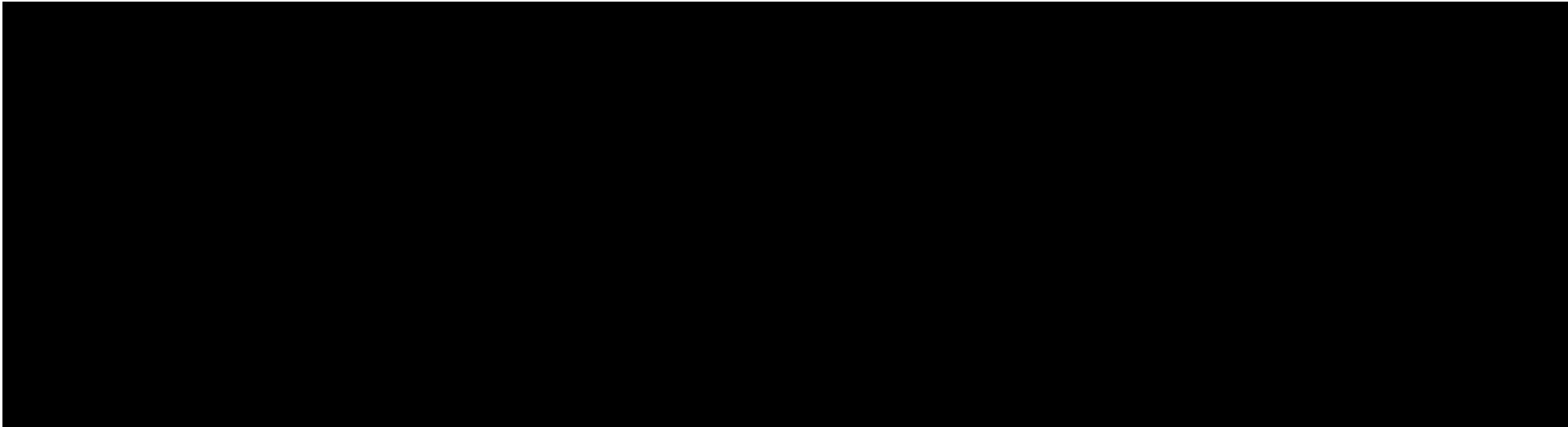




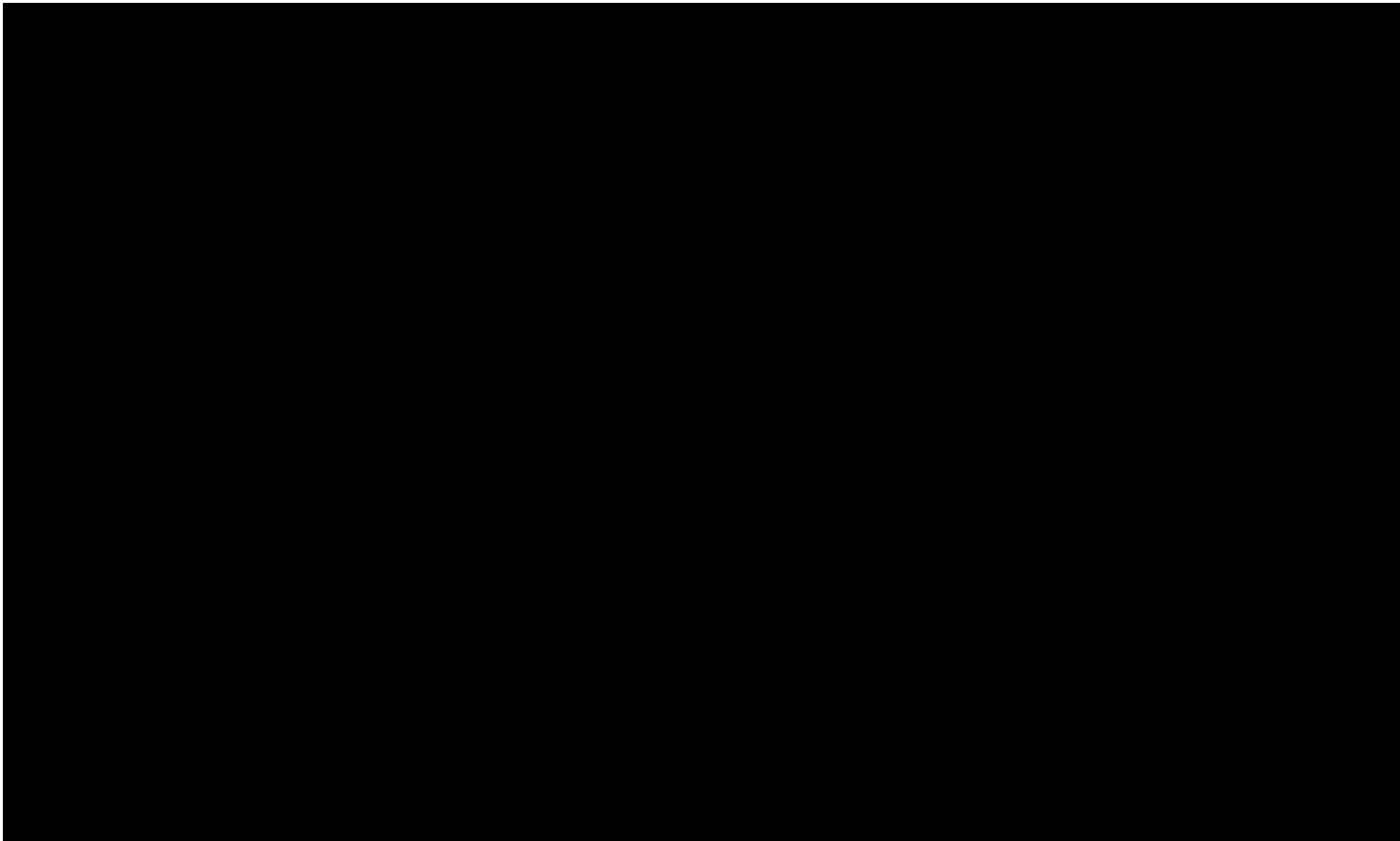
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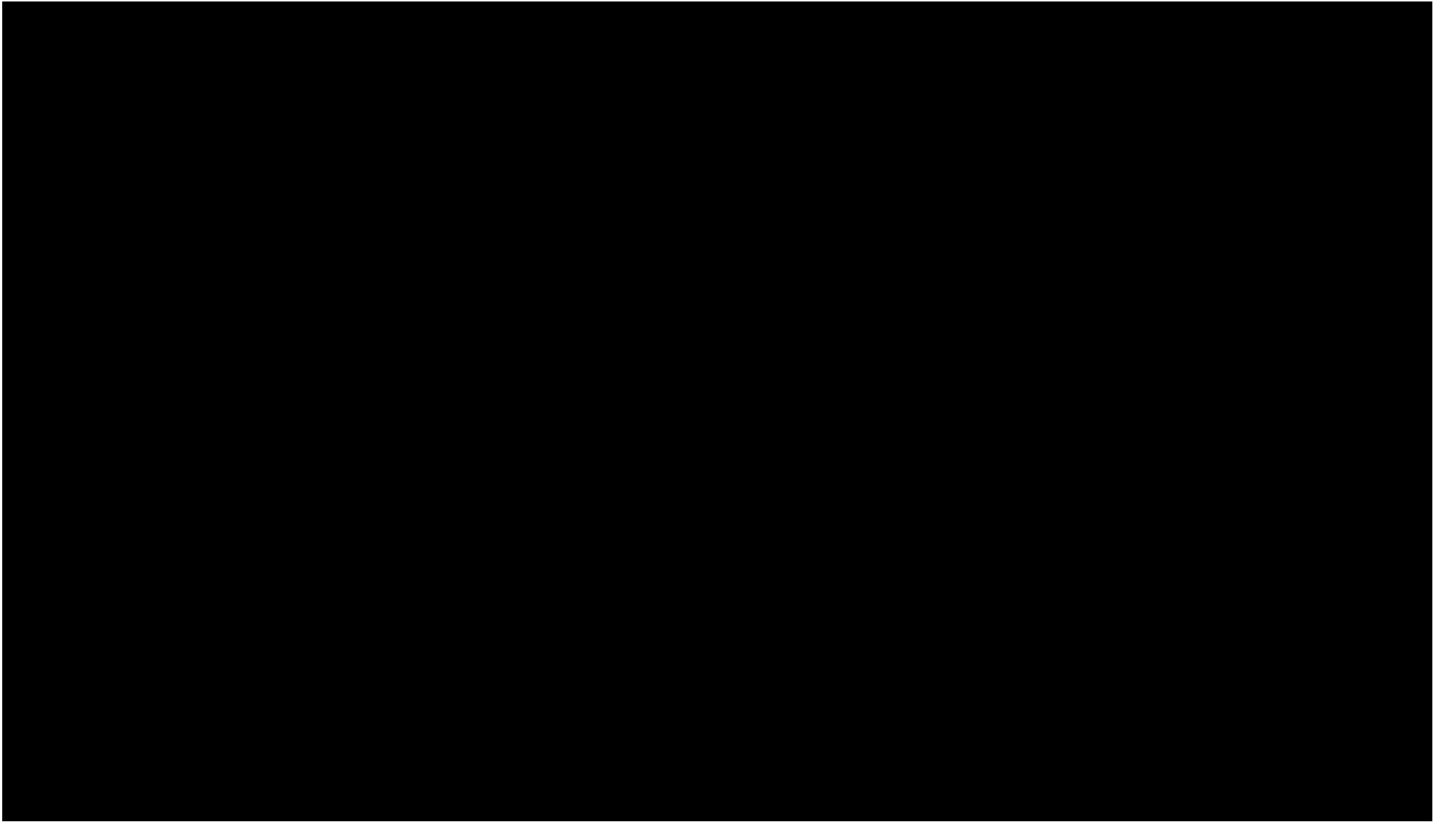


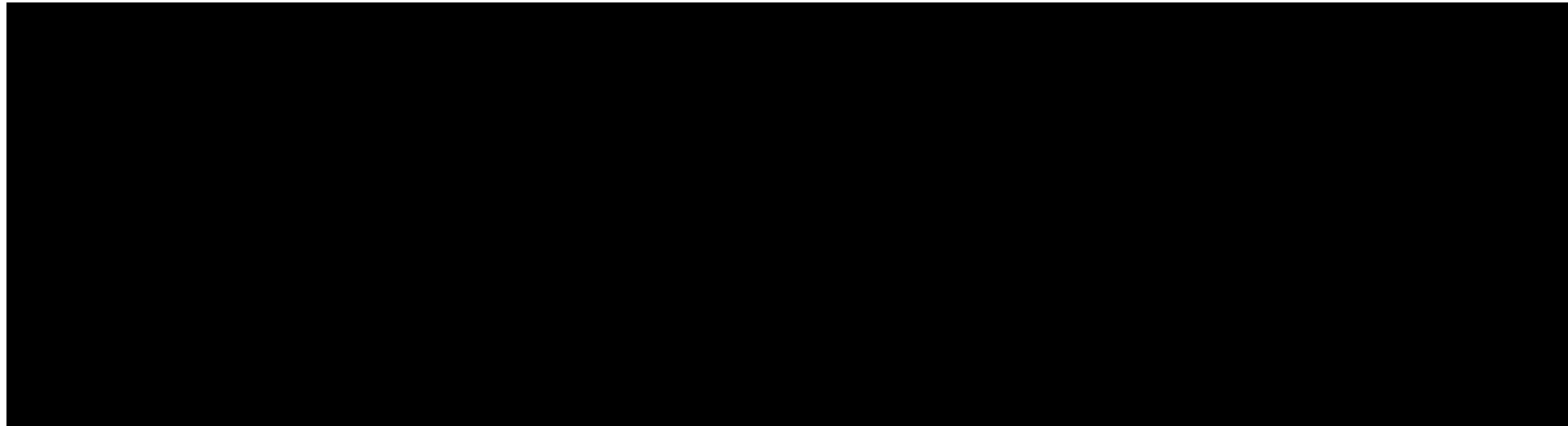




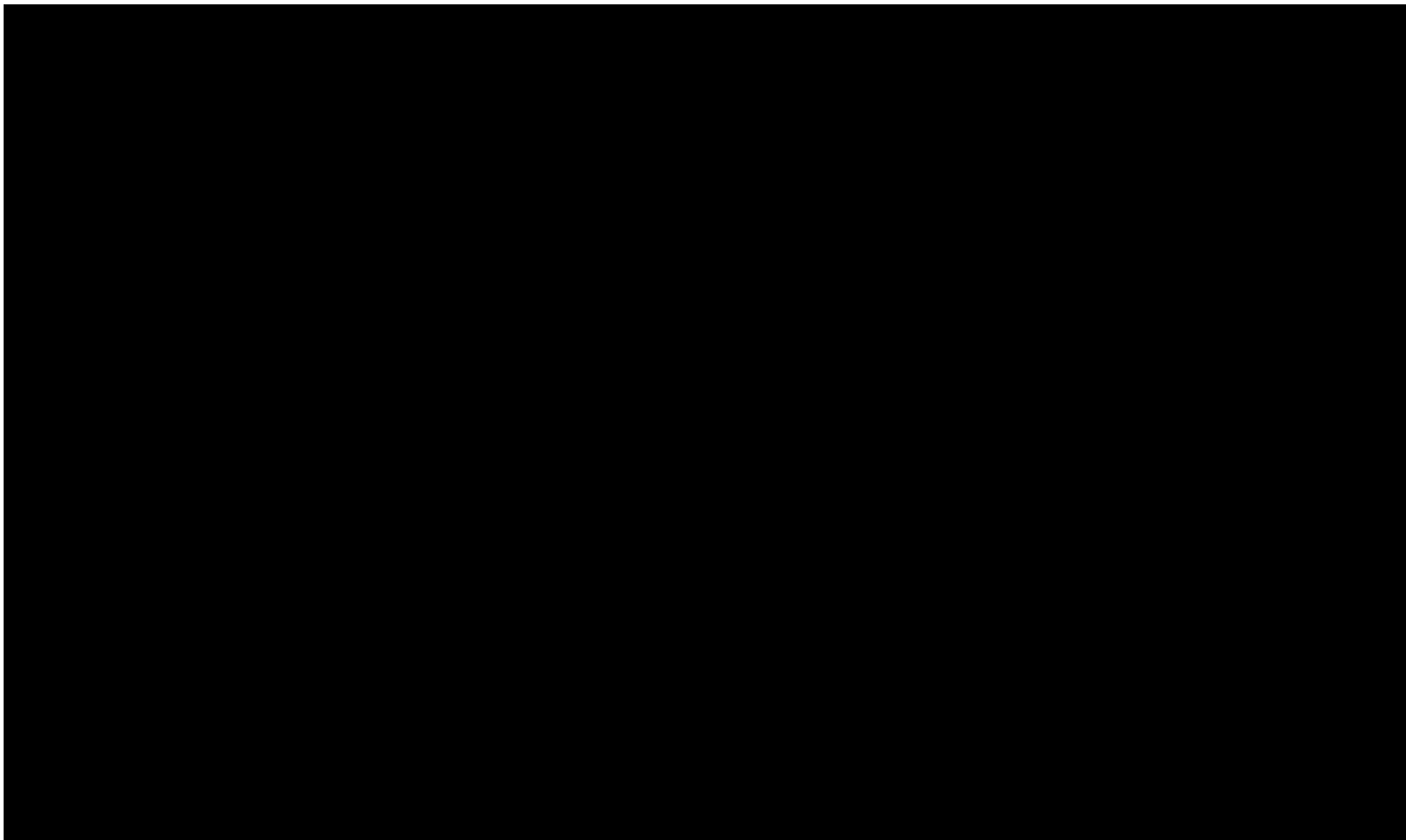
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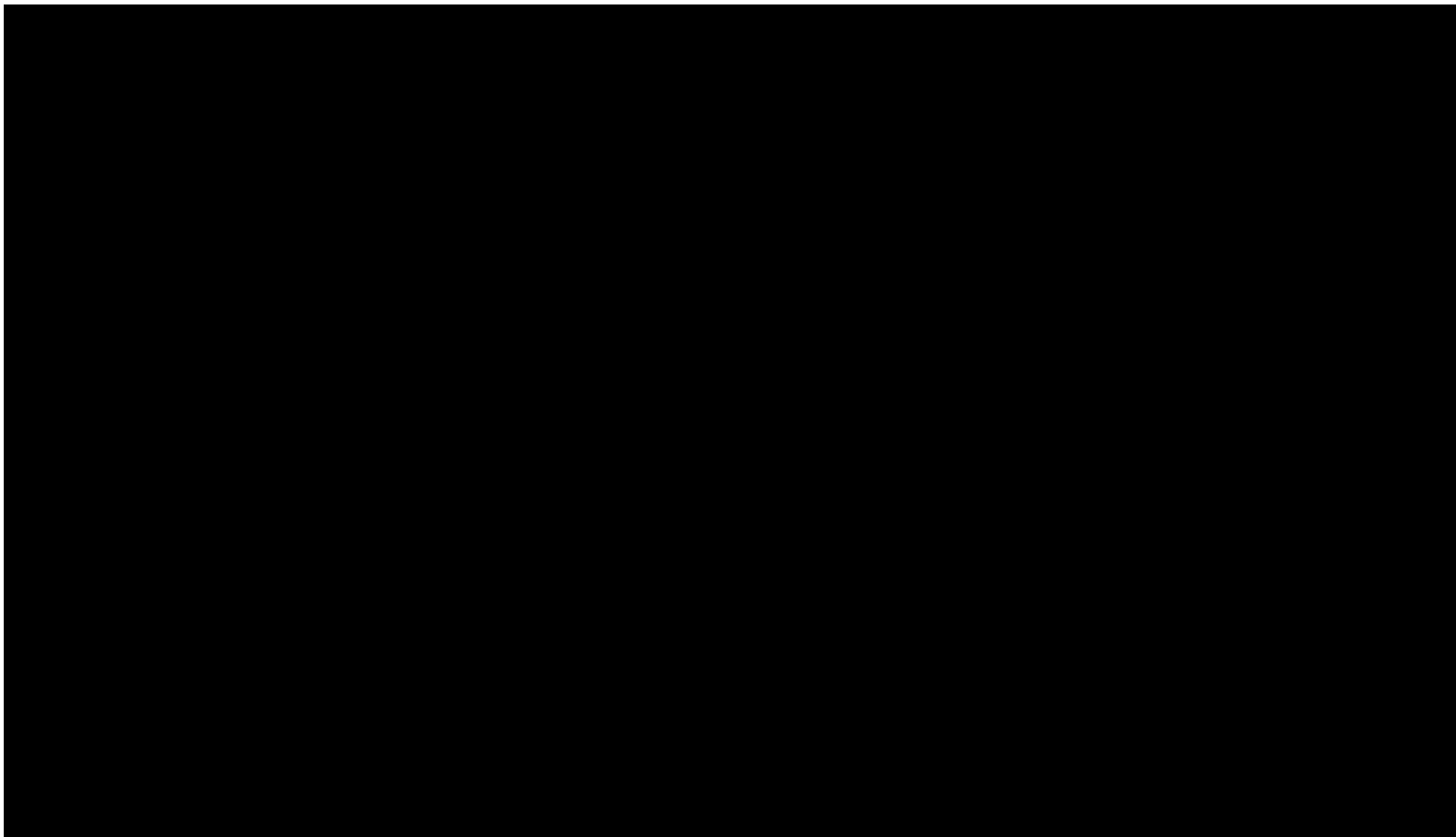






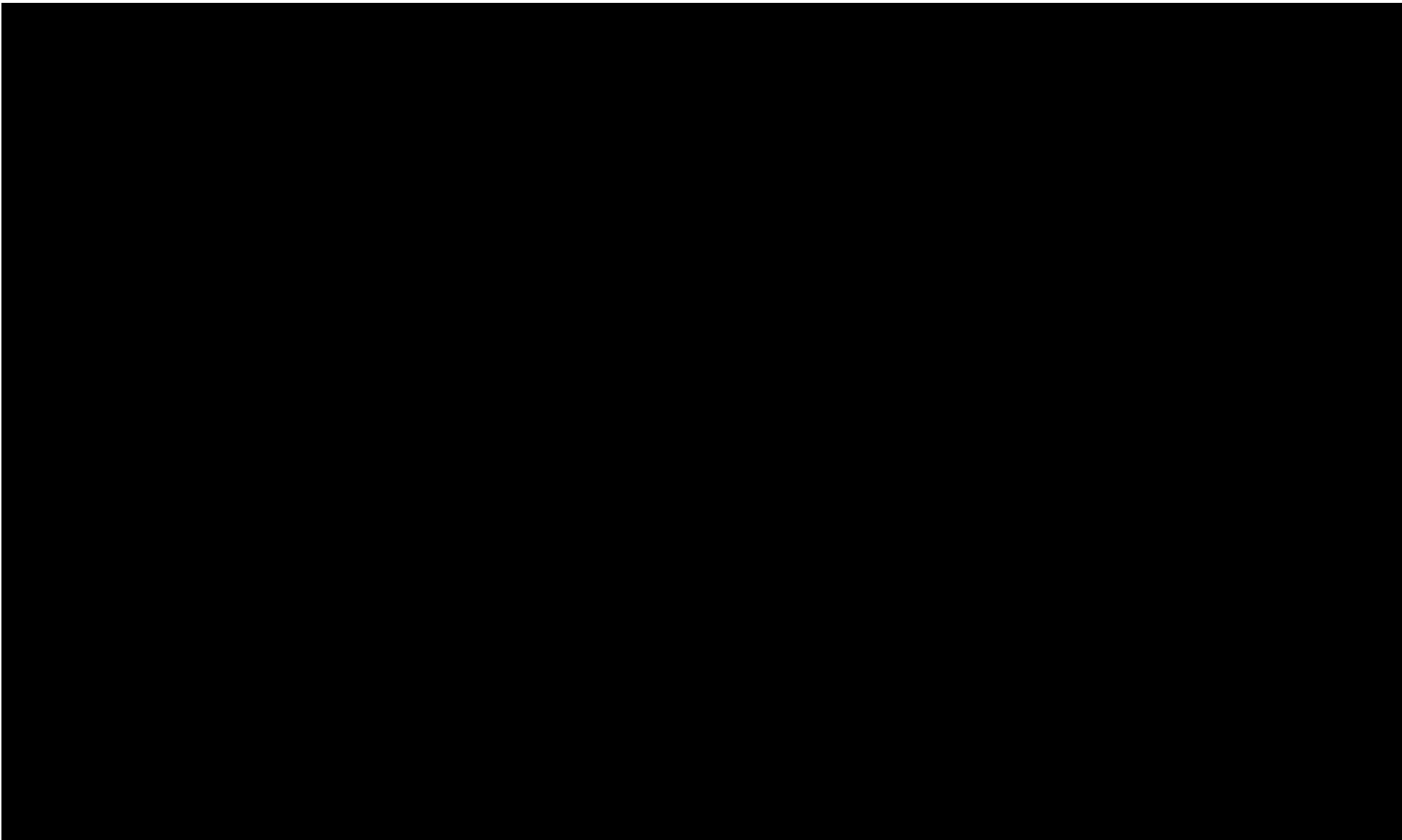
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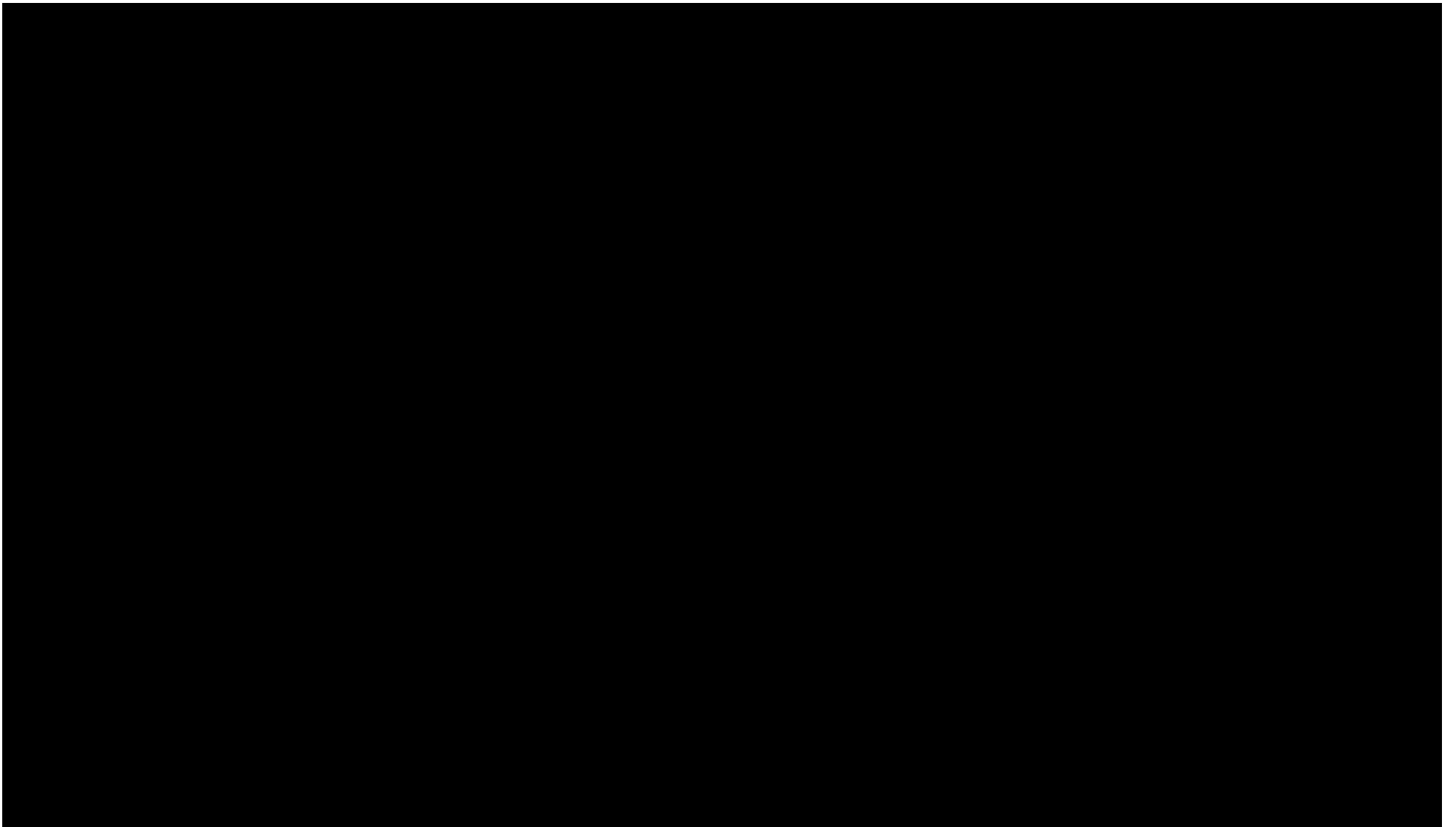


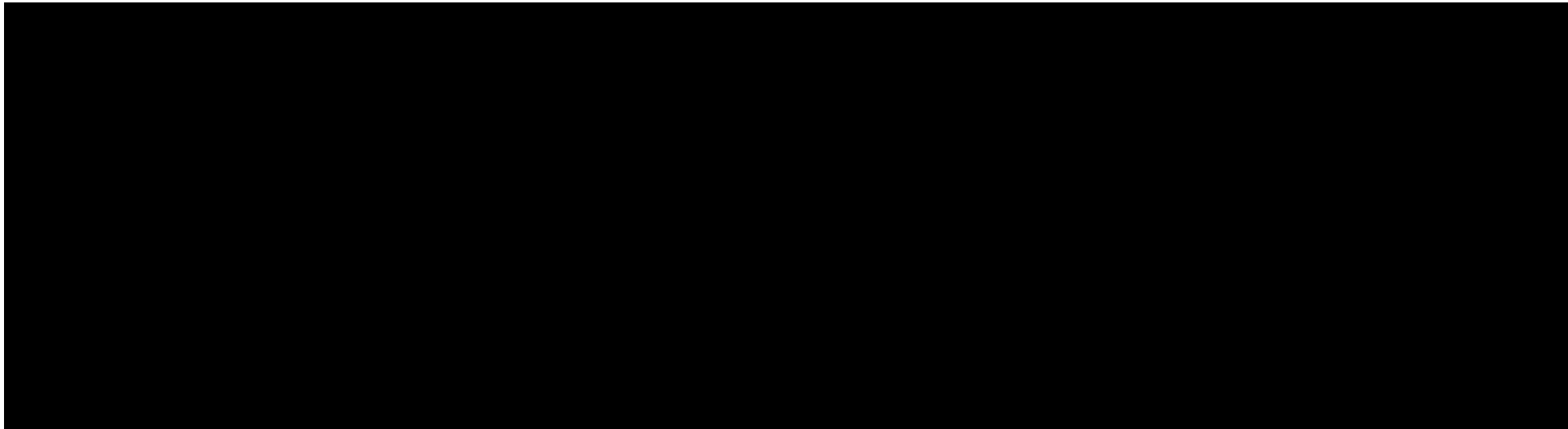




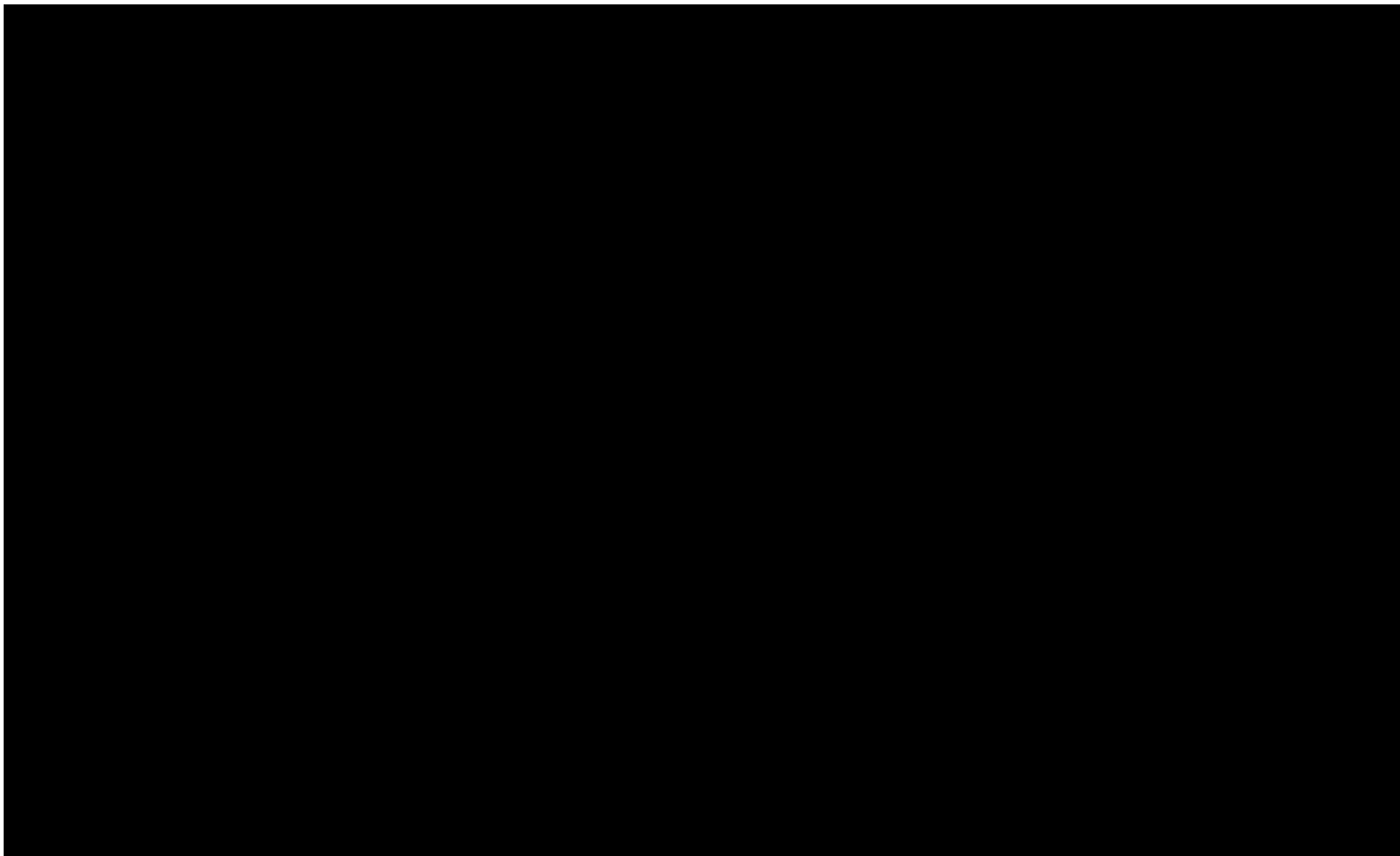
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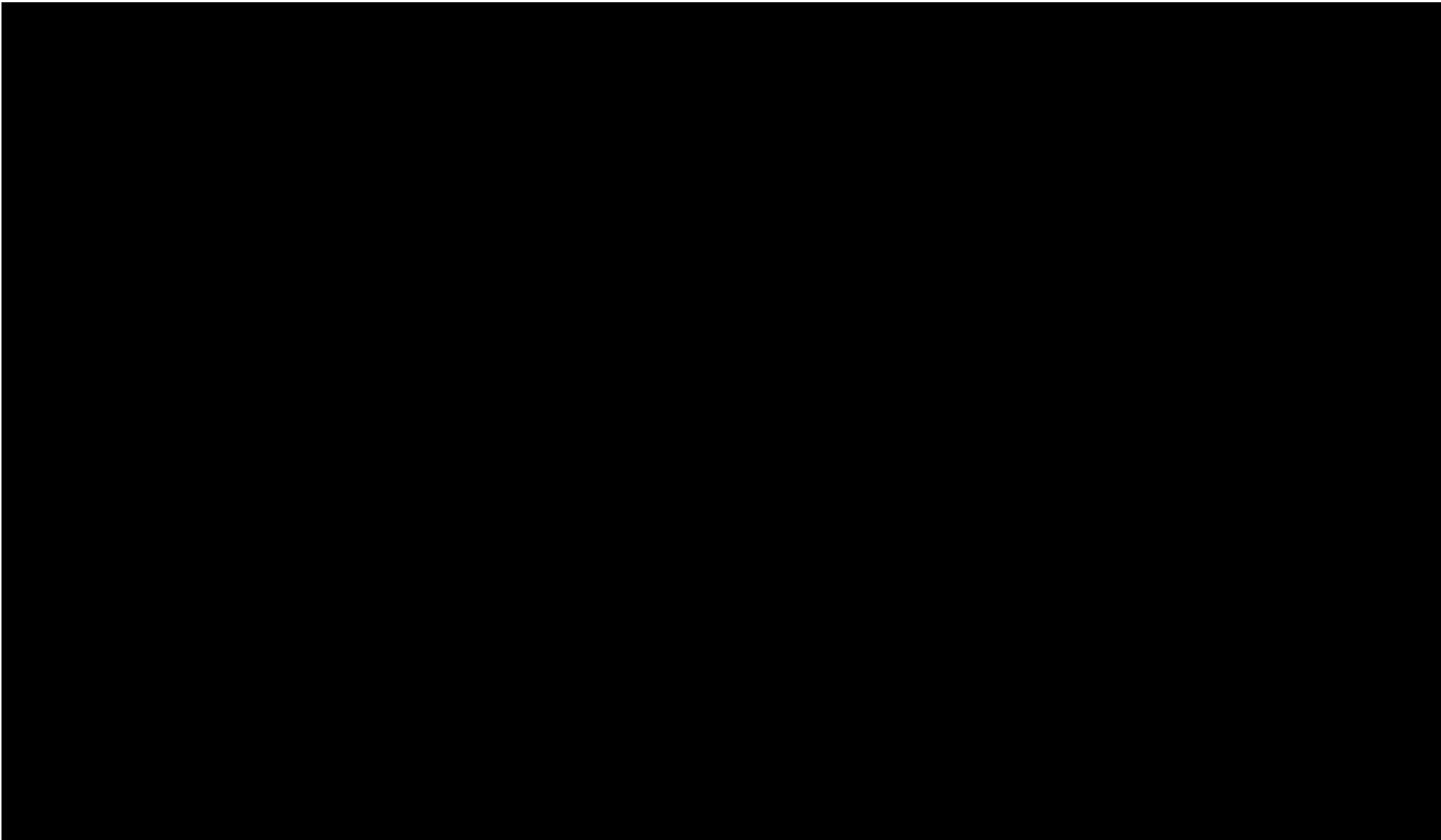


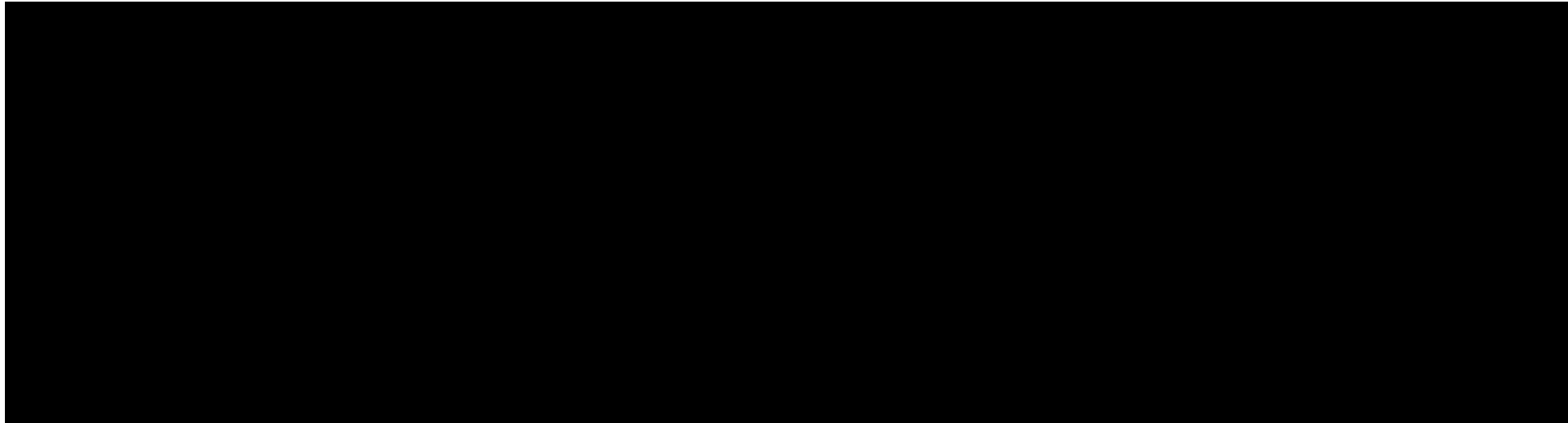




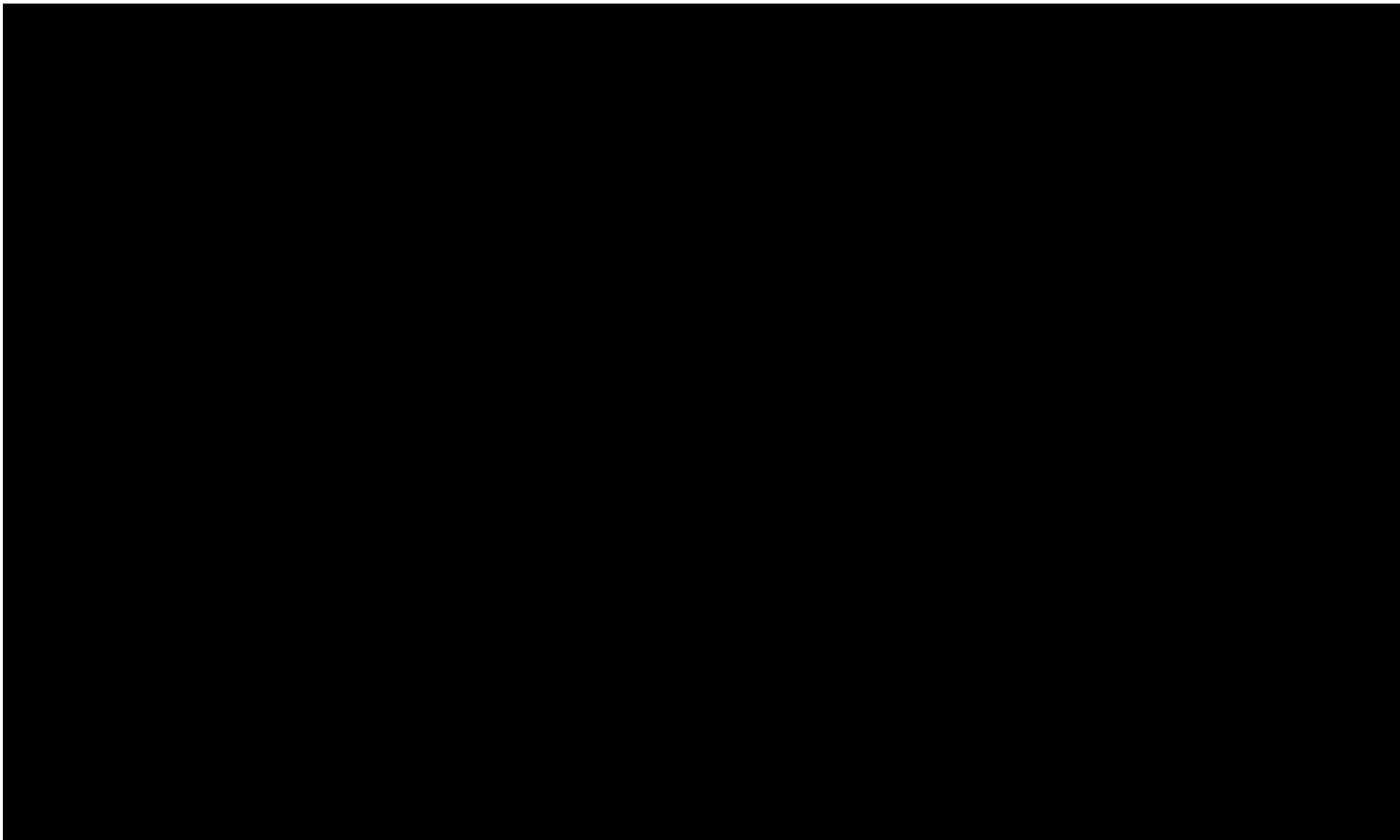
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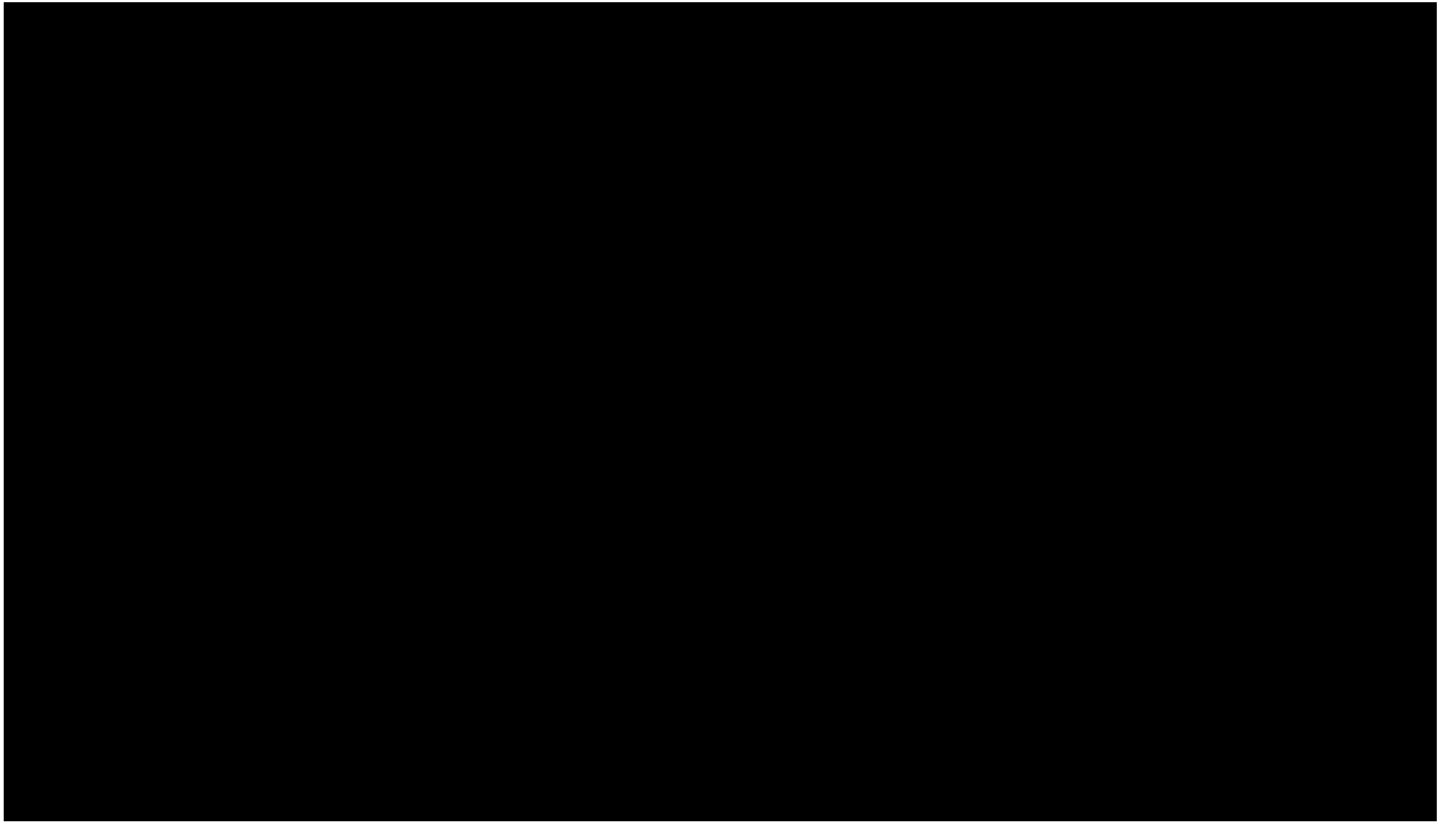


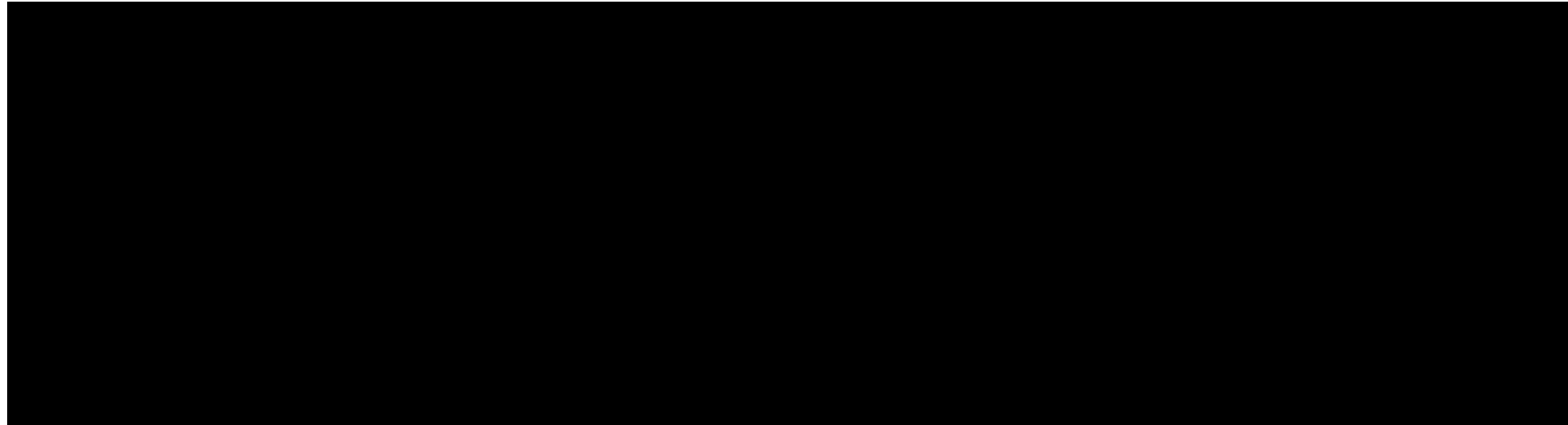




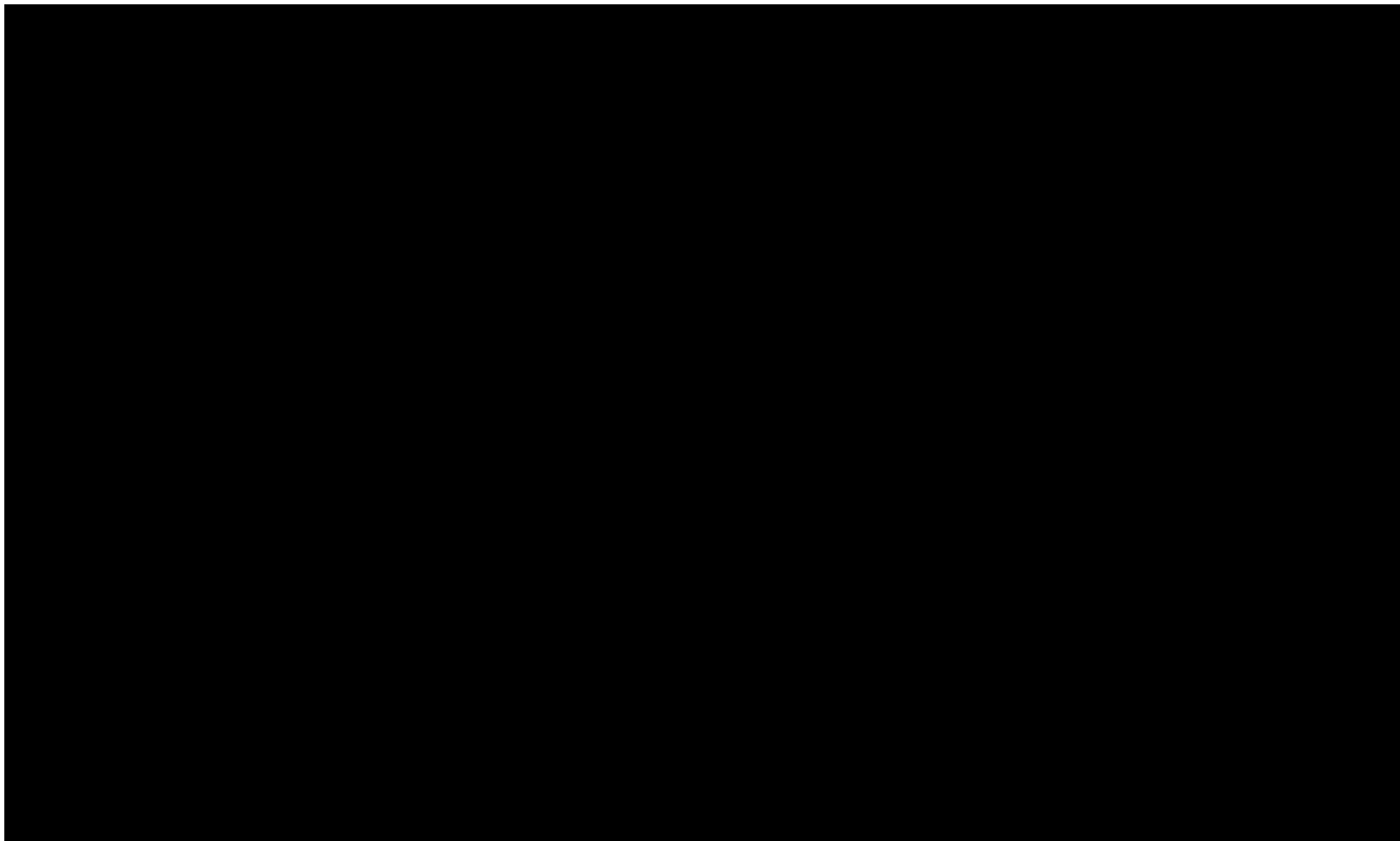
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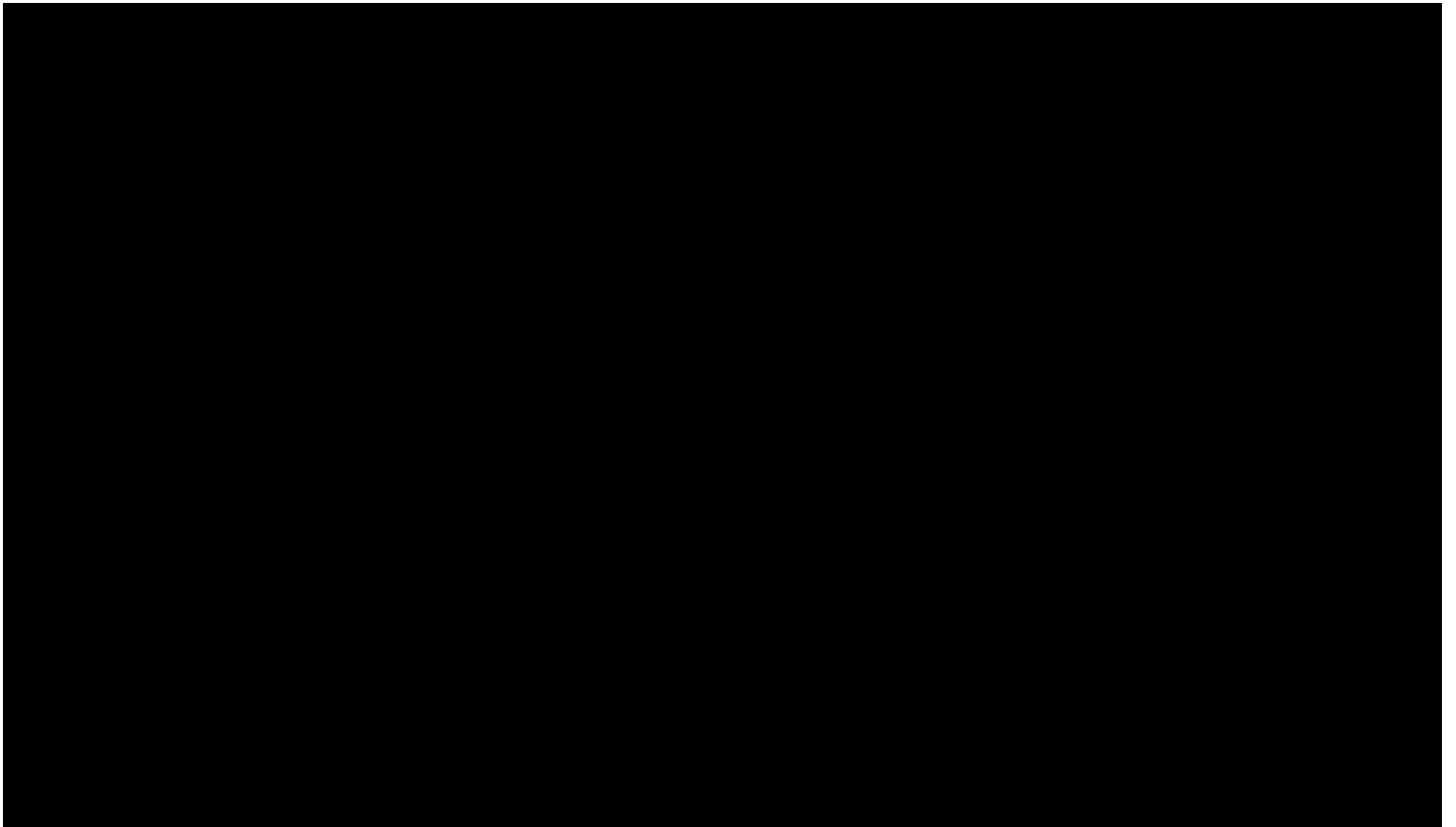


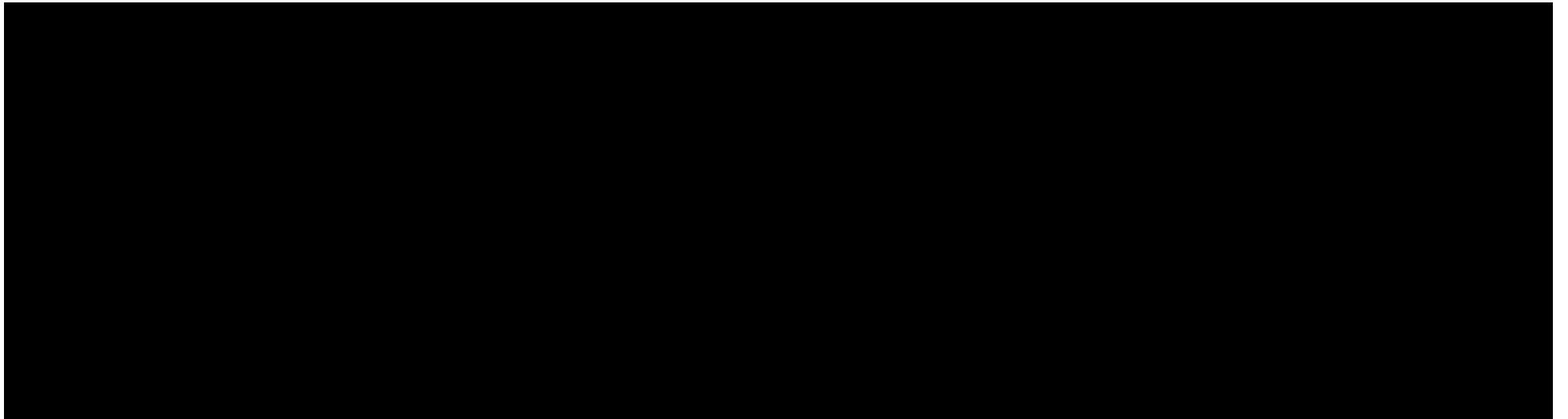




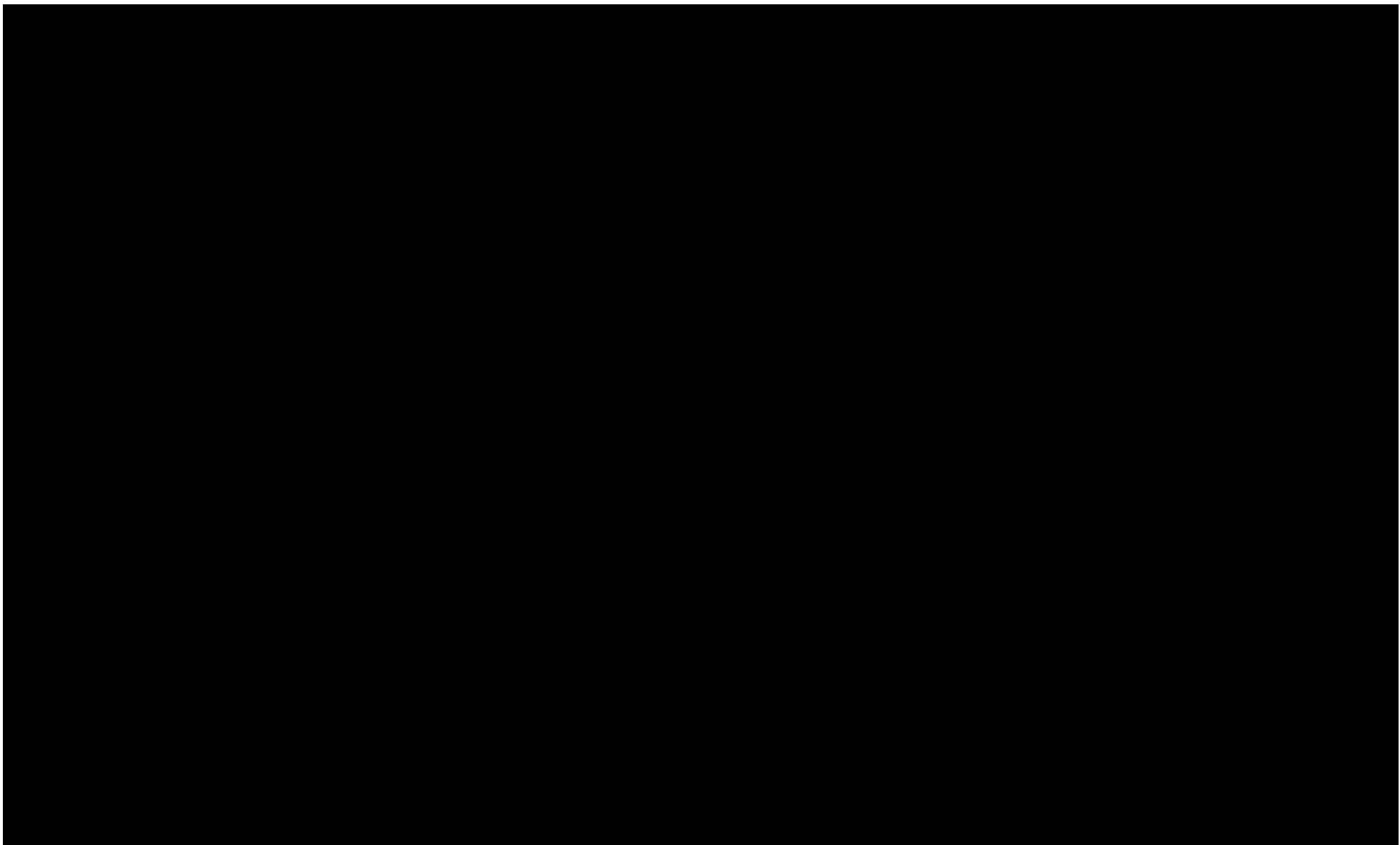
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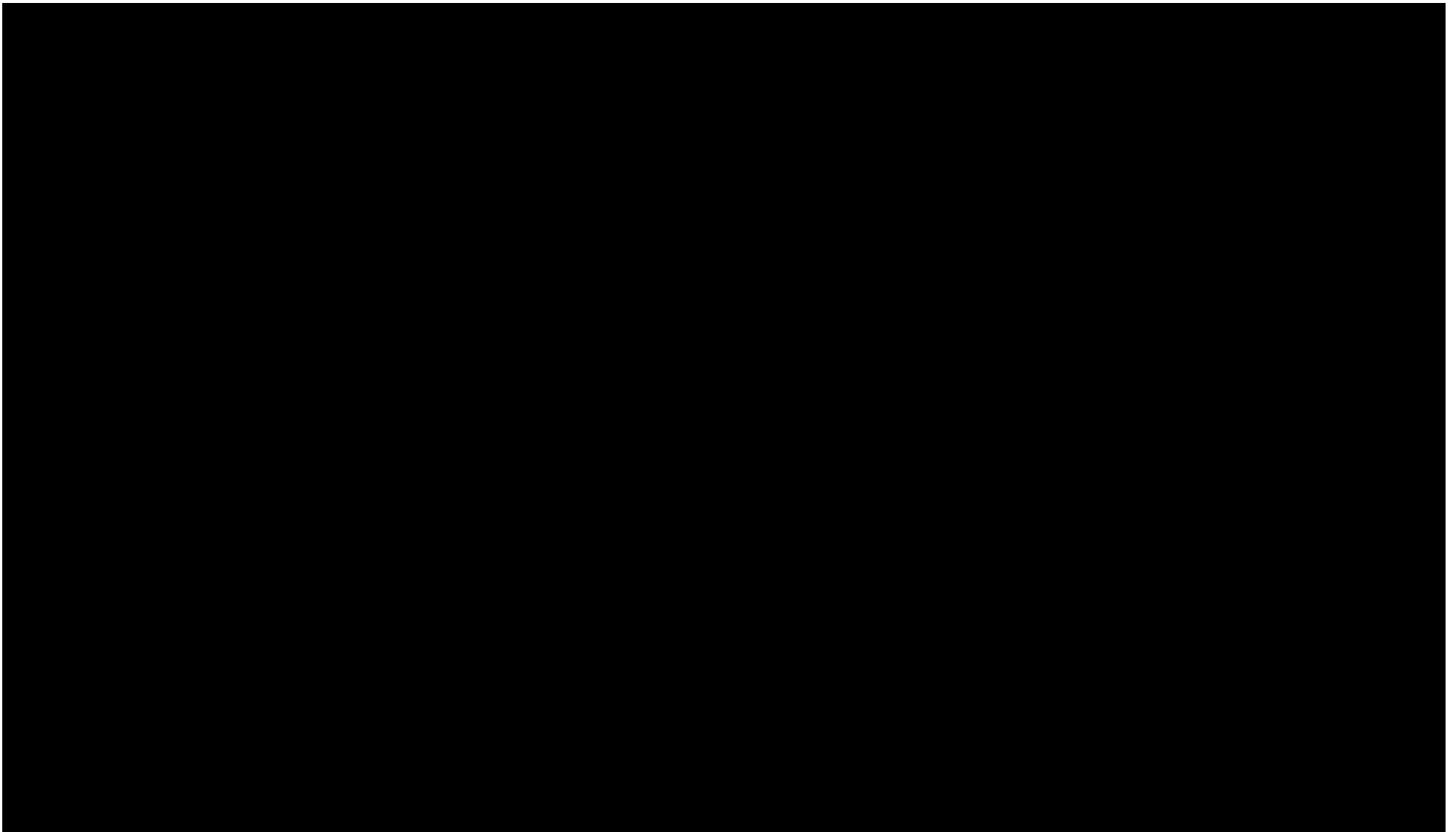






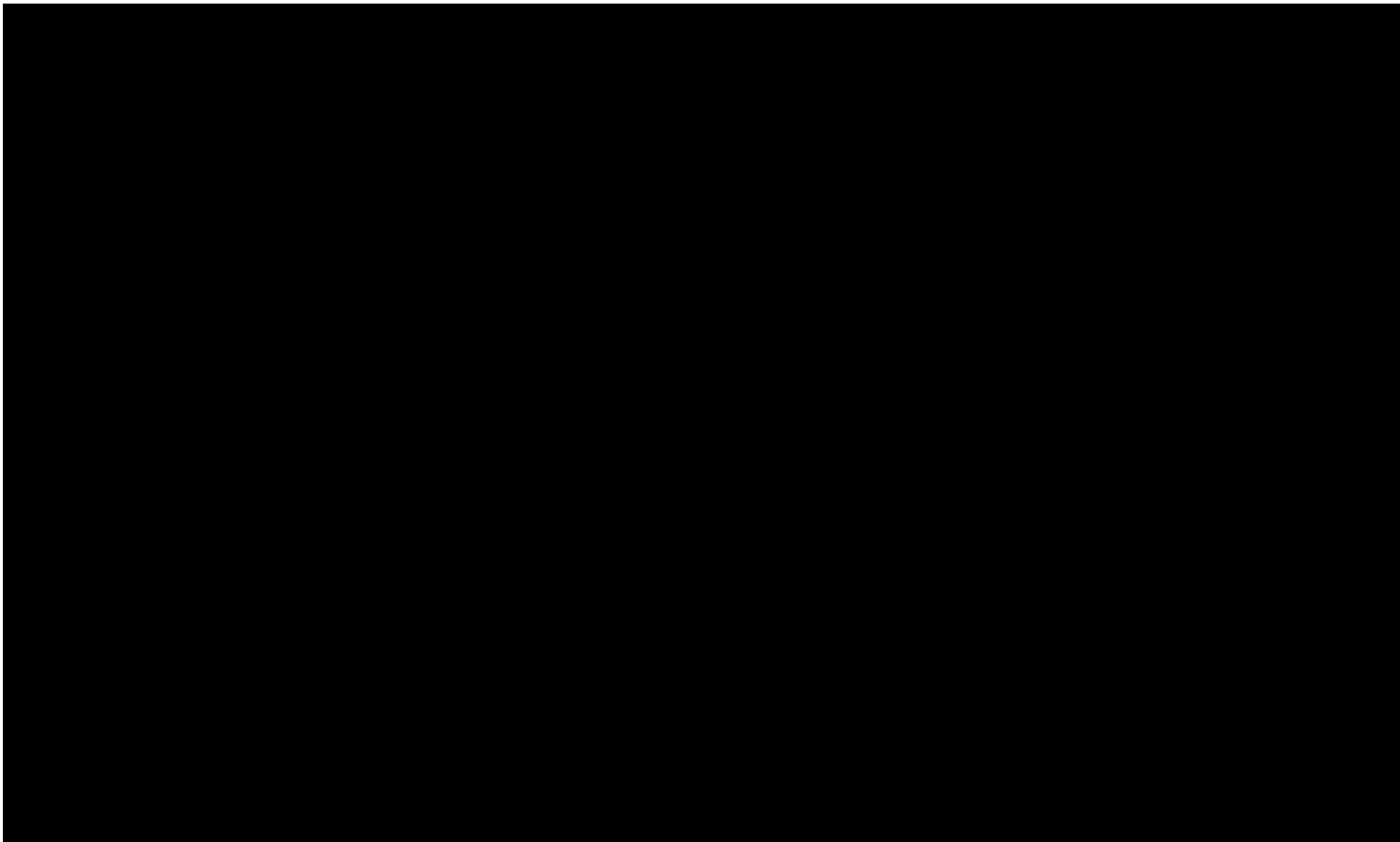
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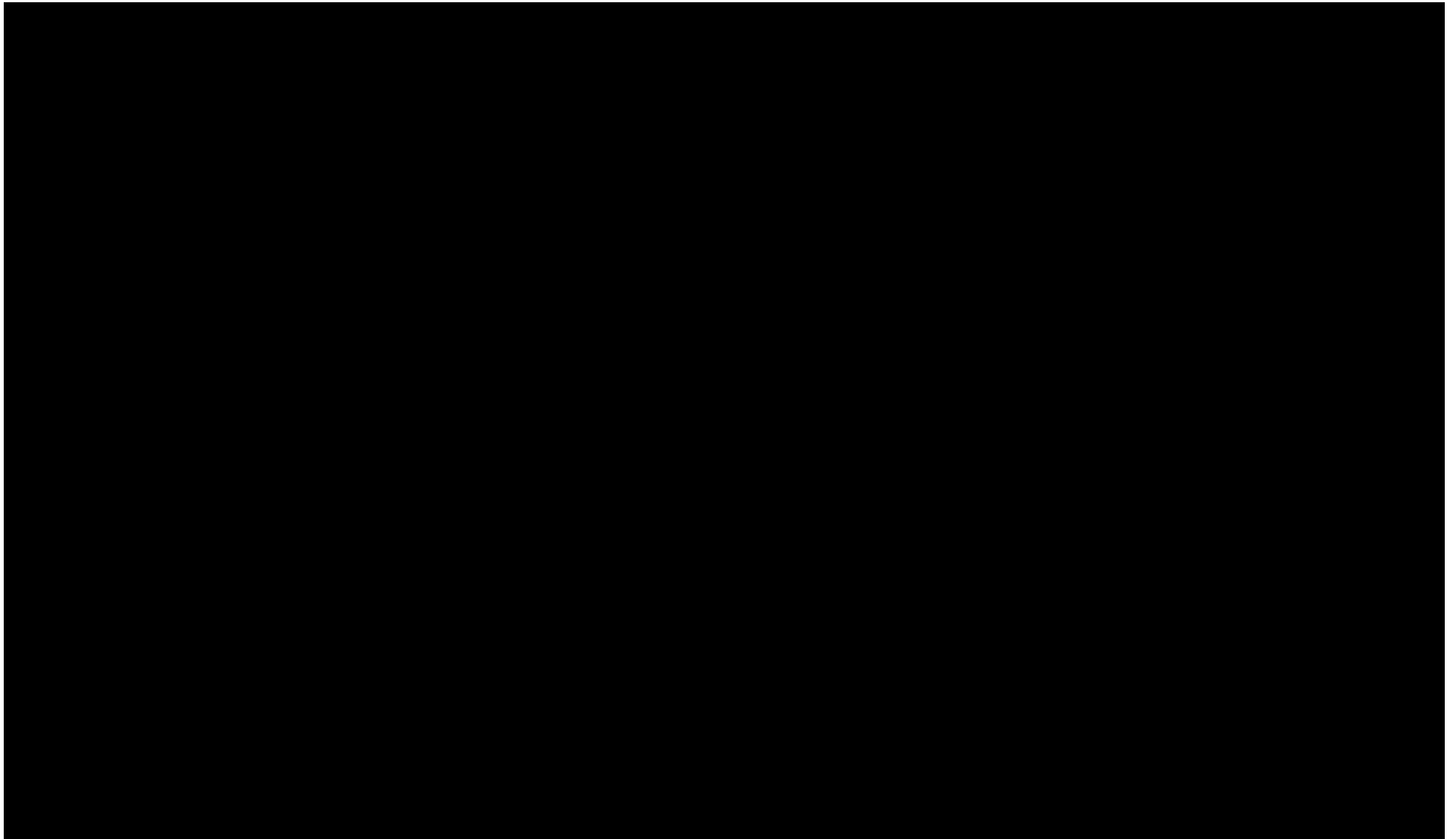


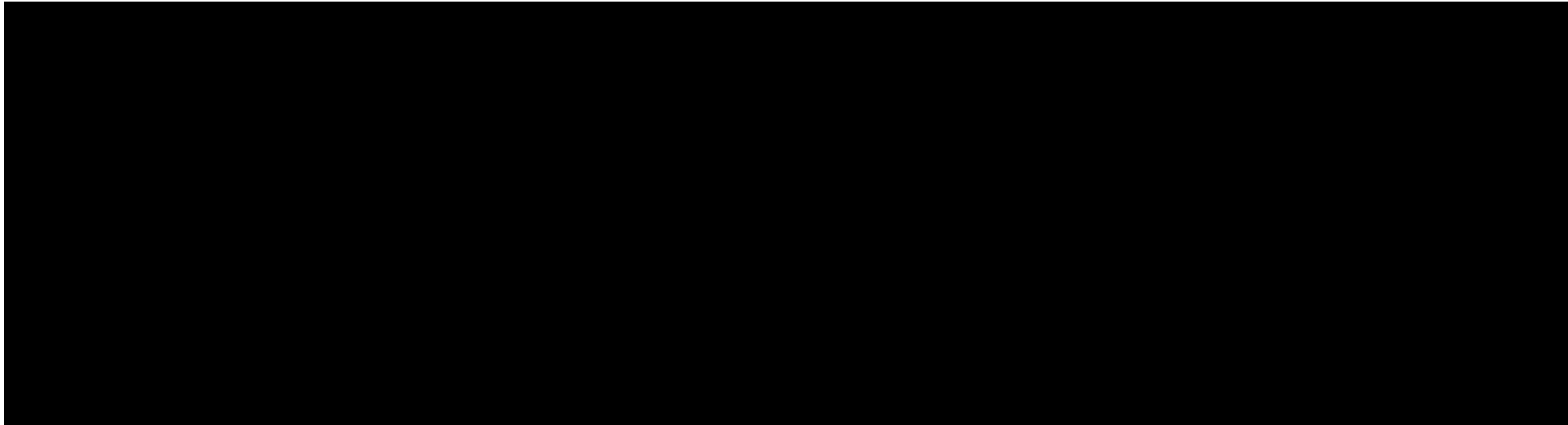




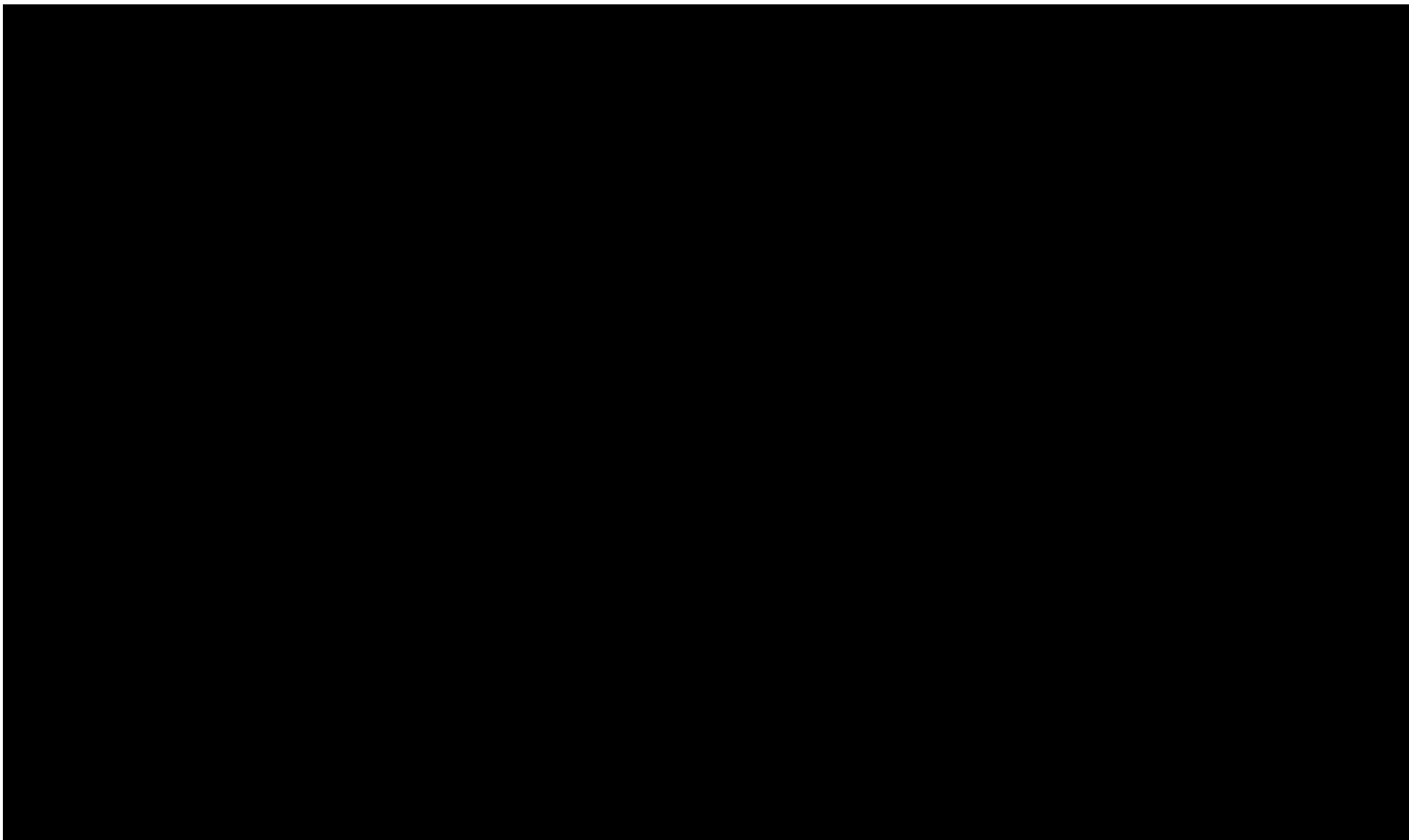
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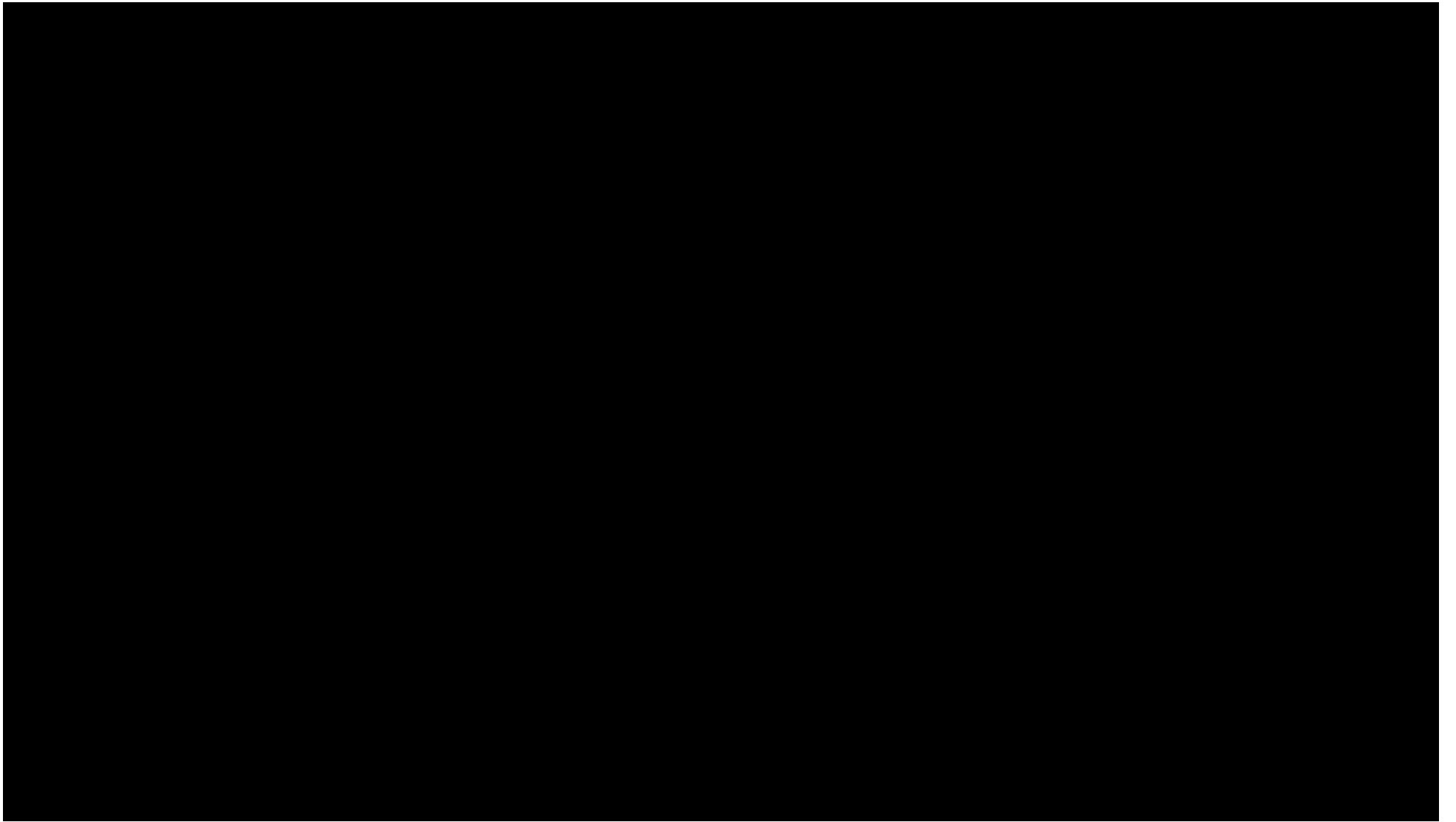


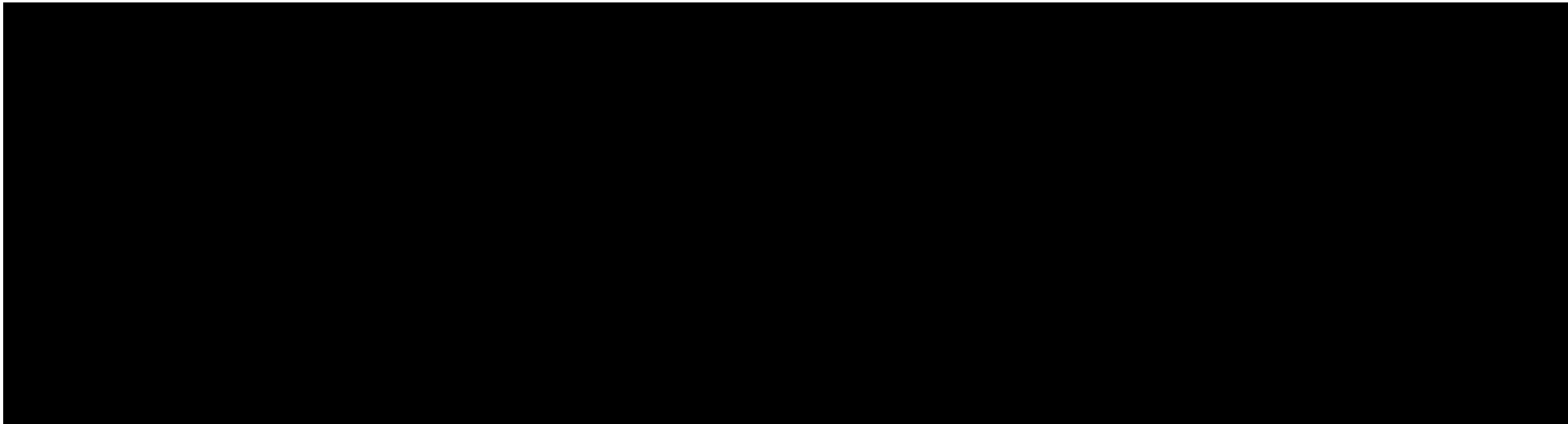




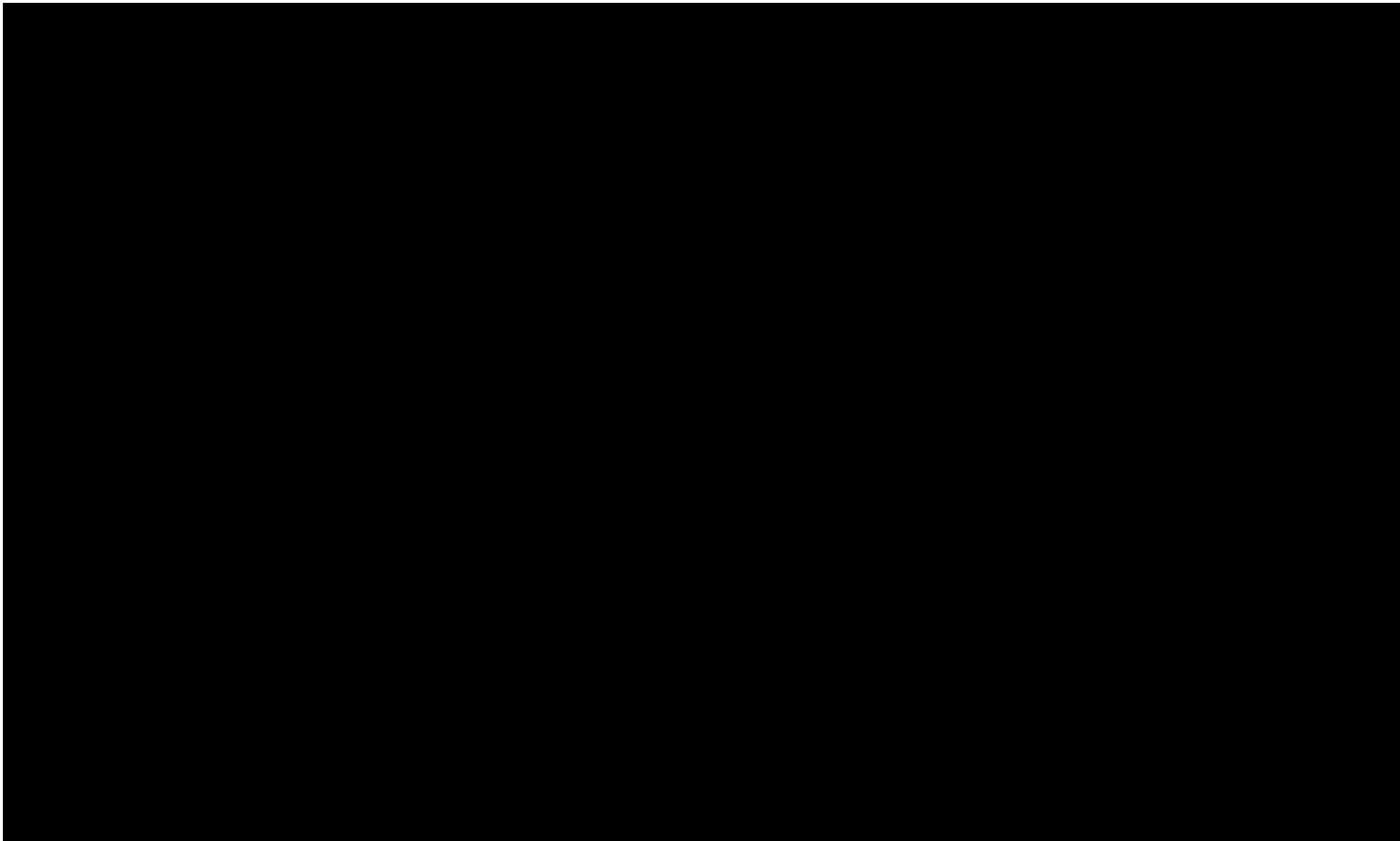
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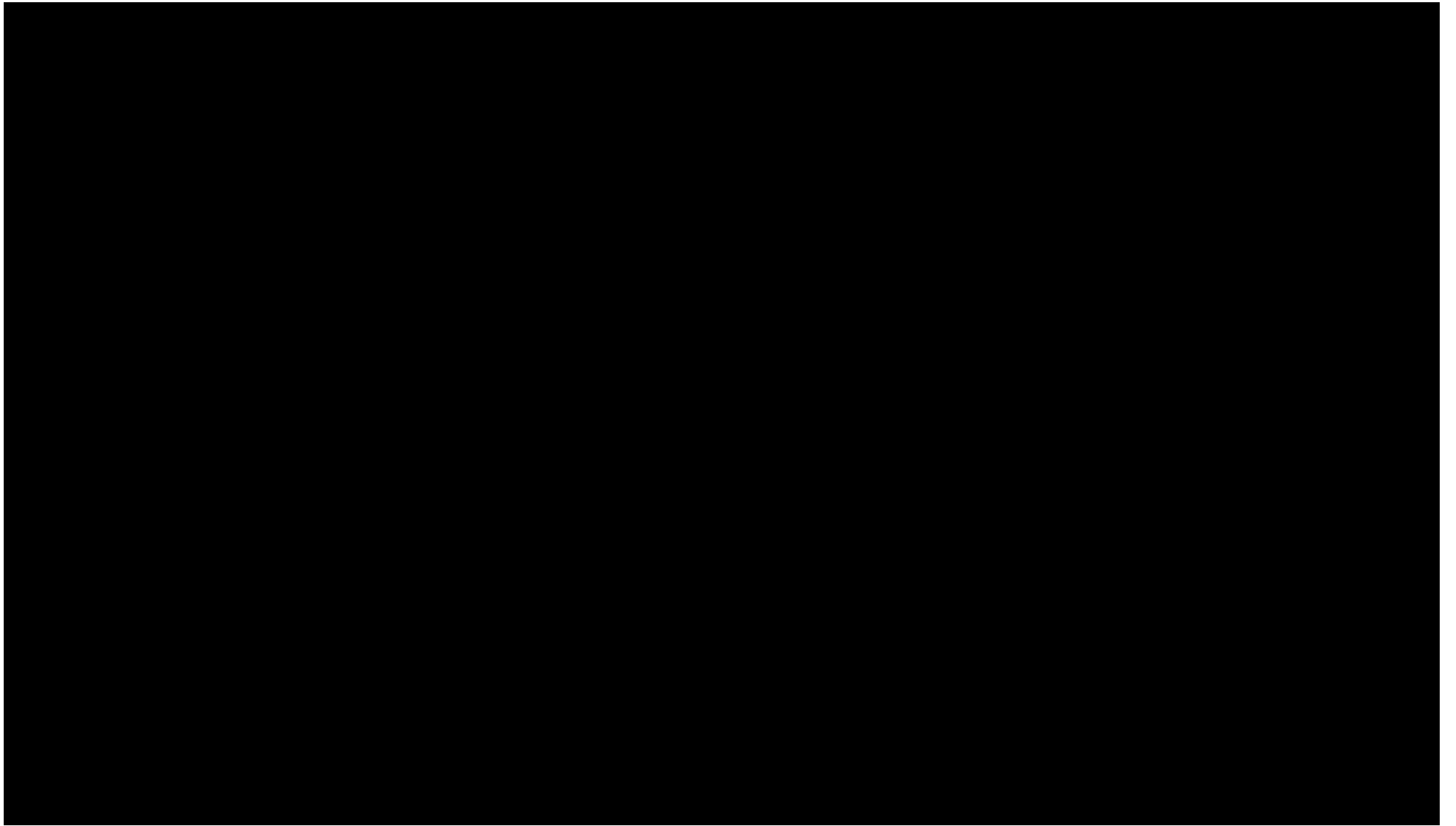


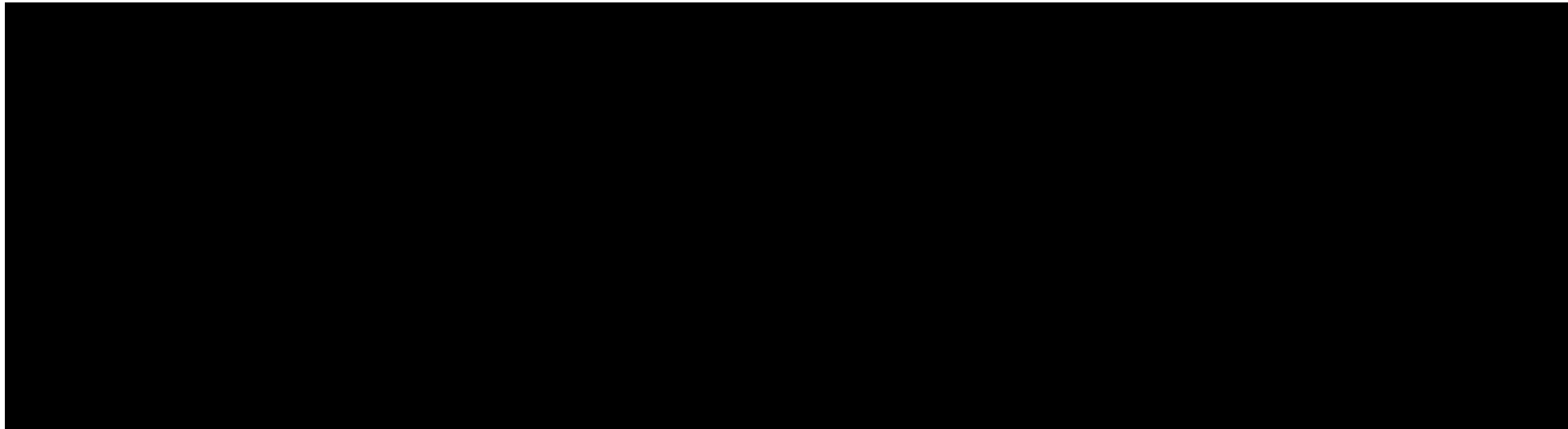




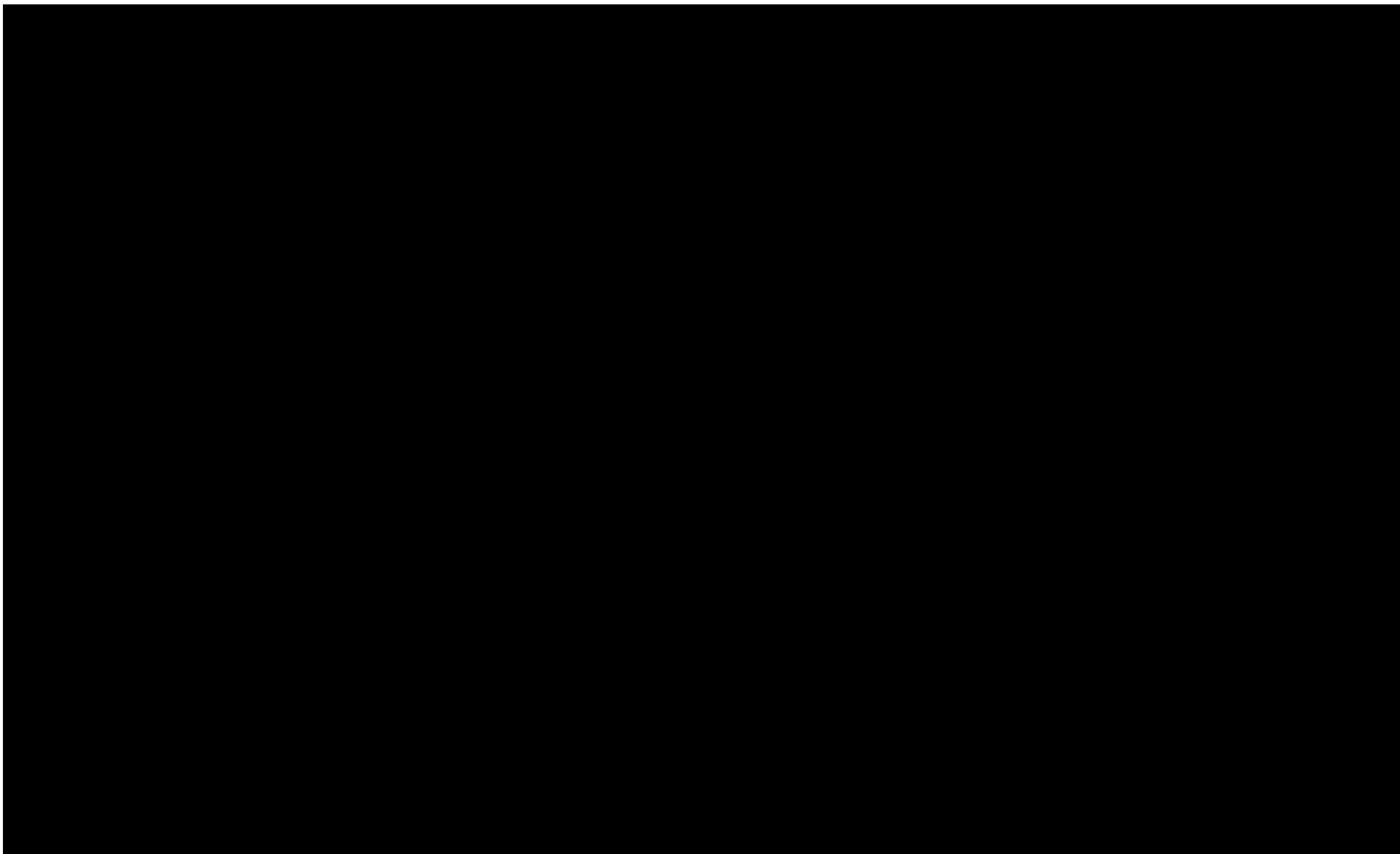
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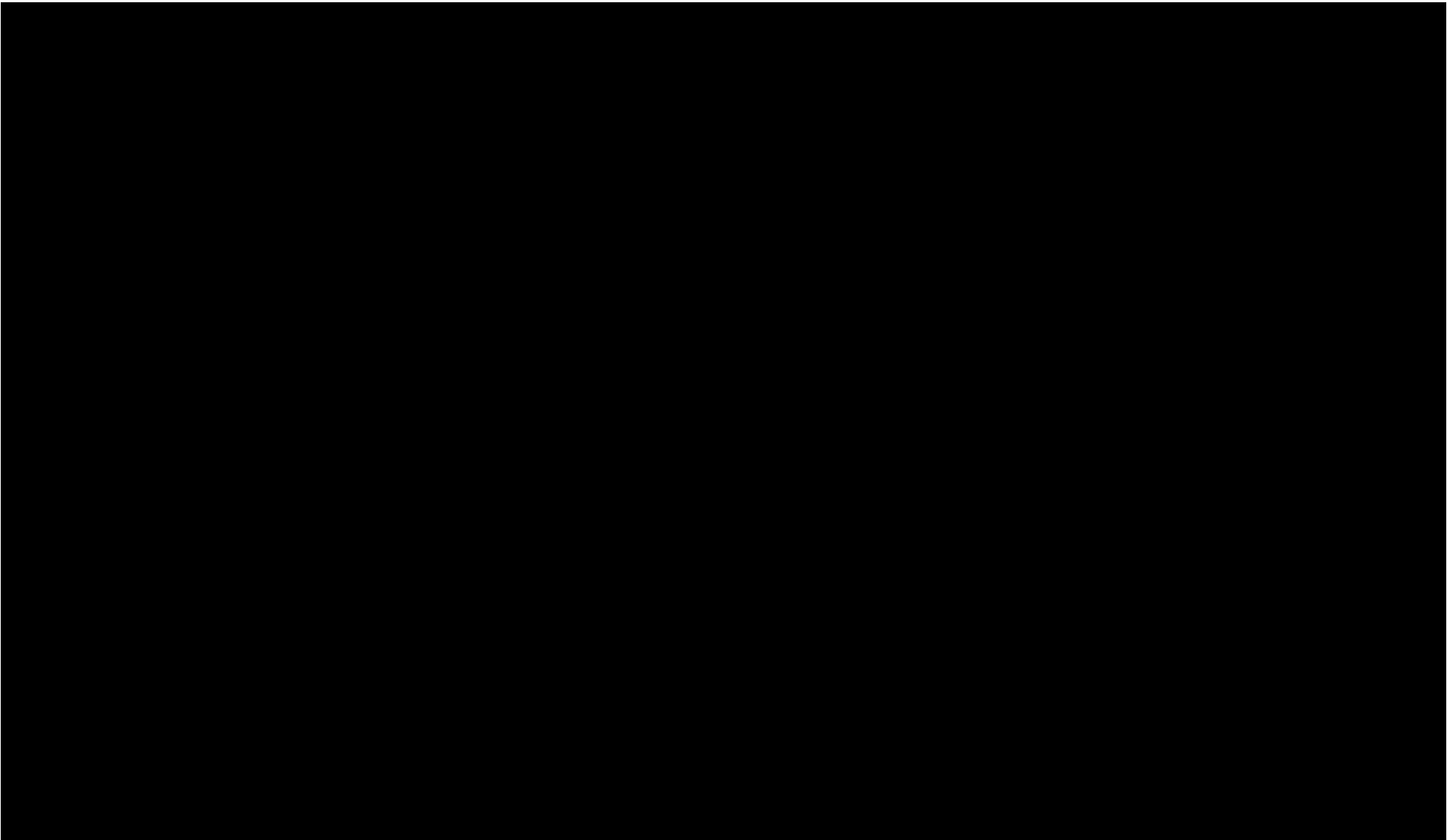


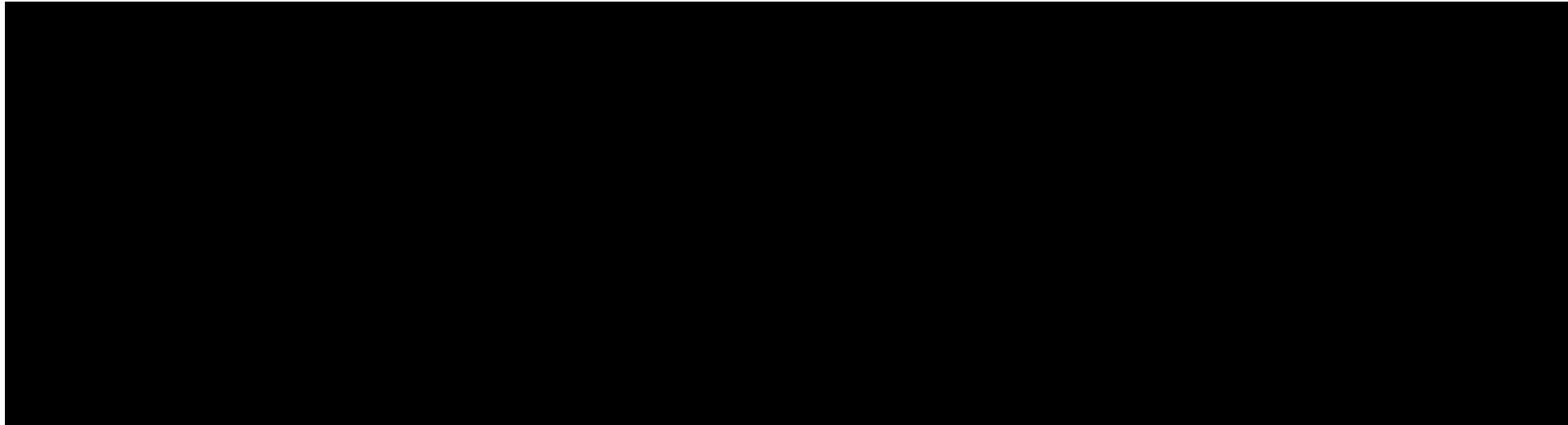




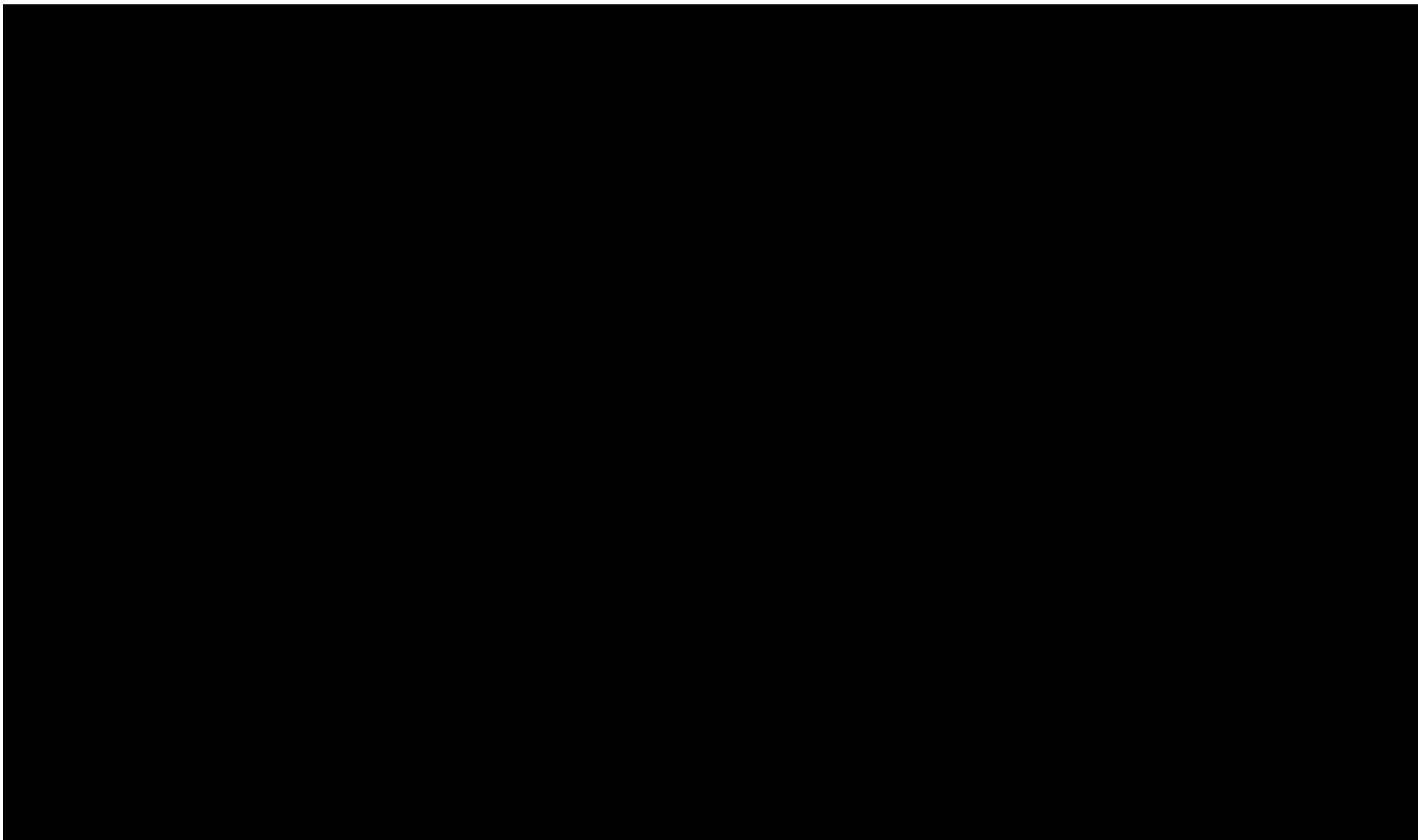
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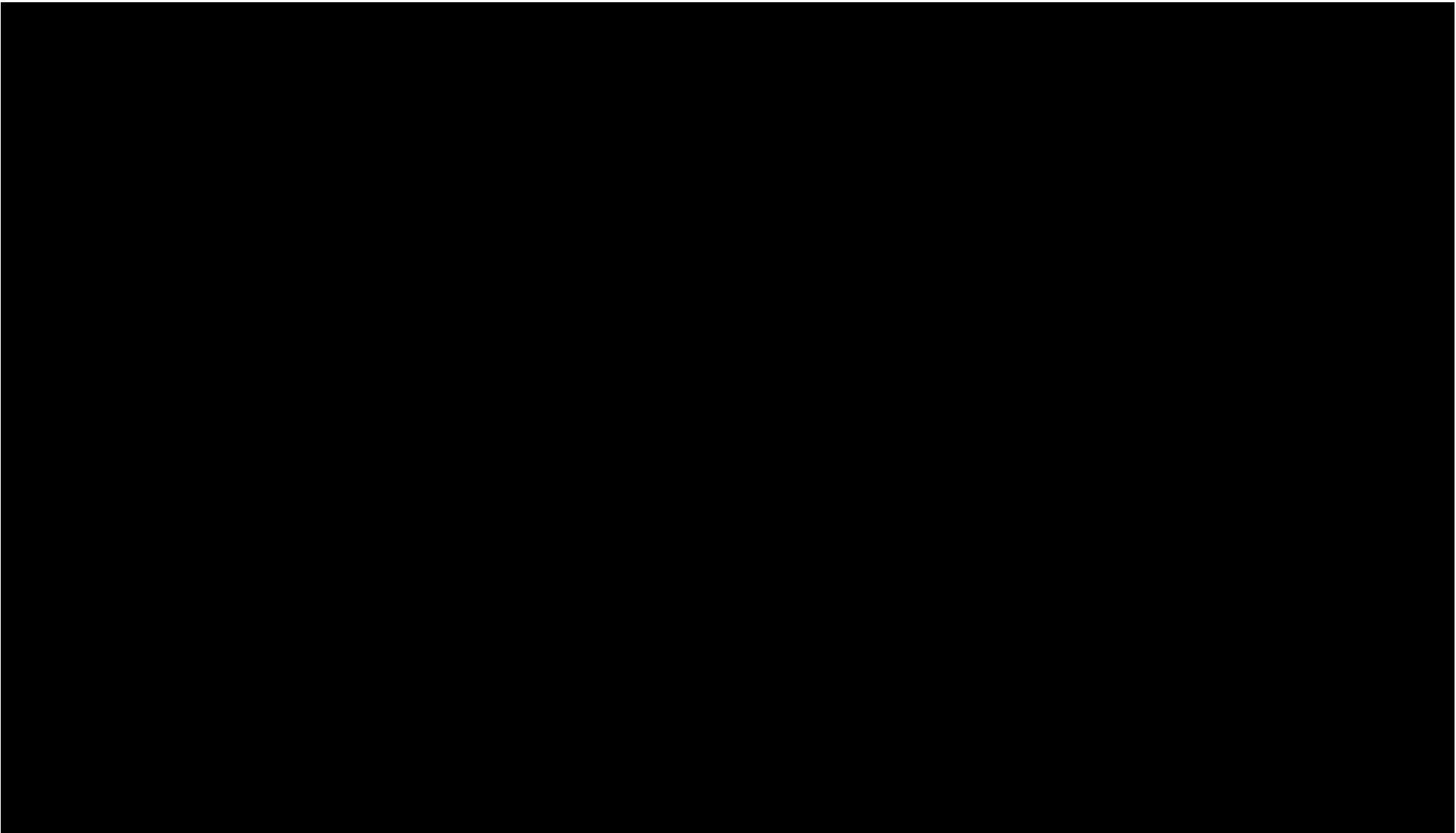






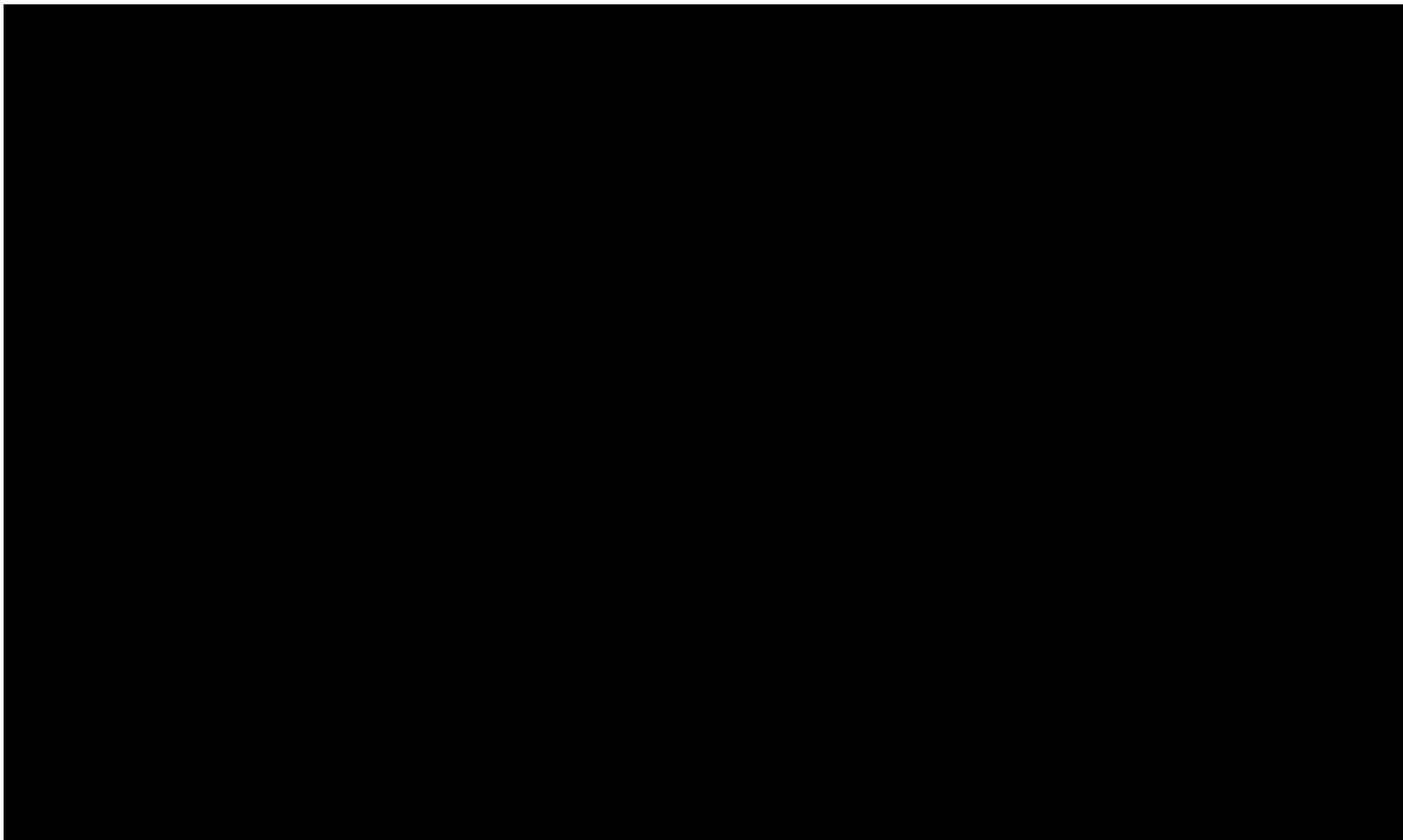
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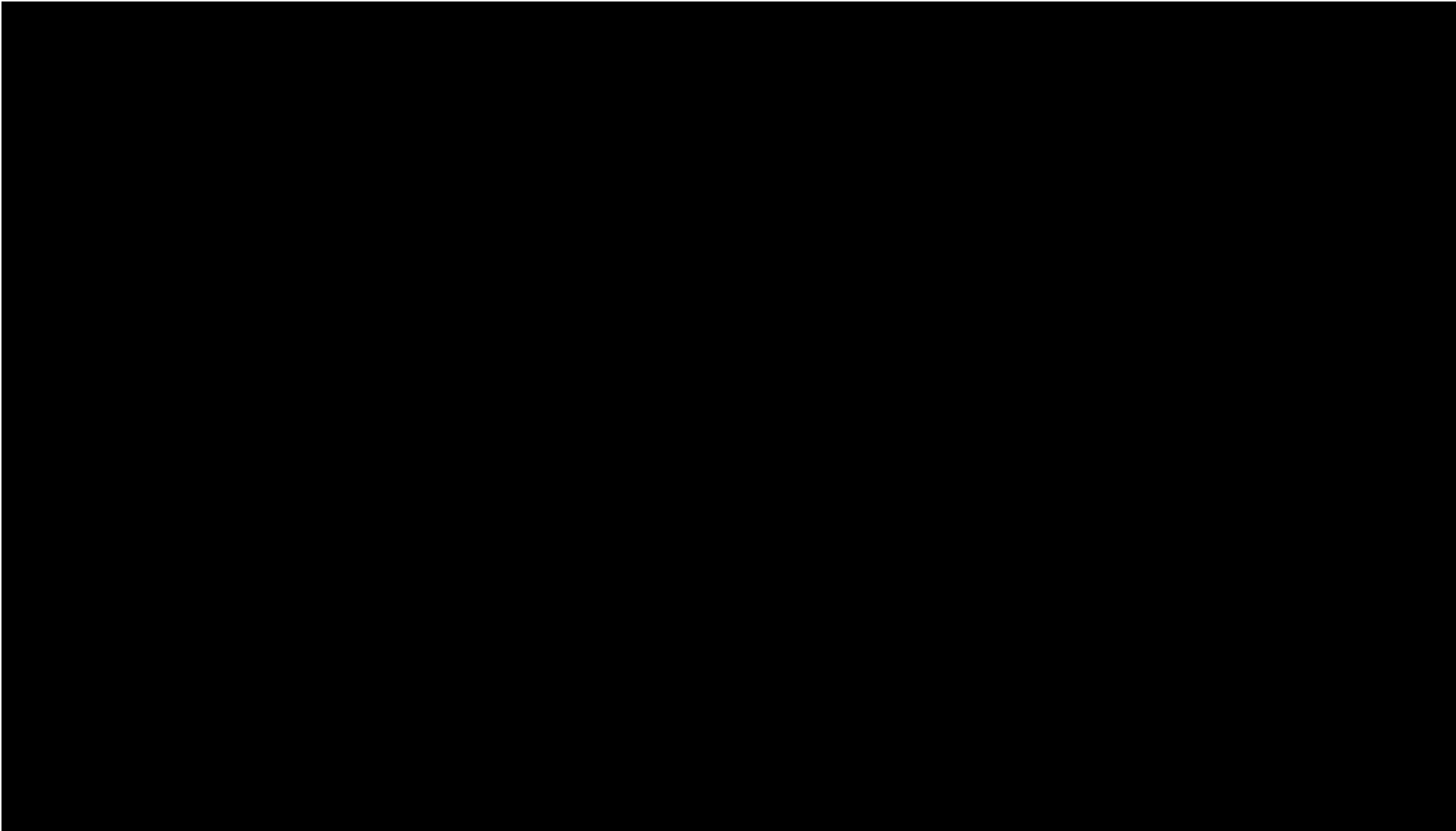


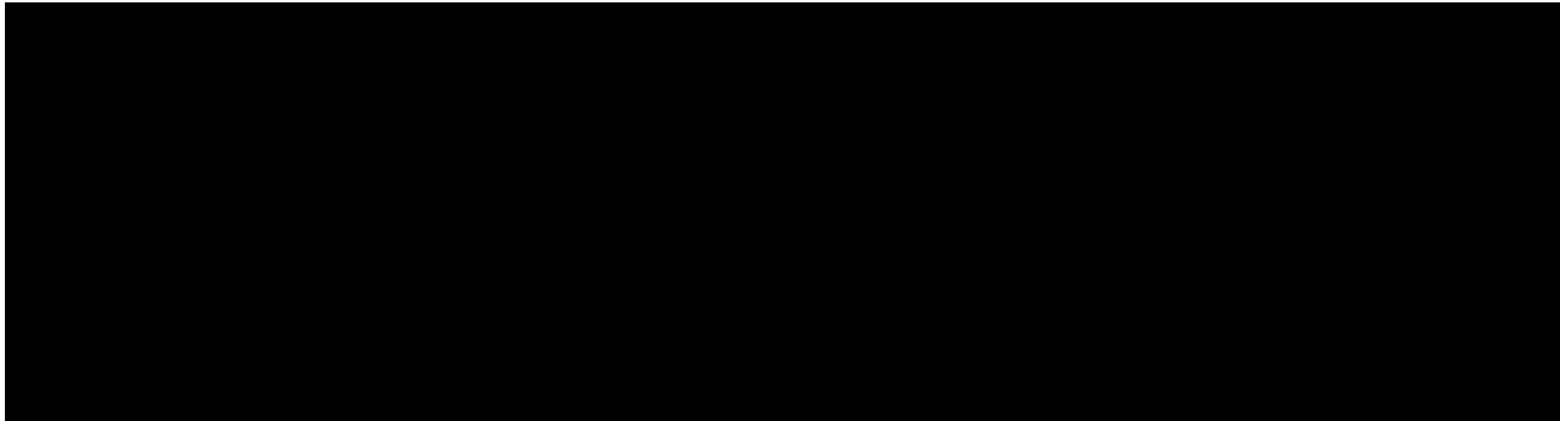




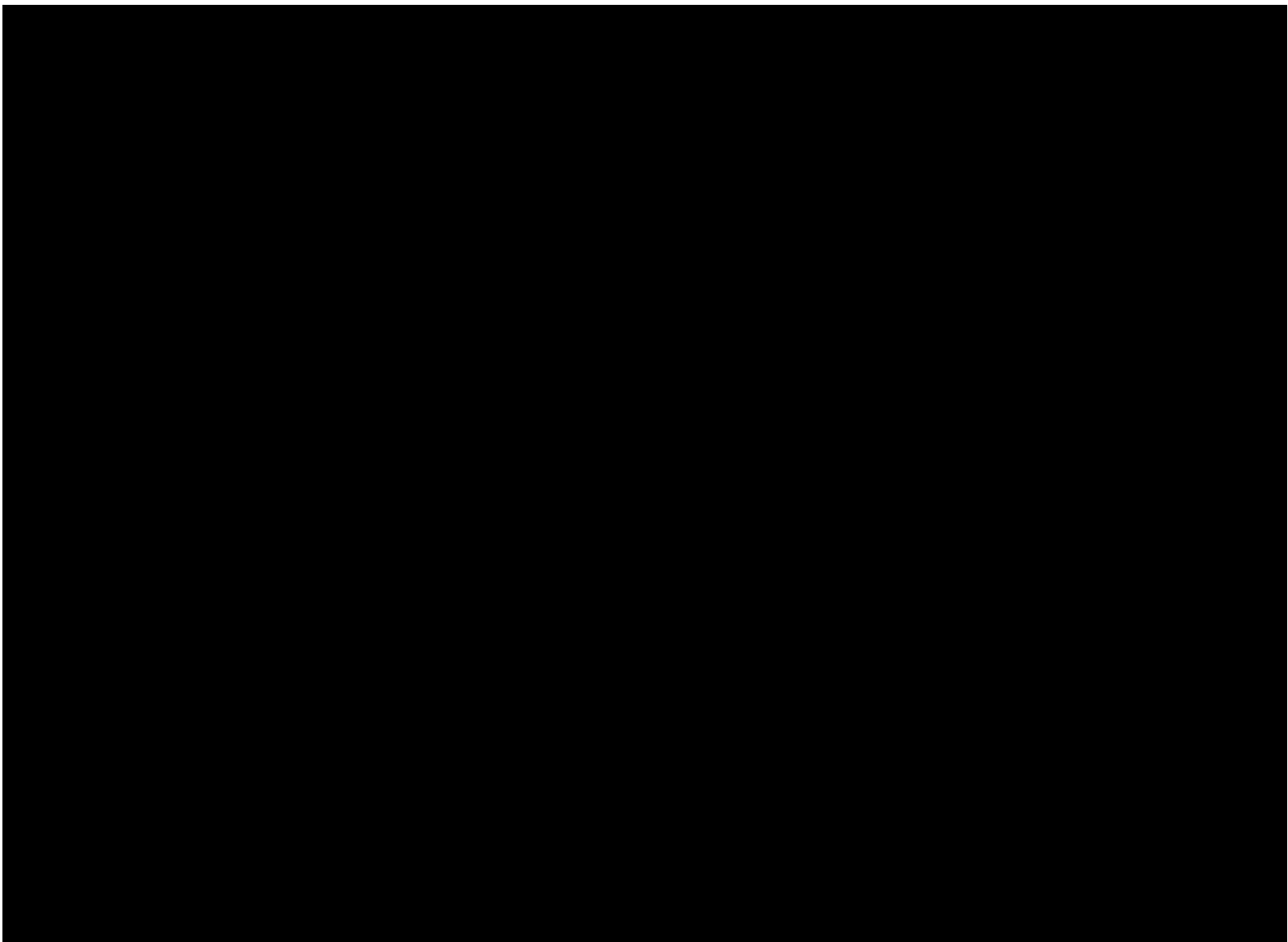
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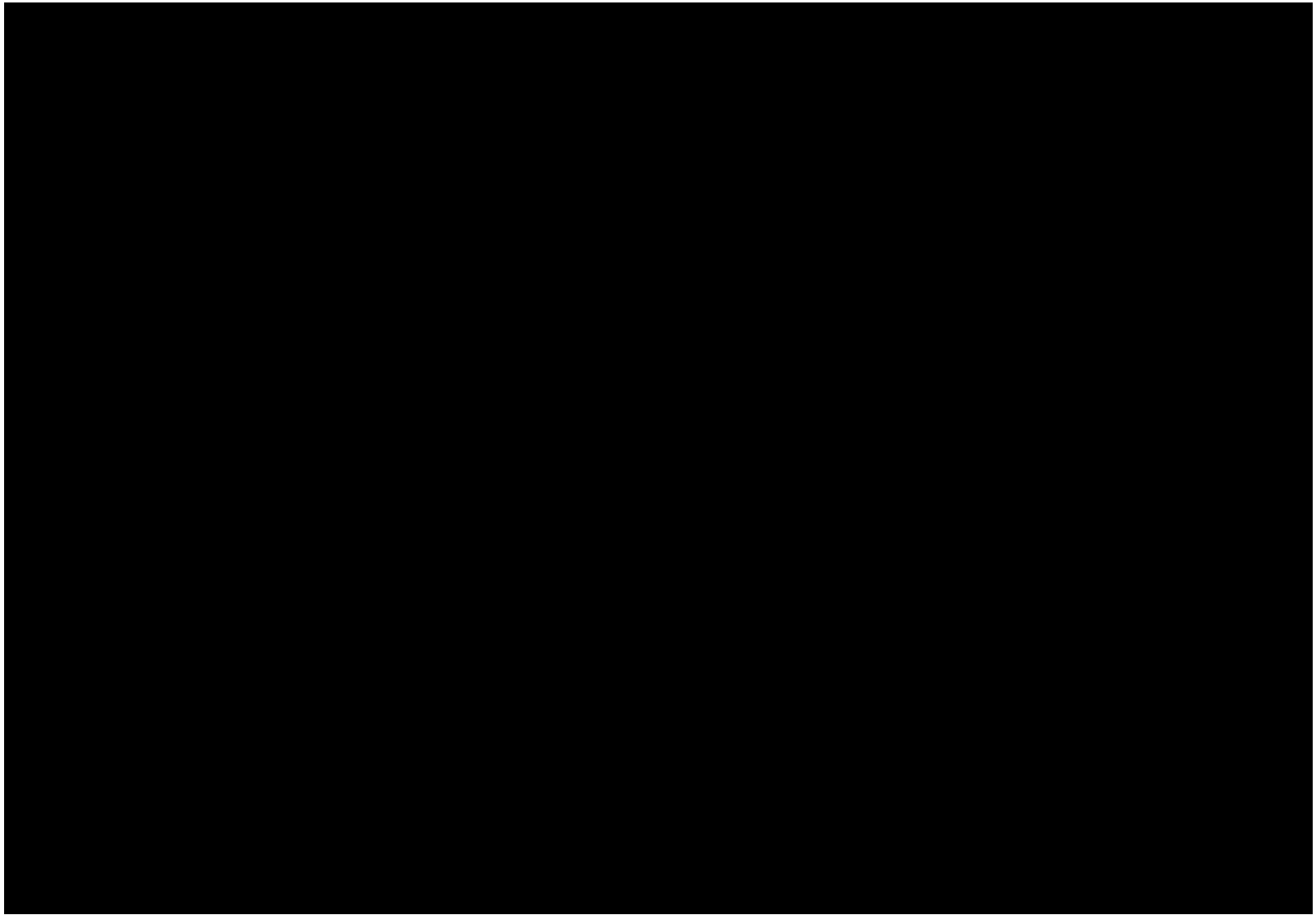






2. End







2. End

Schedule 4 – Indexes Schedule

1. Submission and review

1.1 Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Agreement will apply as supplemented by the following definitions:

Consumer Price Index or CPI means the All Groups Consumer Price Index Weighted Average of Eight Capital Cities (IECC) (ABS Cat No. 6401.0 Series ID A2325846C) published quarterly by the Australian Bureau of Statistics or, if section 1.3 applies, the index determined in accordance with that section.

CPI Multiplier Annual at any time means:

- (a) at the end of the relevant Quarter, the most recently published CPI for a Quarter ending 30 September; divided by
- (b) the published CPI for the Quarter ended 30 September 2016.

CPI Proportion means:

- (a) in relation to Non-Reviewable Services, [REDACTED] and
- (b) in relation to Reviewable Services, [REDACTED]

Wage Price Index or WPI means the Wage Price Index (NSW, All Industries, Private) (ABS Cat No. 6345.0 Series ID A2599049K) published quarterly by the Australian Bureau of Statistics or, if section 1.3 applies, the index determined in accordance with that section.

WPI Multiplier Annual at any time means:

- (a) at the end of the relevant Quarter, the most recently published WPI for a Quarter ending 30 September; divided by
- (b) the published WPI for the Quarter ended 30 September 2016.

WPI Proportion means:

- (a) in relation to Non-Reviewable Services, [REDACTED] and
- (b) in relation to Reviewable Services, [REDACTED]

1.2 Indexation

- (a) All amounts to be "Indexed" under this Agreement are indexed by multiplying the relevant number by:
 - (i) in respect of amounts in the Payment Schedule, the sum of the WPI Proportion multiplied by the relevant WPI multiplier and the CPI Proportion multiplied by the relevant CPI multiplier; and
 - (ii) in respect of any other amounts, the CPI multiplier.
- (b) For the purpose of section 1.2(a):
 - (i) the relevant CPI multiplier will be the CPI Multiplier Annual; and
 - (ii) the relevant WPI multiplier will be the WPI Multiplier Annual.

1.3 Changes to indexes

The following rules apply to all terms identified in section 1.2 as being referable to an index published by the Australian Bureau of Statistics:

- (a) if there is a change in the coverage of the index from that applying at the date of this Agreement and the new index is linked to another index, the defined term is to be referable to the new index;
- (b) if the index is published and there is a change in its:
 - (i) coverage and it is not linked to another index; or
 - (ii) periodicity,

the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to determine:

 - (iii) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
 - (iv) if it is not, what other index should be used as a substitute index for the purpose of the defined terms used in this Agreement,

and that determination is final and binding on the parties;
- (c) if there is a change in the reference base of the index from that applying at the date of this Agreement and the Australian Bureau of Statistics provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term's use in this Agreement, in terms of the new reference base. Where possible, the conversion factor should be applied to item (b) in the definitions in section 1.1 so that going forward both items (a) and (b) are expressed in the terms of the new reference base;
- (d) if there is a change in the reference base of the index from that applying at the date of this Agreement and the Australian Bureau of Statistics does not provide a conversion factor, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of the defined terms used in this Agreement, and that calculation is final and binding on the parties;

- (e) if the index ceases to be published and the Australian Bureau of Statistics publishes another index which is:
 - (i) a replacement of that index; and
 - (ii) linked to the index,the defined term must be re-calculated to the same reference base as the replacement index;
- (f) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index which is linked to the index, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of the defined terms used in this Agreement, and that calculation is final and binding on the parties;
- (g) if the index ceases to be published and the Australian Bureau of Statistics does not publish another index in place of the index, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to determine an appropriate index which is a general indicator of the rate of price change for the relevant goods and services, and that determination is final and binding on the parties; and
- (h) if a Change in Law causes a material aberration in the index, the index must be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption by business or, in the absence of such publication, within six months of the occurrence of the material aberration as agreed by the parties or, in the absence of agreement, as determined by an independent expert in accordance with clause 37 (*Expert Determination*) of this Agreement.

Schedule 5 – Change Compensation Principles

1. Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Agreement will apply as supplemented by the following definitions:

Agreed Margin means the Delivery Margin, the Service Delivery Margin and the ServiceCo Margin.

Base Costs means the Delivery Costs, Service Delivery Costs and ServiceCo Costs in each case that are directly attributable to the relevant Change Compensation Event, but excluding all:

- (a) Prolongation Costs; and
- (b) Agreed Margin.

Change Compensation Event means each event described in Table 1 in section 2.1.

Change Notice means the notice referred to in section 8, including any updated Change Notice.

Change Notice Event has the meaning given in section 8.1(b).

Change Notice Request has the meaning given in section 8.2(a).

Change Response has the meaning given in section 9.1(a)(ii).

Costs means:

- (a) all actual direct capital costs, preliminaries, operation and maintenance costs or external third party advisory costs properly and reasonably incurred, or which will be properly and reasonably incurred and in each case to the extent that they exceed the relevant amounts (if any) assumed in the then current Financial Model; or
- (b) in respect of any "Saving", all direct costs saved or which will be saved or ought reasonably to have been saved.

Delivery Costs means the net incremental Costs of:

- (a) during the Delivery Phase, the D&C Subcontractor or any other Key Subcontractor (to the extent it is performing Delivery Phase Activities); or
- (b) during the Service Delivery Phase, a Subcontractor engaged by ServiceCo to carry out capital works the subject of a Change Compensation Event,

that are directly attributable to the relevant Change Compensation Event including scaffolding and craneage, but excluding all Agreed Margin, Prolongation Costs, Service Delivery Costs and ServiceCo Costs.

Delivery Margin means:

- (a) during the Delivery Phase, the percentage that the D&C Subcontractor or a Key Subcontractor may charge in accordance with Table 2 in section 3.1 as Margin; and
- (b) during the Service Delivery Phase, the percentage that a Subcontractor engaged by ServiceCo to carry out capital works the subject of a Change Compensation Event (other than a Key Subcontractor) may charge, as Margin, as determined through a competitive tender process in accordance with section 4.

D&C Subcontractor means the Subcontractors engaged by ServiceCo to construct the Dwellings and includes a Developer Lessor.

Notification Period means:

- (a) within the time specified in this Agreement; or
- (b) if no time is specified in this Agreement, within [REDACTED]

or such longer period as is agreed to by FACS having regard to the extent and the nature of the relevant event or circumstance and its effects and the information required to be included in the Change Notice.

Margin means an amount on account of:

- (a) off-site overheads and administrative, corporate and other like costs and profit; and
- (b) on-site overheads, including cost of project management services.

Prolongation Costs means actual additional net incremental Costs incurred, or which will be incurred, by ServiceCo or a Subcontractor that are directly attributable to a delay to the achievement of Service Readiness caused by a Compensable Extension Event or a Modification or Change in Mandatory Requirements the subject of a Modification Order, but excluding all Base Costs, Agreed Margin, and any other Margin and Costs that are attributable to delay caused by any other Extension Event.

Service Delivery Costs means the net incremental Costs a Key Subcontractor incurs in performing the Services that are directly attributable to implementing the recurrent elements of the relevant Change Compensation Event during the Service Delivery Phase, including warranty costs and lifecycle costs, but excluding all Agreed Margin, Prolongation Costs, Delivery Costs and ServiceCo Costs.

Service Delivery Margin means the percentage that a Key Subcontractor may charge in accordance with Table 2 in section 3.1 (as applicable) on its Service Delivery Costs or Delivery Costs (as applicable), as Margin.

ServiceCo Costs means the net incremental Costs incurred by ServiceCo that are directly attributable to implementing the relevant Change Compensation Event, but excluding all Agreed Margin, Prolongation Costs, costs of project management services provided by ServiceCo, Delivery Costs and Service Delivery Costs.

ServiceCo Margin means [REDACTED]

Savings means the amount of any Costs of ServiceCo or a Subcontractor, together with the relevant Agreed Margin and Margin avoided or otherwise reduced in accordance with this Schedule arising in connection with a Change Compensation Event.

2. Change Compensation Events

2.1 Change Compensation Events

Table 1 sets out:

- (a) the Change Compensation Events for which either party may be entitled to compensation in accordance with this Schedule; and
- (b) the relevant sections of this Schedule that are to be used in calculating that compensation.

Table 1 Change Compensation Events and entitlements

| Change Compensation Event | Clause | Agreed Margin entitlement | Relevant clauses or sections for calculating compensation |
|---|---|-----------------------------------|---|
| Change in Mandatory Requirements | Clause 26.10 (<i>Change in Mandatory Requirements</i>) | No Agreed Margins are applicable. | Section 3.1 (for cost in modifying the works, Relevant Infrastructure or the Services). Section 3.2 (for delay costs). |
| Compensable Extension Event | Clause 23.7 (<i>Entitlement to costs</i>) | No Agreed Margins are applicable. | Section 3.1 (for services costs or Savings (as applicable)). Section 3.2 (for delay costs). |
| Compensable Intervening Event | Clause 24.5 (<i>Payment</i>) | Agreed Margins are applicable. | Section 3.1 (for works or services costs other than repair or rebuilding the Relevant Infrastructure). |
| Modification (excluding any Modification proposed by ServiceCo) | Clause 26 (<i>Modifications</i>) | Agreed Margins are applicable. | Section 3.1 (for works or services costs or savings (as applicable)). Section 3.2 (for delay costs). |
| ServiceCo initiated | Clause 26.8(d) | Agreed Margins are | Section 3.1 (for works |

| Change Compensation Event | Clause | Agreed Margin entitlement | Relevant clauses or sections for calculating compensation |
|--------------------------------|-----------------------------|---|---|
| Modification sharing of Saving | <i>(Sharing of Savings)</i> | applicable when calculating share of Savings. | or services costs or savings (as applicable)). Section 3.3 (for determining share of Savings). |

3. Methodology for calculating compensation

3.1 Compensation for Change Compensation Events

- (a) Subject to the specific requirements and restrictions otherwise set out in this Agreement, the entitlement to compensation in respect of a Change Compensation Event will be calculated as follows:

$$P = C - D - I$$

where:

P = the amount payable to ServiceCo, where this is a positive amount, or the amount payable to FACS, where this is a negative amount;

C = the amount of any Base Costs plus applicable Agreed Margin payable to ServiceCo in accordance with this Schedule;

D = the amount of any Savings including (in order to increase the amounts of the Savings) the applicable Agreed Margins on the Costs saved; and

I = proceeds from any Insurance policies which respond to the Change Compensation Event or any other insurance proceeds or compensation received by, or that would have been received by, ServiceCo or any of its Associates in respect of the relevant Change Compensation Event but for any failure by ServiceCo or any of its Associates to effect and maintain any Insurance in accordance with clause 30 (*Insurance*) of this Agreement and the Insurance Schedule, or to make or pursue a claim under any Insurance or to comply with any Service Package Documents or Insurance policy.

- (b) **(Delivery Phase Activities and capital works):** To the extent that Change Compensation Events involve Delivery Phase Activities or capital works during the Service Delivery Phase, the amount of item "C" in the formula in section 3.1(a) will be calculated as follows:

$$C = A + B + D + E$$

where:

C = the amount of any Base Costs plus applicable Agreed Margin payable;

A = the Delivery Costs;

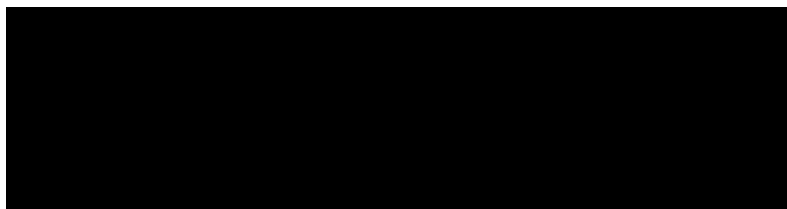
B = the Agreed Margin for the respective D&C Subcontractor or Key Subcontractor (as applicable), in each case multiplied by its respective Delivery Costs;

D = ServiceCo Costs; and

E = the applicable ServiceCo Margin multiplied by "A".

Table 2 Agreed Margins for Delivery Phase Activities and capital works

Component

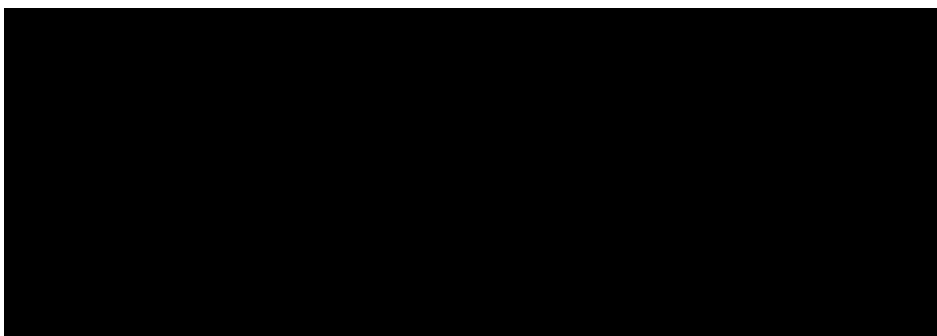


1. *The above dollar thresholds are as at Commercial Close and will be Indexed thereafter.*

(c) **(Recurrent works or services):** To the extent that Change Compensation Events involve recurrent works or services, the amount of item "C" in the formula in section 3.1(a) will be calculated as follows:

$$C = A + B + D + E$$

where:



3.2 Compensation for Prolongation Costs

Subject to the specific requirements and restrictions otherwise set out in this Agreement, ServiceCo's entitlement to Prolongation Costs on the occurrence of those Change Compensation Events listed in Table 1 in section 2.1 as entitling ServiceCo to compensation under this section 3.2 and for which ServiceCo is granted an extension of time will be calculated as follows:

$$P = A - I$$

where:

P = the amount payable to ServiceCo;

A = Prolongation Costs for each day for which ServiceCo is granted an extension of time to the Date for Service Readiness for the relevant Change Compensation Event in accordance with this Agreement; and

I = any proceeds from any Insurance policies which responds to the relevant Change Compensation Event or any other insurance proceeds, damages or compensation received by, or that would have been received by, ServiceCo or any of its Associates in respect of the relevant Change Compensation Event but for any failure by ServiceCo or any of its Associates to effect and maintain any Insurances in accordance with clause 30 (*Insurance*) of this Agreement and the Insurance Schedule or to make or pursue a claim under any Insurance or to comply with any Service Package Documents or Insurance policy.

If "P" is a negative number it is deemed to be "0".

3.3 Savings

For the purposes of section 3.1, the amount of any Saving payable to FACS in respect of clause 26.8(d) (*Sharing of Savings*) of this Agreement will be as agreed between the parties at the time, or if the parties are unable to agree within 20 Business Days of ServiceCo issuing the relevant Modification Proposal pursuant to clause 26.8(d) (*Sharing of Savings*) of this Agreement, the amount of Savings payable to FACS will be [REDACTED]

3.4 Change in Mandatory Requirements

To the extent that:

- (a) a Change in Mandatory Requirements occurs for which ServiceCo is entitled to relief in accordance with this Agreement; and
- (b) the Change in Mandatory Requirements affects a Reviewable Service,

(**Changed Reviewable Service**) then, the amount payable to ServiceCo pursuant to section 3.1 in respect of the Changed Reviewable Service will be those Base Costs and Margin incurred, or to be incurred, until the commencement of the next Reviewable Services Term.

4. Tender process during Service Delivery Phase

- (a) FACS may require ServiceCo to carry out, or procure that the relevant Key Subcontractor carries out, a tender process in respect of a Change Compensation Event in accordance with this section 4 if, during the Service Delivery Phase:
 - (i) the relevant Change Compensation Event involves a capital cost component and the Delivery Costs are likely to exceed [REDACTED] (Indexed); or
 - (ii) FACS notifies ServiceCo that it does not accept or rejects a Change Notice issued by ServiceCo and that it requires ServiceCo to carry out a tender process in respect of the relevant Change Compensation Event.
- (b) If a tender process is required to be carried out in accordance with section 4(a):
 - (i) **(tender process)**: ServiceCo must, or if applicable must procure that the relevant Key Subcontractor, obtain a minimum of three separate quotes from experienced, independent and capable contractors reasonably acceptable to FACS to carry out any work or services in respect of the Change Compensation Event;
 - (ii) **(tender process material)**: ServiceCo must, and if applicable must procure that the relevant Key Subcontractor, permit FACS to review all materials that are issued and submitted in the tender process and provide any other information that FACS reasonably requires including such written consents as are required (including by Law) to carry out any Probitly Investigations;
 - (iii) **(selection criteria)**: ServiceCo must ensure, and if requested by FACS, demonstrate to the reasonable satisfaction of FACS, that the Subcontractor or the relevant Key Subcontractor (as the case may be) it intends to select and engage is the best choice having regard to the:
 - A. price quoted;
 - B. experience and capability of that Subcontractor; and
 - C. ability of the Subcontractor to carry out the work or the services in the manner required by this Agreement;
 - (iv) **(subcontracting requirements)**: the Subcontractor must meet the requirements in respect of Subcontractors set out in this Agreement; and
 - (v) **(FACS not satisfied)**: if, following the conduct of the tender process, FACS is not reasonably satisfied with the tenders, it may:
 - A. direct ServiceCo:
 - 1) not to accept; and
 - 2) if applicable to procure that the relevant Key Subcontractor does not accept,
 - any tender offer;

- B. except where expressly stated otherwise in this Agreement, direct ServiceCo not to proceed with the relevant Change Compensation Event; or
- C. instruct ServiceCo to proceed with the work or the services, but on another basis under this Schedule.

5. General principles for calculating compensation

The extent (if any) to which compensation will be payable by FACS, for a Change Compensation Event, will be determined as follows (but without affecting any express limitations on or exclusions from the calculation of such compensation as set out in this Agreement):

- (a) **(overriding considerations):** the overriding considerations will be that:
 - (i) FACS is receiving value for money; and
 - (ii) the compensation amount is fair and reasonable and is calculated in a manner that is transparent and reflects commercial arm's length arrangements;
- (b) **(incremental costs):** changes in Base Costs are to be determined on an incremental basis where:
 - (i) in the case of an increase in Base Costs, only costs that would not be incurred but for the Change Compensation Event are to be taken into account;
 - (ii) in the case of a reduction in Base Costs, only savings that would not have accrued but for the Change Compensation Event are to be taken into account; and
 - (iii) Base Costs will be calculated net of any insurance proceeds, damages or compensation which ServiceCo or the Key Subcontractors receives or are entitled to receive as a result of the Change Compensation Event;
- (c) **(mitigation):** calculation of Costs will:
 - (i) exclude any incremental Costs which would not have been incurred; and
 - (ii) include any Savings which would have been derived,

to the extent ServiceCo and its Associates fail to use all reasonable endeavours to mitigate the effects of any Change Compensation Event (including by putting in place temporary measures reasonably acceptable to the FACS Representative);
- (d) **(time value of money):**
 - (i) appropriate regard must be given to the time value of money and timing of cash flows by discounting or inflating them to reflect when they occur (if applicable);
- (e) **(Open Book Basis):**
 - (i) ServiceCo must and must procure that its Associates:

- A. provide all information referred to in this Schedule on an Open Book Basis (as defined below);
 - B. make available the appropriate personnel to explain the basis on which a particular calculation has been made; and
 - C. allow FACS to review and undertake audits,
- in order to enable FACS to verify compliance with this Agreement and make an accurate assessment of Costs and Savings; and
- (ii) Open Book Basis will include ServiceCo and its Key Subcontractors providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other Costs and Margins of ServiceCo and its Associates in a clear and transparent manner and other information reasonably requested by FACS including reasonably available source documents required to verify such calculation;
- (f) **(no double counting):** no amounts will be double counted and no costs will be payable more than once; and
 - (g) **(Margins):** except where ServiceCo is expressly entitled to be paid an Agreed Margin, FACS will not pay or otherwise compensate ServiceCo (or any Key Subcontractor) for any Margin (or loss of Margin) in respect of a Change Compensation Event.

6. Form and timing of compensation

- (a) **(Change Compensation Event):** If a Change Compensation Event:
 - (i) results in an amount owing from ServiceCo to FACS, FACS will deduct such amount from the Monthly Service Payments payable to ServiceCo after the relevant Change Compensation Event, or if there are insufficient subsequent Monthly Service Payments payable to ServiceCo to cover the amount of the Change Compensation Event or if the Change Compensation Event occurs during the Delivery Phase, such amount will be a debt due and payable by ServiceCo to FACS;
 - (ii) results in an amount owing from FACS to ServiceCo that is not financed by ServiceCo in accordance with section 6(b), FACS will pay such amount to ServiceCo, subject to paragraph 6(a)(iii), in accordance with the payment arrangements set out in the approved Change Notice which could include a lump sum payment, monthly in arrears, a series of milestone payments or an adjustment to the Monthly Service Payment (or a combination of these methods); or
 - (iii) results in an amount owing from FACS to ServiceCo that is financed by ServiceCo in accordance with section 6(b), FACS will pay such amount to ServiceCo by way of an increase in the Monthly Service Payment.
- (b) **(Reasonable endeavours to obtain funding):** Where FACS requests ServiceCo to obtain funding for a Change Compensation Event, ServiceCo must use all reasonable endeavours to obtain such funding, including by using any Savings resulting from other Change Compensation Events which have resulted in amounts being available under the Finance Documents.

- (c) **(Unable to obtain funds):** Where ServiceCo, having used all reasonable endeavours, is unable to obtain funding or funding that is on terms which are satisfactory to FACS, FACS will pay the relevant amounts in accordance with section 6(a)(iii).

7. Annual review of ongoing compensation

- (a) **(Annual review):** If compensation for a Change Compensation Event has been made by an increase in the Monthly Service Payment, the amount of the compensation (other than ServiceCo's costs of financing the Change Compensation Event) will be subject to annual review at the end of each Operating Year in accordance with this section 7 to reflect actual Base Costs incurred for the relevant Change Compensation Event for that Operating Year.
- (b) **(Adjustment to Monthly Service Payment):** To the extent that the ongoing net Costs or net Savings arising as a consequence of any Change Compensation Event differs from the then existing compensation made through the Monthly Service Payment, the Monthly Service Payment will be adjusted accordingly over the balance of the Term.
- (c) **(Time of review):** Within one month prior to the end of each Operating Year, ServiceCo must undertake and provide to FACS a review of the amount of ongoing net Costs or net Savings arising as a consequence of the Change Compensation Event incurred, paid or accrued for which compensation has been made through the Monthly Service Payment over the Term.
- (d) **(FACS review and Disputes):** FACS must, within [REDACTED] of receipt of a review undertaken in accordance with section 7(c), notify ServiceCo of any matter within that review with which FACS does not agree, and any Dispute on the extent of any adjustment of compensation may be referred by either party for resolution in accordance with clause 34 (*Dispute resolution procedure*) of this Agreement.

8. Change Notice

8.1 Change Notice and FACS response

- (a) Each Change Notice must be prepared in accordance with and comply with this Schedule.
- (b) If:
- (i) an event or circumstance is expressed in this Agreement to be a Change Compensation Event;
 - (ii) ServiceCo is entitled or required to submit a Change Notice to FACS in accordance with this Agreement in respect of an event or circumstance; or
 - (iii) an amount is to be calculated in accordance with this Schedule,
- (each a **Change Notice Event**),
- then, as a condition precedent to making a Claim in respect of such an event or circumstance, ServiceCo must prepare and submit to the FACS Representative, a Change Notice which complies with section 10 within the initial Notification Period.

- (c) Where the Change Notice Event continues beyond the issue of the initial Change Notice, ServiceCo must prepare and submit to FACS an updated Change Notice within each further Notification Period following the initial Change Notice to the extent expressly set out in this Agreement.

8.2 FACS may request a Change Notice

- (a) Where:
 - (i) FACS believes that a Change Compensation Event or any other event or circumstance for which ServiceCo is entitled or required to submit a Change Notice has occurred; and
 - (ii) ServiceCo has not submitted a Change Notice,FACS may in a notice entitled "Change Notice Request", request that ServiceCo prepare and submit a Change Notice in respect of the particular event (a **Change Notice Request**).
- (b) ServiceCo must prepare and submit a Change Notice within the Notification Period following receipt of the Change Notice Request.

8.3 Instruction to proceed

- (a) If FACS issues a Modification Order under clause 26.7(a) (*Instruction to proceed*) of this Agreement:
 - (i) FACS will:
 - A. determine (acting reasonably) all matters required to enable the Modification to be implemented including:
 - 1) the cost effect of the Modification;
 - 2) if the Modification is to be carried out during the Delivery Phase, the effect which the proposed Modification will have on the Delivery Phase Program (including any extension of time required to the Milestone Dates and the Date(s) for Service Readiness); and
 - 3) any relief which is required from ServiceCo's obligations under this Agreement; and
 - B. assume that funding for the Modification will be provided by FACS unless the parties otherwise agree; and
 - (ii) ServiceCo must proceed with the Modification in accordance with the Modification Order.
- (b) Any Dispute in relation to a Modification Order issued by FACS under clause 26.7(a) (*Instruction to proceed*) of this Agreement may be referred by ServiceCo to expert determination in accordance with clause 37 (*Expert determination*) of this Agreement.

9. Change Response

9.1 FACS to issue a Change Response

- (a) Unless otherwise expressly stated in this Agreement, within 20 Business Days after receipt of a Change Notice (or such longer period as FACS, or any other person to whom the Change Notice is required to be given under this Agreement, reasonably requires having regard to the nature of the Change Notice Event, the information required to be included in the Change Response, the content and quality of the Change Notice and whether FACS requires an expert to verify an amount calculated by ServiceCo in the Change Notice), FACS:
- (i) may request from ServiceCo any further information that FACS reasonably requires in order to assess the Change Notice in accordance with this Schedule, in which case FACS will not be required to issue a Change Response until 20 Business Days after receipt from ServiceCo of all such further information reasonably requested;
 - (ii) must advise ServiceCo, in a notice entitled "Change Response", that FACS:
 - A. accepts the Change Notice (and in the case of a Modification the subject of a Modification Proposal submitted under clauses 23.3 (*Change Notice*), 26.8 (*Modifications proposed by ServiceCo*) or 26.9 (*Directions*) of this Agreement, the Change Response must be entitled "Modification Order"), in which case ServiceCo will, subject to ServiceCo complying with the other requirements of this Agreement (including this Schedule), be entitled to:
 - 1) compensation (if any) to the extent provided under and in accordance with section 5;
 - 2) relief (if any); and
 - 3) an extension of time (if any) to the extent provided in accordance with clauses 23 (*Delivery Phase – delay*), 24 (*Service Delivery Phase – Intervening Events*), 26.11 (*Extension of time*) or 26.10 (*Change in Mandatory Requirements*) (as applicable) of this Agreement,on the terms set out in the relevant Change Notice;
 - B. does not accept or rejects the Change Notice or a part of the Change Notice (and the reasons for this) and advise its determination of ServiceCo's entitlement to any extension of time, relief and/or compensation in accordance with this Schedule; or
 - C. in the case of a Change Notice in response to a Modification Request, does not wish to proceed with the proposed Modification and confirms that the Modification Request is withdrawn,

(each a **Change Response**).

- (b) A Change Response provided by FACS has the effect of varying this Agreement to the extent the Change Notice is accepted in the relevant Change Response, with effect from the date of receipt by ServiceCo of that Change Response, or such other date specified in that Change Response.
- (c) Whether or not ServiceCo has issued a Change Notice in respect of a Change Notice Event, FACS may at any time in its absolute discretion, issue a Change Response in accordance with this Schedule in respect of a Change Notice Event.
- (d) Nothing in this Agreement requires FACS to review a Change Notice in accordance with the Review Procedures.
- (e) FACS (including within any time period specified in this Agreement) will entitle ServiceCo to the relief and/or compensation set out in the Change Notice or put any time at large or, deprive FACS to grant the relief and/or compensation sought or such other relief as appropriate (including the power to extend time).

9.2 FACS' options

Where FACS does not accept the Change Notice, or a part of it, FACS may:

- (a) require ServiceCo to:
 - (i) have any amount that is not an Agreed Margin determined by expert determination in accordance with clause 37 (*Expert determination*) of this Agreement; or
 - (ii) during the Service Delivery Phase, procure that the relevant Key Subcontractor conduct a tender process for any part of the work the subject of the Change Compensation Event that will not be carried out by ServiceCo and the relevant Key Subcontractor, in accordance with section 4;
- (b) amend any aspect of the Change Notice in the Change Response to reflect ServiceCo's actual entitlement; or
- (c) reject the Change Notice on the basis that the event which is the subject of the Change Notice is not an event for which ServiceCo is entitled to submit a Change Notice under the Service Package Documents.

9.3 ServiceCo's options where the Change Notice is not accepted or is rejected

If FACS does not accept or rejects a Change Notice or a part of it:

- (a) ServiceCo must proceed with the Service Package Activities in accordance with this Agreement and the Change Response; and
- (b) ServiceCo must as a condition precedent to pursuing its Claim in respect of the Change Compensation Event (or the relevant part of it, as applicable) refer any Dispute in relation to all or any part of the Change Response to expert determination in accordance with clause 37 (*Expert determination*) of this Agreement within 20 Business Days (or such other period as agreed with FACS) after ServiceCo's receipt of the Change Response.

9.4 Dispute resolution

- (a) If FACS does not accept or rejects an amount as calculated by ServiceCo in any Change Notice (such amount not being a fixed or specified amount under this Schedule), FACS may have the amounts verified by an expert appointed in accordance with clause 37 (*Expert determination*) of this Agreement, in which case:
 - (i) the Base Costs calculated in item "C" in the formula in section 3.1 will be the lower of:
 - A. the amount claimed by ServiceCo in accordance with this Schedule; and
 - B. the amount verified by the expert; and
 - (ii) the Savings calculated in item "D" in the formula in section 3.1 will be the higher of:
 - A. the amount claimed by ServiceCo in accordance with this Schedule; and
 - B. the amount verified by the expert,
- and FACS will update any Change Response provided under section 9.1 promptly following the expert's verification.

10. Contents of Change Notice

10.1 General

Each Change Notice must:

- (a) contain:
 - (i) the information required by this Schedule; and
 - (ii) any additional information required under this Agreement in respect of a particular Change Notice Event or required by FACS;
- (b) be signed by the ServiceCo Representative;
- (c) attach copies of any required changes to the Delivery Phase Program, the Delivery Phase Reports or the Service Delivery Phase Plans (as applicable);
- (d) set out detailed particulars of the nature, occurrence and impact of the relevant Change Notice Event;
- (e) comply with sections 10.2 to 10.4;
- (f) if the Change Compensation Event occurs prior to the Date of Service Readiness and results in an amount owing from ServiceCo to FACS, details of the form and timing of compensation ServiceCo proposes, including by:
 - (i) a debt due and payable by ServiceCo to FACS; or
 - (ii) by a reduced or resculpted Monthly Service Payment profile, with such reduction or resculpting being at least equivalent in value to the

corresponding amount if the form and timing of the relevant compensation was a debt due and payable by ServiceCo to FACS; and

- (g) in respect of a Relief Event, describe the reduction in ServiceCo's liability to indemnify or release FACS and its Associates in accordance with this Agreement.

10.2 Mitigating factors

In each Change Notice, ServiceCo must describe the actions ServiceCo and its Associates have taken (and any further action ServiceCo proposes to take in the future) to:

- (a) mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the Change Notice Event (including by putting in place temporary measures reasonably required by FACS); and
- (b) take advantage of any positive or beneficial effects of the Change Notice Event and maximise any reduction in Costs arising from the Change Notice Event.

10.3 Effects

In each Change Notice, ServiceCo must provide details, where applicable, and to the extent known or able to be predicted, of:

- (a) the effects of the Change Notice Event on:
 - (i) the workmanship, quality, appearance or durability of any part of the Relevant Infrastructure;
 - (ii) the delivery of the Relevant Infrastructure;
 - (iii) the management and maintenance of the Relevant Infrastructure;
 - (iv) the carrying out of the Service Package Activities and ServiceCo's ability to carry out the Services in accordance with the Services Requirements;
 - (v) the Relevant Infrastructure being Fit for Purpose;
 - (vi) the warranties given by ServiceCo in this Agreement or by a Key Subcontractor in its Key Subcontract;
 - (vii) any other relevant part of this Agreement (including Schedules and Annexures) or any other FACS Service Package Document, including any amendments required; and
 - (viii) any existing Approvals or the requirement for any new Approvals;
- (b) any damage caused by the Change Notice Event;
- (c) the time consequences of a Change Notice Event, including:
 - (i) an estimate of the time (if any) during which ServiceCo will be prevented from carrying out or delayed in carrying out the Service Package Activities due to the Change Notice Event, any impact on any Date for Service Readiness or any likely Date of Service Readiness and any impact on activities on the critical path contained in the then current Delivery Phase Program;

- (ii) in the case of a Change Notice Event which is a Modification, the time for completion of the Modification (including whether the Modification is required to be completed prior to any Date for Service Readiness) and the latest date by which FACS could accept the Change Notice with no impact upon the Date for Service Readiness; and
 - (iii) any revised Date for Service Readiness;
- (d) where ServiceCo claims as a consequence of a Change Notice Event:
 - (i) an extension of time to a Date for Service Readiness, the number of days extension claimed together with:
 - A. the basis of calculating the total number of days claimed; and
 - B. any information reasonably required by FACS to demonstrate that ServiceCo has satisfied the conditions relevant to its extension of time claim as referred to in clauses 23 (*Delivery Phase – delay*) or 24 (*Service Delivery Phase – Intervening Events*) of this Agreement; or
 - (ii) relief from any other of its other obligations under this Agreement, the basis on which that ServiceCo has formed the opinion that such relief is required together with all necessary supporting evidence;
- (e) the cost consequences of, and the compensation claimed in respect of, the Change Notice Event, together with any information reasonably required by FACS to demonstrate that ServiceCo has satisfied the conditions relevant to its compensation claim as referred to in clauses 23.4(b) (*Conditions precedent to extension or relief*) or 24.2(b) (*Conditions precedent to relief*) of this Agreement; and
- (f) the material effect (if any) which a Modification proposed by FACS has on the residual value of a Dwelling, capped at the reasonable cost of rectifying the Modification at the end of the Term.

10.4 Warranty by ServiceCo

All Change Notices must:

- (a) where the Change Notice is in respect of a Modification the subject of a Modification Order, contain a warranty by ServiceCo in respect of the Change Compensation Event that:
 - (i) the relevant Change Notice has been prepared so as to avoid or minimise:
 - A. any delay in achieving Service Readiness; and
 - B. any adverse safety impacts of the Change Compensation Event on people;
 - (ii) the Modification when implemented will:
 - A. enable the Relevant Infrastructure to deliver the Services in accordance with the Services Specification and

otherwise meet the requirements of this Agreement, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 10.3; and

B. enable ServiceCo at all times during the Service Delivery Phase to carry out the Service Package Activities in accordance with the Services Requirements and to comply with the terms of this Agreement, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 10.3; and

(iii) in each case, without limiting the warranties given by ServiceCo in other clauses of this Agreement, except to the extent that it is agreed between the parties or determined in accordance with this Agreement that the proposed Modification will have an adverse effect on the matters referred to in section 10.3; and

(b) contain a warranty by ServiceCo that it is satisfied that the Claim the subject of the Change Notice is bona fide, true and correct to the best of its knowledge and the relief sought is an accurate reflection of ServiceCo's entitlement under this Agreement to the extent it is able to be known at the time.

Schedule 6 – Termination Payments

1. Definitions

For the purposes of this Schedule, the definitions in clause 1 (*Definitions*) of this Agreement will apply as supplemented by the following definitions:

Actual Proceeds has the meaning given to it in section 3.3(b).

Additional Amount has the meaning given to it in section 3.3(a).

Adjusted New Monthly Service Payment has the meaning given in section 4.2(c)(iv).

Compensation Date means either:

- (a) if section 4.2(c) applies, the earlier of:
 - (i) the date that the New Contract is entered into; and
 - (ii) the date on which the Termination Payment payable to ServiceCo has been agreed or determined in accordance with section 4.5; or
- (b) if section 4.3 applies, the date on which the Estimated Net Cost has been agreed or determined.

Compliant Tender means a tender which meets all of the Qualification Criteria.

Deemed New Contract means a contract in respect of any terminated Stages on the same terms and conditions as this Agreement as at the Termination Date, but with the following amendments:

- (a) the Dwellings are to be delivered using a leasing strategy;
- (b) any Major Default Notices must be cancelled and any related breach waived;
- (c) the location of the Dwellings will be comparable, but will not necessarily be the exact locations set out in this Agreement (including through the application of the Site Selection Strategy); and
- (d) the term shall be equal to the period from the Compensation Date to and including the Final Expiry Date.

Estimated Net Cost means the amount determined in accordance with sections 4.3 and 4.4.

Fair Value means the amount at which an asset, equity or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale.

Government Debt Rate means the NSW Treasury Corporation (TCorp) long term 90 day reversion rate.

Liquid Market means that there are at least two parties (in addition to any party controlled by the Financiers, each of whom is capable of being a suitable substitute contractor) in the

prevailing market for public private partnership contracts or similar contracts for the provision of services (in each case the same as or similar to this Agreement), such that the result of that tender process would provide a reasonably likely indicator of Fair Value.

New Contract means a contract on the same terms and conditions as this Agreement as at the Termination Date, but with the following amendments:

- (a) the Dwellings are to be delivered using a leasing strategy;
- (b) any Major Default Notices shall be cancelled and any related breach waived;
- (c) the location of the Dwellings will be comparable, but will not necessarily be the exact locations set out in this Agreement (including through the application of the Site Selection Strategy);
- (d) the term shall be equal to the period from the Compensation Date to and including the Final Expiry Date; and
- (e) any other amendments which do not materially increase the Monthly Service Payment which FACS would be prepared to pay in consideration for New ServiceCo entering into the New Contract.

Parameters for Adjustment means the following items:

- (a) Not used.
- (b) Not used.
- (c) Not used.

New ServiceCo means the person or entity who has entered or who will enter into a New Contract with FACS.

NPV New Monthly Service Payment means:

$$\text{NPVNMSP} = A - B$$

where:

| | | |
|---------|---|---|
| NPVNMSP | = | Net Present Value New Monthly Service Payment; |
| A | = | the total of all payments of the Adjusted New Monthly Service Payments forecast to be made over the term of the New Contract (or, if shorter, the period from the Compensation Date to and including the Final Expiry Date) calculated and discounted as at the Termination Date by the Government Debt Rate; and |
| B | = | the total of all payments of the Monthly Service Payments forecast to be made over the Term of the Services Agreement had it not terminated, calculated and discounted as at the Termination Date by the Government Debt Rate. |

To the extent that the NPVNMSP is negative, it will be taken to be zero.

Provisional Proceeds has the meaning given to it in section 3.3(a).

Qualification Criteria means the criteria which FACS requires tenderers to meet as part of the Tender Process, which shall be:

- (a) criteria having substantially the same effect as the criteria applied by FACS when selecting those to be invited to submit detailed proposals and any other final offers under the procurement process used in the selection of ServiceCo to deliver the Service Package;
- (b) the operational and technical ability of the tenderers to deliver the Service Package Activities;
- (c) the independence of the tenderer from ServiceCo and FACS; and
- (d) any other relevant tender criteria selected by FACS acting reasonably.

ServiceCo Additional Amount has the meaning given to it in section 3.3(c)(i).

Subcontractor Breakage Costs means the sum of the amounts reasonably and properly payable by ServiceCo to ServiceCo's Subcontractors on termination of this Agreement, under Subcontracts to which ServiceCo is a party, provided:

- (a) such amounts are incurred under arrangements and/or agreements entered into on arms-length commercial terms prior to the Termination Date;
- (b) both ServiceCo and the relevant Subcontractor have used reasonable efforts to mitigate such amounts; and
- (c) such amounts will not include any amount in respect of loss of profit (or similar) to subcontractors.

Tender Costs means the internal and external costs reasonably incurred or reasonably expected to be incurred by FACS in carrying out the Tender Process and/or in connection with any calculation of the Estimated Net Cost (including the cost of the independent expert appointed pursuant to section 4.3(d)).

Tender Documentation means the documentation issued by FACS to request tenders from any parties interested in entering into a New Contract in accordance with section 4.2(c).

Tender Process means the process by which FACS requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and negotiates to enter into a New Contract with a New ServiceCo, in accordance with section 4.2(c).

Termination Date means in respect of each stage that is terminated, the date of termination of that stage in accordance with clause 32 (*Termination*) of this Agreement.

2. Interpretation

To the extent a termination occurs in respect of some but not all Stages, the provisions of this Schedule will be construed to apply for only those Stages which have been terminated.

3. Payment of Termination Payment

3.1 Timing of payment

If this Agreement is terminated under clause 32 (*Termination*) of this Agreement, the party obliged to pay the Termination Payment under clause 32.6 of this Services Agreement must pay the Termination Payment as a lump sum on or before the date which is 90 days after the Termination Date (or where termination is pursuant to clause 32.4 (*Termination for Default Termination Event*) of this Agreement, 30 days after the Compensation Date if this is later).

3.2 Payment of interest

In respect of Termination Payments calculated under this Schedule only, interest shall accrue on any unpaid element of the Termination Payment:

- (a) in respect of a Termination Payment calculated under section 4, from the 31st day after the Compensation Date to (and excluding) the date on which the Termination Payment is paid in full. Interest shall accrue on that Termination Payment at the Overdue Rate. Interest is payable on the date on which the Termination Payment is paid; and
- (b) in respect of any Termination Payment calculated under section 5, from and including the Termination Date to (and excluding) the date on which the Termination Payment is paid in full. Interest on the Termination Payment shall accrue at the Government Debt Rate from and including the day after the Termination Date to and including the 90th day after the Termination Date and thereafter on the whole of that Termination Payment at the Overdue Rate. Interest is payable on the date on which the Termination Payment is paid.

3.3 Treatment of insurance proceeds

- (a) Notwithstanding any term of this Agreement, if the calculation of the Termination Payment requires the parties to take into account insurance proceeds that have not yet been received by ServiceCo, then receipt (or non-receipt) of the insurance proceeds, or uncertainty as to the quantity or timing of receipt of the same, shall not delay the calculation or payment of the Termination Payment and instead the parties shall calculate the Termination Payment on the basis of the maximum amount of proceeds that ServiceCo is reasonably likely to recover assuming that ServiceCo has complied with its insurance obligations under clause 30 (*Insurance*) of this Agreement and the Insurance Schedule (**Provisional Proceeds**) taking into account all information that is then available to the parties.
- (b) If, following the calculation of the Termination Payment, the insurance proceeds that ServiceCo actually recovers (**Actual Proceeds**) are less than the Provisional Proceeds, FACS shall, immediately on notification of the Actual Proceeds by ServiceCo, pay to ServiceCo an amount equal to that by which the Provisional Proceeds exceed the Actual Proceeds (**Additional Amount**). For the avoidance of doubt, FACS will not be required to pay any interest on this Additional Amount.
- (c) If, following the calculation of the Termination Payment, the Actual Proceeds are more than the Provisional Proceeds, FACS may, in its sole discretion:
 - (i) direct ServiceCo to immediately on receipt of the Actual Proceeds, pay to FACS an amount equal to that by which the Actual Proceeds exceed the Provisional Proceeds (**ServiceCo Additional Amount**); or
 - (ii) if FACS has not paid the Termination Payment in full at that time, reduce the outstanding Termination Payment by the ServiceCo Additional Amount,and ServiceCo will not be required to pay any interest on any ServiceCo Additional Amount.
- (d) References to insurance proceeds in sections 3.3(b) to 3.3(c) (inclusive) are to insurance proceeds that ServiceCo is entitled to retain and which it has not applied and it is not obliged to apply in respect of its reinstatement obligations under this Agreement.

3.4 General obligations

- (a) Each Party must use all reasonable endeavours to mitigate any losses or costs forming part of any Termination Payment.
- (b) Any Termination Payment payable by or to ServiceCo must be calculated in accordance with this Schedule without any double counting.

4. Termination for Default Termination Event

4.1 Default Termination Event

If FACS terminates this Agreement following a Default Termination Event in accordance with clause 32.4 (*Termination for Default Termination Event*) of this Agreement (regardless of whether FACS otherwise has the right to terminate for any other reason), FACS must at its sole discretion, elect to:

- (a) re-tender the provision of the Service Package Activities in accordance with section 4.2; or
- (b) require an expert determination in accordance with section 4.3.

4.2 Re-tendering process

- (a) FACS is entitled to elect to retender the provision of the Service Package Activities in accordance with section 4.1(a) if:
 - (i) FACS notifies ServiceCo on or before the date falling 20 Business Days after the Termination Date;
 - (ii) there is a Liquid Market, and (to the extent there are any Financiers) either:
 - A. the Financiers have not exercised their rights to step-in under clause 5.2 of the Financiers' Tripartite Deed; or
 - B. the Financiers have exercised their rights to step-in under clause 5.2 of the Financiers' Tripartite Deed and the Financiers have not procured the transfer of ServiceCo's rights and liabilities under this Agreement to a suitable substitute contractor and have failed to use all reasonable efforts to do so,

in which case the amount of compensation payable by FACS shall be agreed or determined in accordance with sections 4.2(c) and 4.5.
- (b) Any Dispute in relation to whether a Liquid Market exists may be referred by either party for dispute resolution in accordance with clause 34 (*Dispute resolution procedure*) of this Agreement.
- (c) If FACS elects to re-tender the provision of the Service Package Activities in accordance with section 4.2(a), the following provisions shall apply:
 - (i) the objective of the Tender Process shall be to identify a new service company and the lowest New Monthly Service Payment offered by a Compliant Tenderer;
 - (ii) the FACS Representative shall use its reasonable endeavours to complete the Tender Process as soon as practicable having regard

to the assistance given by ServiceCo in connection with the Tender Process;

- (iii) the FACS Representative shall notify ServiceCo of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and shall act reasonably in setting such requirements and terms;
- (iv) as soon as practicable after tenders have been received, the FACS Representative shall determine the Compliant Tenders and the lowest Monthly Service payment offered by a Compliant Tenderer (**New Monthly Service Payment**) and will require an independent expert to adjust the New Monthly Service Payment so as to neutralise for any differences between the New Monthly Service Payment and the current Monthly Service Payment which arise as a result of the Parameters for Adjustment (**Adjusted New Monthly Service Payment**);
- (v) as soon as practicable after the expert has concluded the process in section (iv), the FACS Representative shall notify ServiceCo of:
 - A. the Adjusted New Monthly Service Payment; and
 - B. the Tender Costs;
- (vi) if FACS receives less than two tenders (or less than two Compliant Tenders) in response to the Tender Process, the provisions of section 4.3 shall apply;
- (vii) FACS may elect at any time prior to the receipt of two Compliant Tenders to follow the no re-tendering procedure under section 4.1 by notifying ServiceCo that this election has been made and upon the making of such an election, the provisions of section 4.3 shall apply; and
- (viii) in the event that the Tender Process is not completed within 12 months from the date of issue of the Tender Documentation, the provisions of section 4.3 shall apply.

4.3 Expert determination

If:

- (a) FACS elects to require expert determination pursuant to sections 4.1 or 4.2(c)(vii);
- (b) the provisions of sections 4.2(c)(vi) or 4.2(c)(viii) apply; or
- (c) the conditions set out in section 4.2(a) are not satisfied,

the following provisions apply:

- (d) the parties will procure the services of an independent expert to determine the Estimated Net Cost based on the formula set out in section 4.4 (as applicable) and agree that the Estimated Additional Cost as determined by the independent expert will be final and binding; and
- (e) all forecast amounts of revenues and costs must be calculated by the independent expert on a nominal basis as at the Termination Date, whereby future amounts are indexed at the indexation rates in the Financial Model.

4.4 Estimated Net Cost

The Estimated Net Cost shall be determined by the independent expert, based on the following formula:

$$\text{ENC} = A - B$$

where:

$$\text{ENC} = \text{Estimated Net Cost;}$$

$$A = \text{the total of all costs reasonably forecast to be incurred by FACS as a direct result of termination of this Agreement, calculated and discounted at the Government Debt Rate, such costs to include:}$$

- (a) the costs reasonably forecast to be incurred by FACS over the term of the Deemed New Contract (or, if shorter, the period from the Compensation Date to and including the Final Expiry Date) in connection with providing the Service Package Activities to the standard required by the Deemed New Contract, but adjusted so as to neutralise for any differences between this amount and the current Monthly Service Payment which arise as a result of the Parameters for Adjustment;
- (b) any lease payments payable under a lease entered into pursuant to the Option to Lease;
- (c) a reasonable risk assessment of any cost overruns that will arise whether or not forecast in the Financial Model; and
- (d) any rectification costs required to deliver services under the Deemed New Contract to the standard required in the Deemed New Contract and any additional operating costs required to restore operating service standards; and

$$B = \text{the total of all payments of the Monthly Service Payments forecast to be made over the term of the Services Agreement had that not been terminated calculated and discounted as at the Termination Date by the Government Debt Rate.}$$

To the extent that the ENC is negative, it will be taken to be zero.

4.5 Termination for Default Termination Event

- (a) If this Agreement is terminated pursuant to clause 32.4 (*Termination for Default Termination Event*) of this Agreement, the Termination Payment shall be calculated as follows:

Termination Payment or TP means:

$$\text{TP} = A + B + C + D + E + F - G + H + I + J$$

where:

- A = the NPV New Monthly Service Payment offered by a Compliant Tenderer if section 4.2 applies, or the Estimated Net Cost if section 4.3 applies;
- B = the Tender Costs;
- C = the amounts that FACS is entitled to set off or deduct under this Agreement including, for the avoidance of doubt, any reasonable costs incurred by FACS in connection with the relevant Default Termination Event and as a direct result of terminating this Agreement;
- D = any amounts owing by ServiceCo to FACS under the Service Package Documents as at the Termination Date;
- E = any gains which have or will accrue to ServiceCo as a result of the termination of this Agreement and any other Service Package Documents;
- F = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) ServiceCo is entitled to receive, or would be entitled to receive had ServiceCo complied with the requirements of clause 30 (*Insurance*) of this Agreement, the Insurance Schedule and the relevant insurance policy, under any insurance policy;
- G = any amounts due and payable by FACS to ServiceCo in accordance with the terms of FACS Service Package Documents as at the Termination Date, but only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;
- H = any amounts paid to ServiceCo by FACS (including as a component of the Monthly Service Payment) for maintenance, refurbishment or capital replacement where that maintenance, refurbishment or capital replacement has not been carried out by ServiceCo;
- I = FACS' reasonable costs in consulting with and relocating the current tenants of ServiceCo out of the Dwellings into alternative accommodation (if applicable);
- J = FACS' reasonable costs of bringing the Dwellings to a standard appropriate for use as accommodation by Tenants (to the extent FACS has exercised the Option to Lease).
- (b) If the Termination Payment is a positive number, ServiceCo shall pay that amount to FACS.
- (c) If the Termination Payment is a negative number, FACS shall pay that amount to ServiceCo.

5. Voluntary Termination by FACS

If this Agreement is terminated pursuant to clause 32.2 (*Voluntary Termination*) of this Agreement, the Termination Payment shall be calculated as follows:

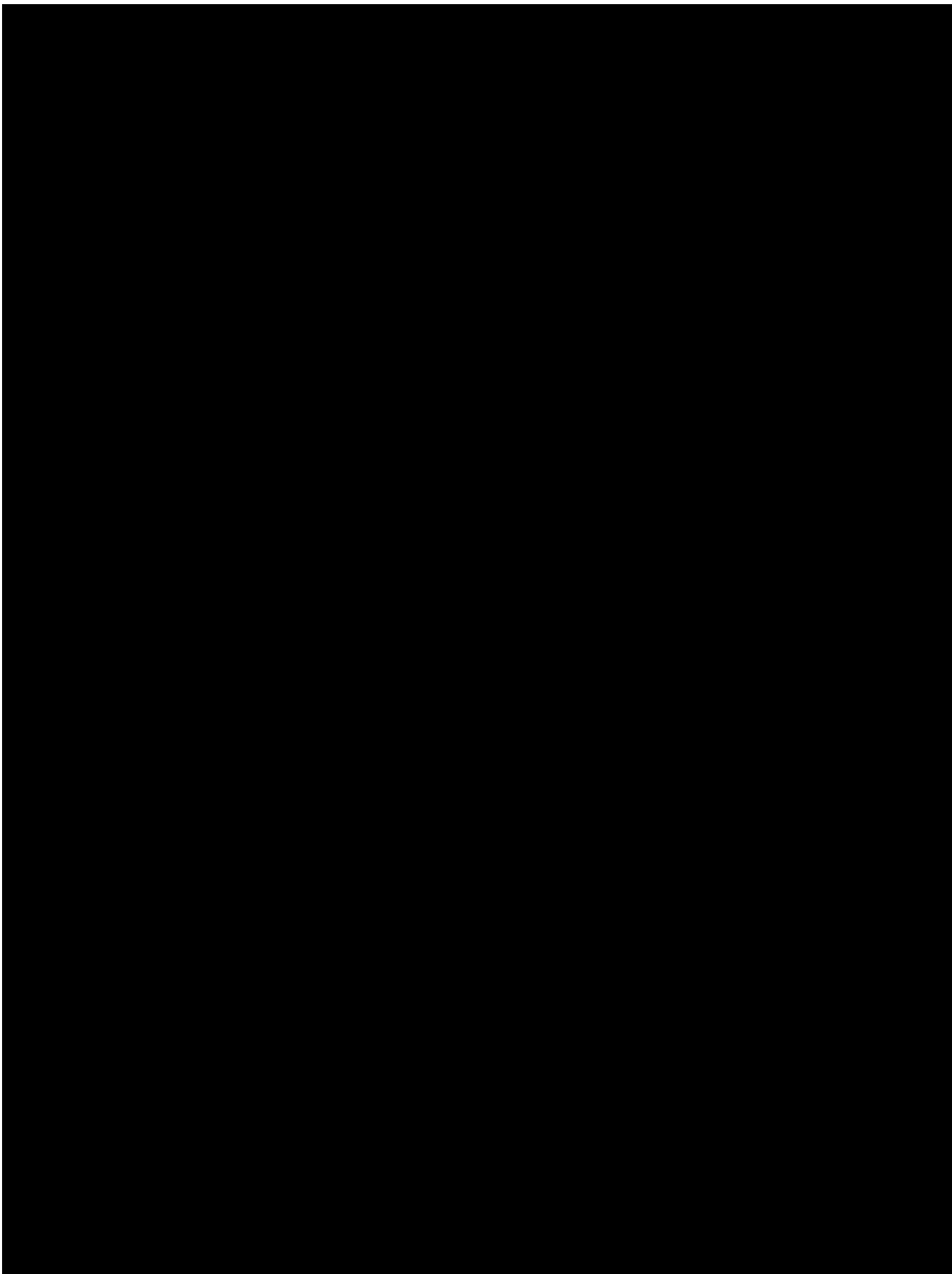
Termination Payment or TP means:

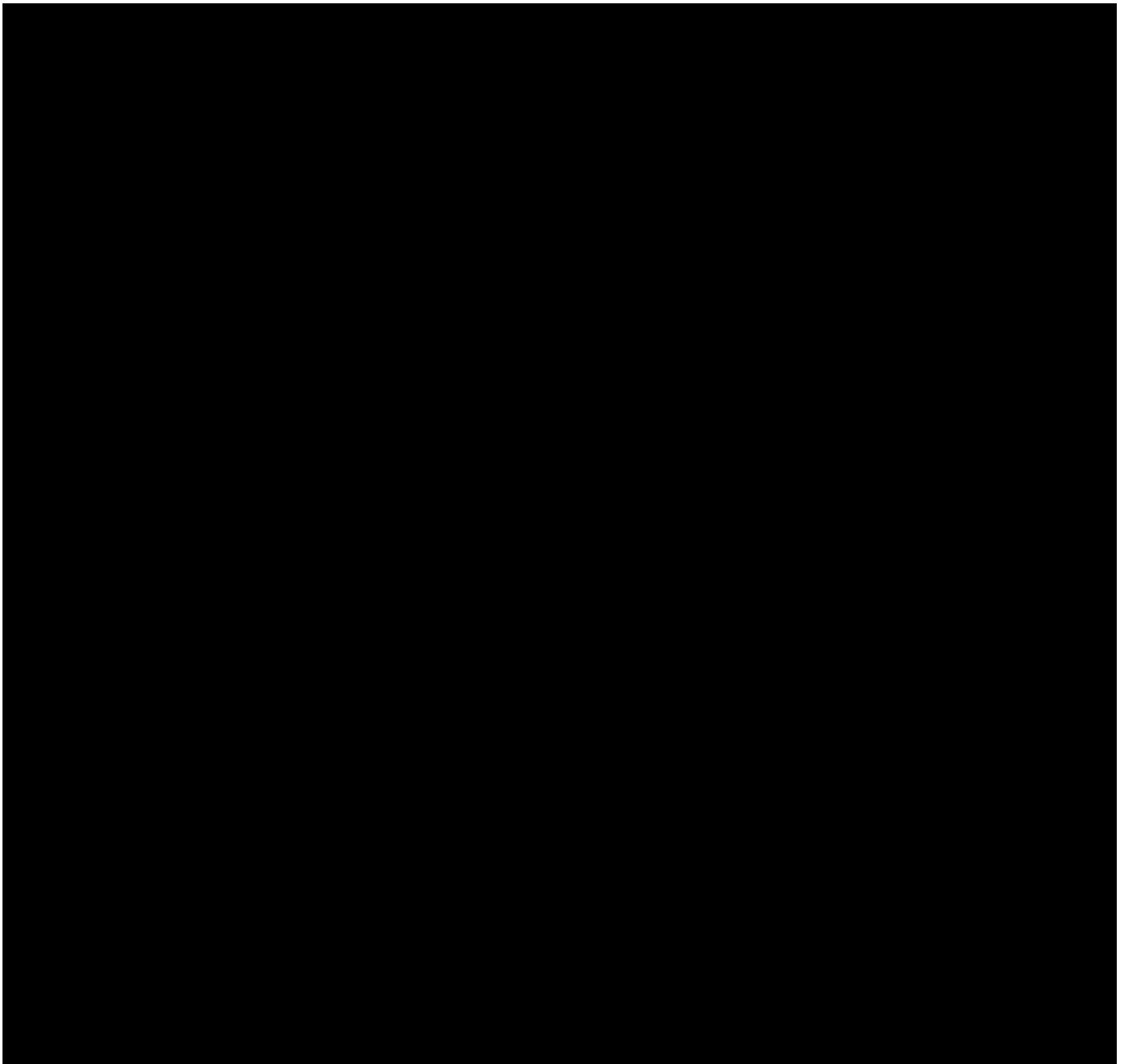
TP = $A + B - C - D - E + F + G$ where:

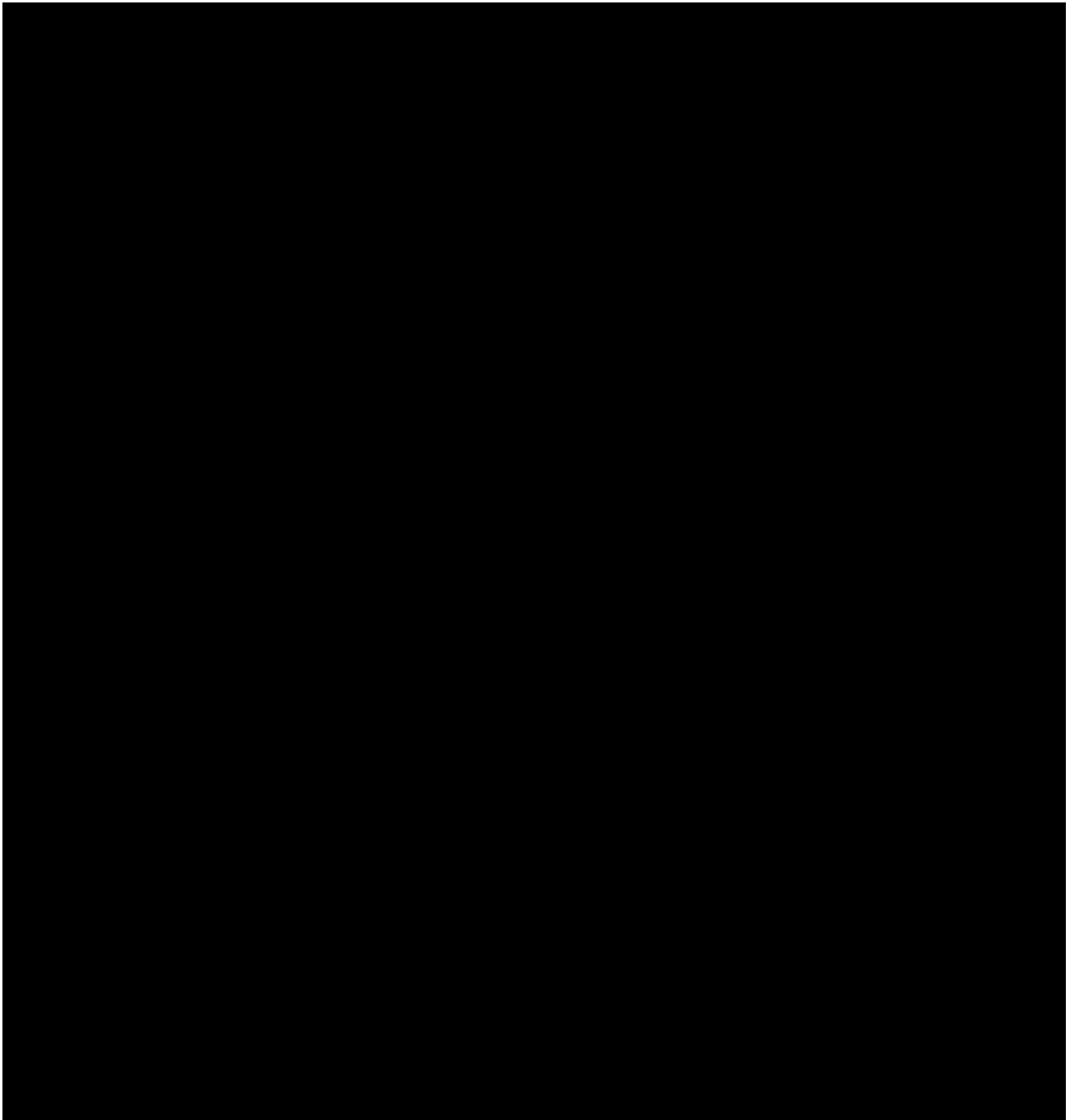
A = an amount equal to the reasonable ServiceCo costs incurred in assisting

FACS to decant existing Tenants (if requested);

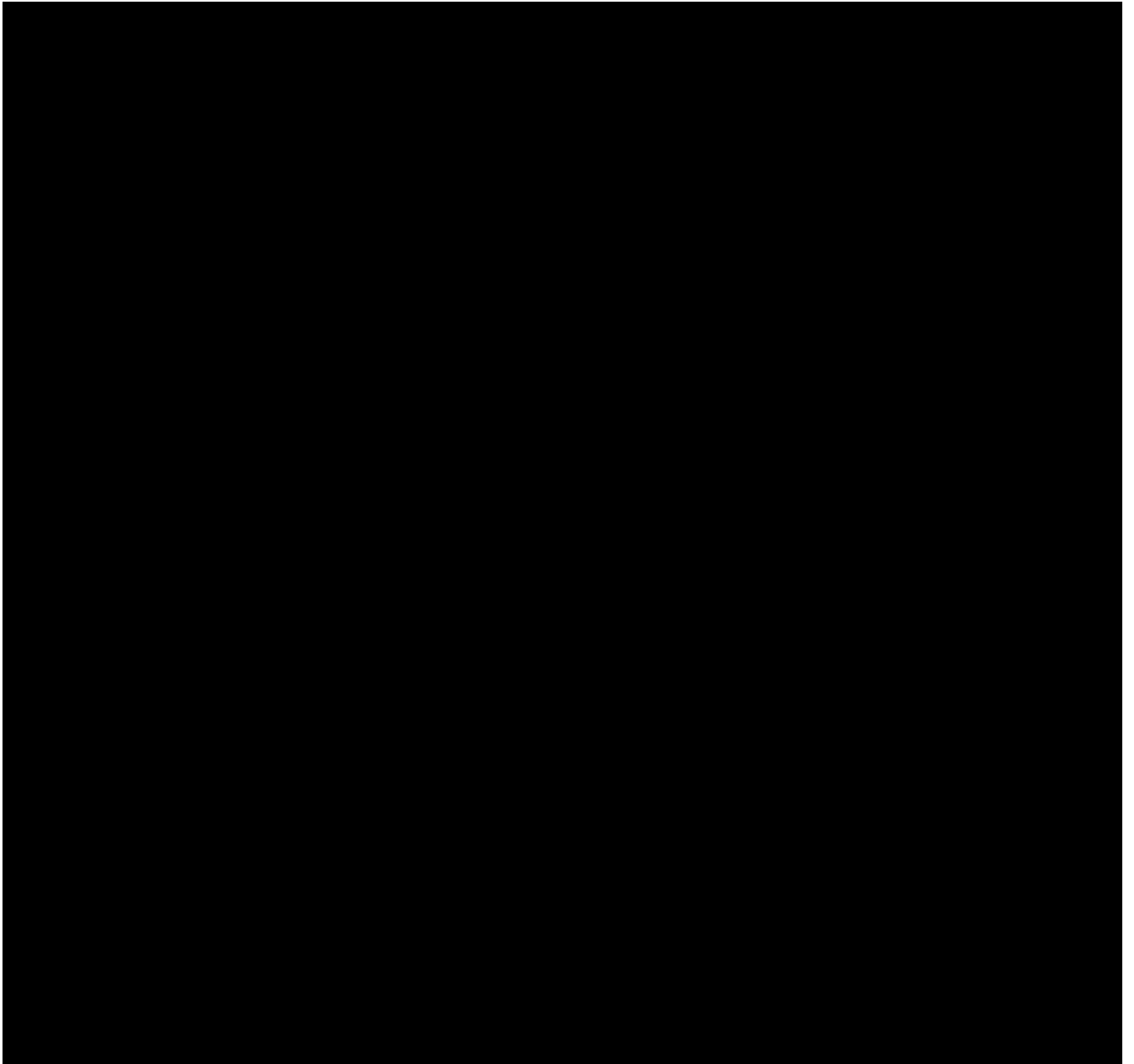
- B = an amount equal to the net present value of the Monthly Service Payments calculated and discounted as at the Termination Date by the Government Debt Rate forecast under the Base Case Financial Model to be made for the lesser period of either:
- (i) the period from the Termination Date or the last Date for Service Readiness whichever is the later, until the date that is 3 years after the Termination Date had the Services Agreement not terminated or the last Service Commencement Date whichever is the later; or
 - (ii) the date that is the Contract Expiry as set out in this Agreement;
- C = any amounts owing by ServiceCo to FACS, under the FACS Service Package Documents as at the Termination Date;
- D = any amounts paid by FACS to ServiceCo on account for Services not performed by the Termination Date;
- E = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) ServiceCo is entitled to retain in respect of a Claim which has been made or has arisen or accrued on or before the Termination Date (or ServiceCo would be entitled to retain had ServiceCo complied with the requirements of clause 30 (*Insurance*) of this Agreement, the Insurance Schedule and the relevant insurance policy) under any insurance policy;
- F = any amounts due and payable by FACS to ServiceCo in accordance with the terms of FACS Service Package Documents as at the Termination Date, but only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid as at the Termination Date;
- G = an amount equal to the reasonable costs incurred or to be incurred by ServiceCo in repairing damage to Dwellings caused by Tenants which costs have not yet been recouped by or reimbursed to ServiceCo through the Monthly Service Payments.

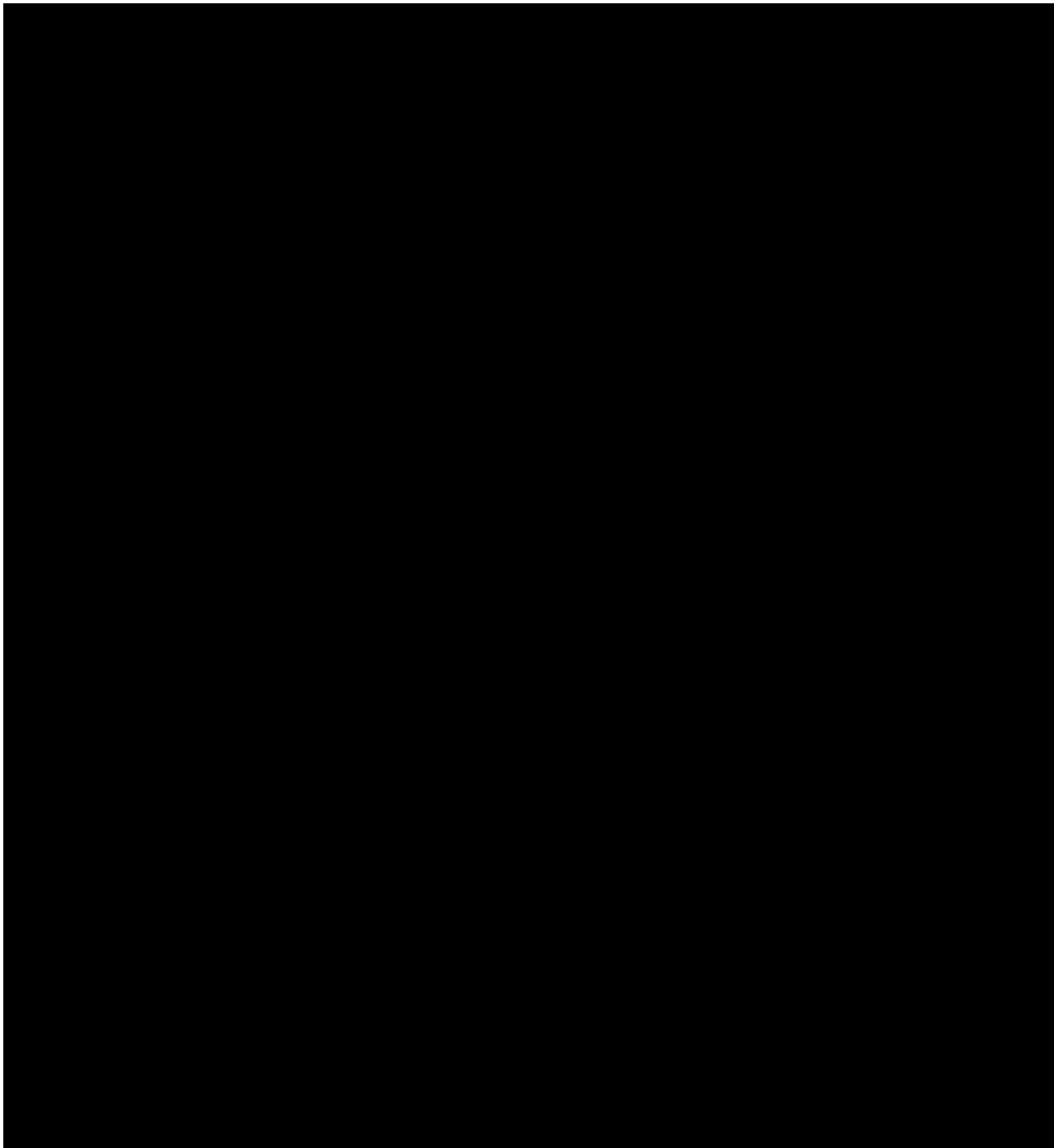


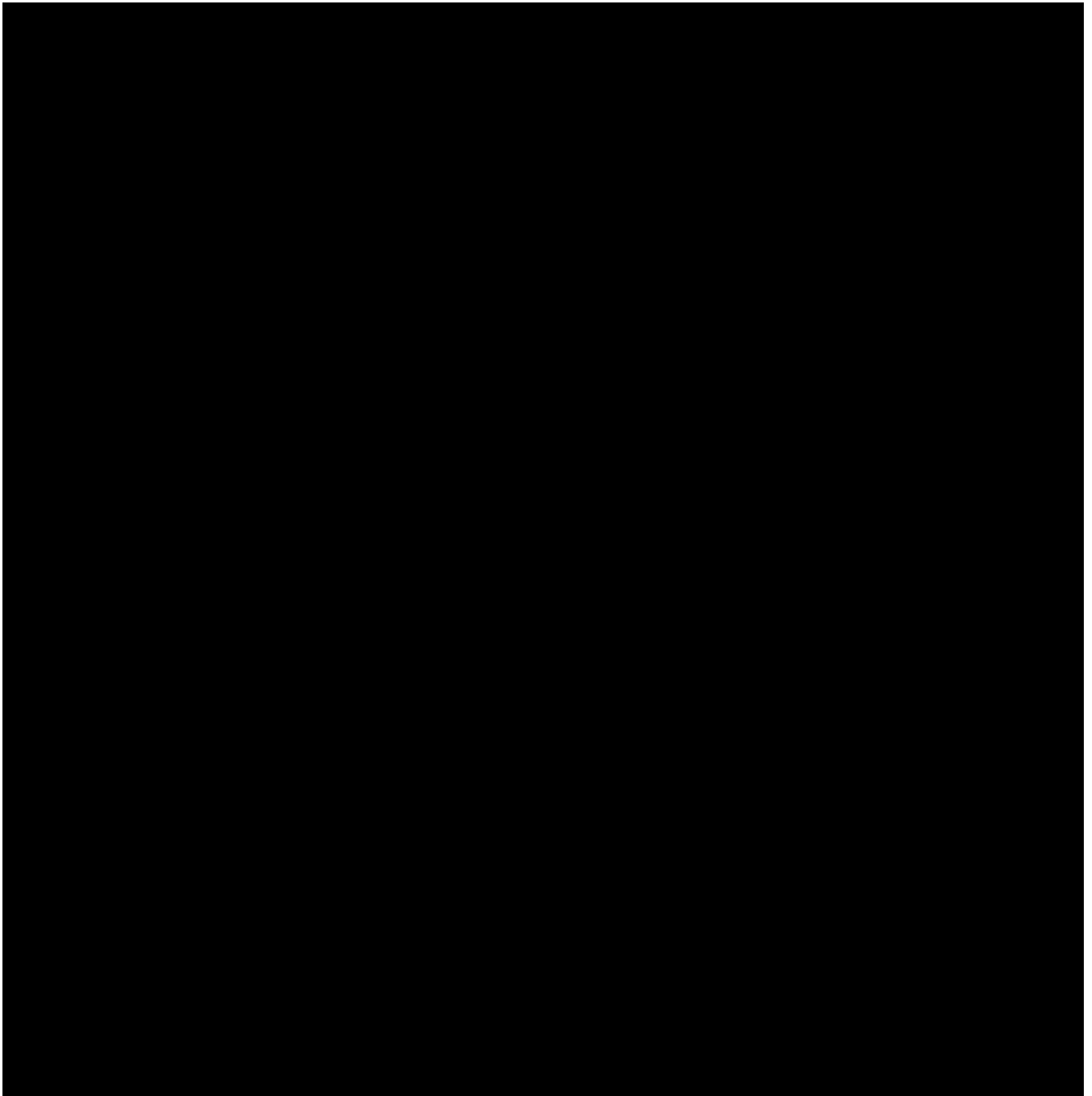


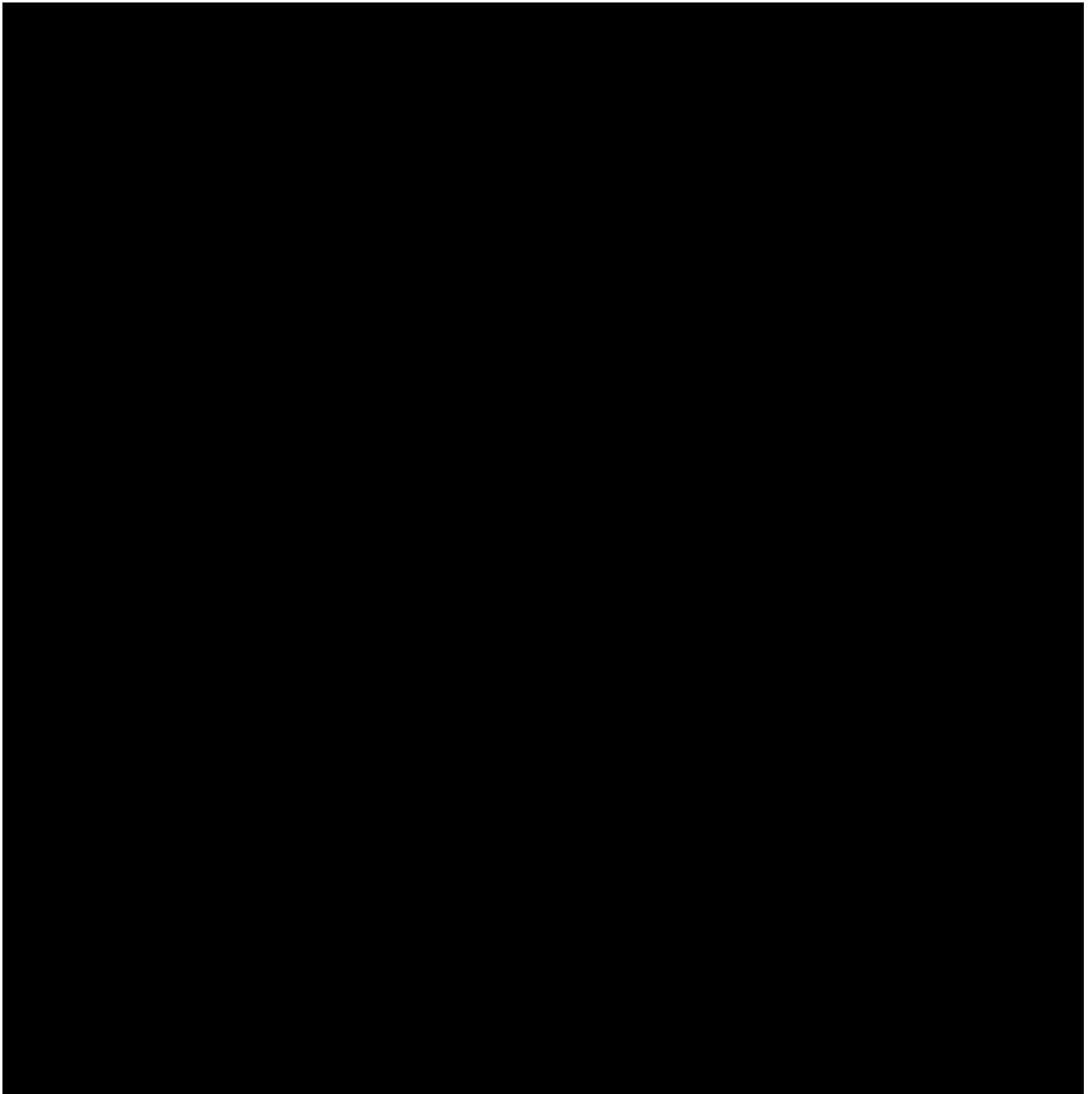


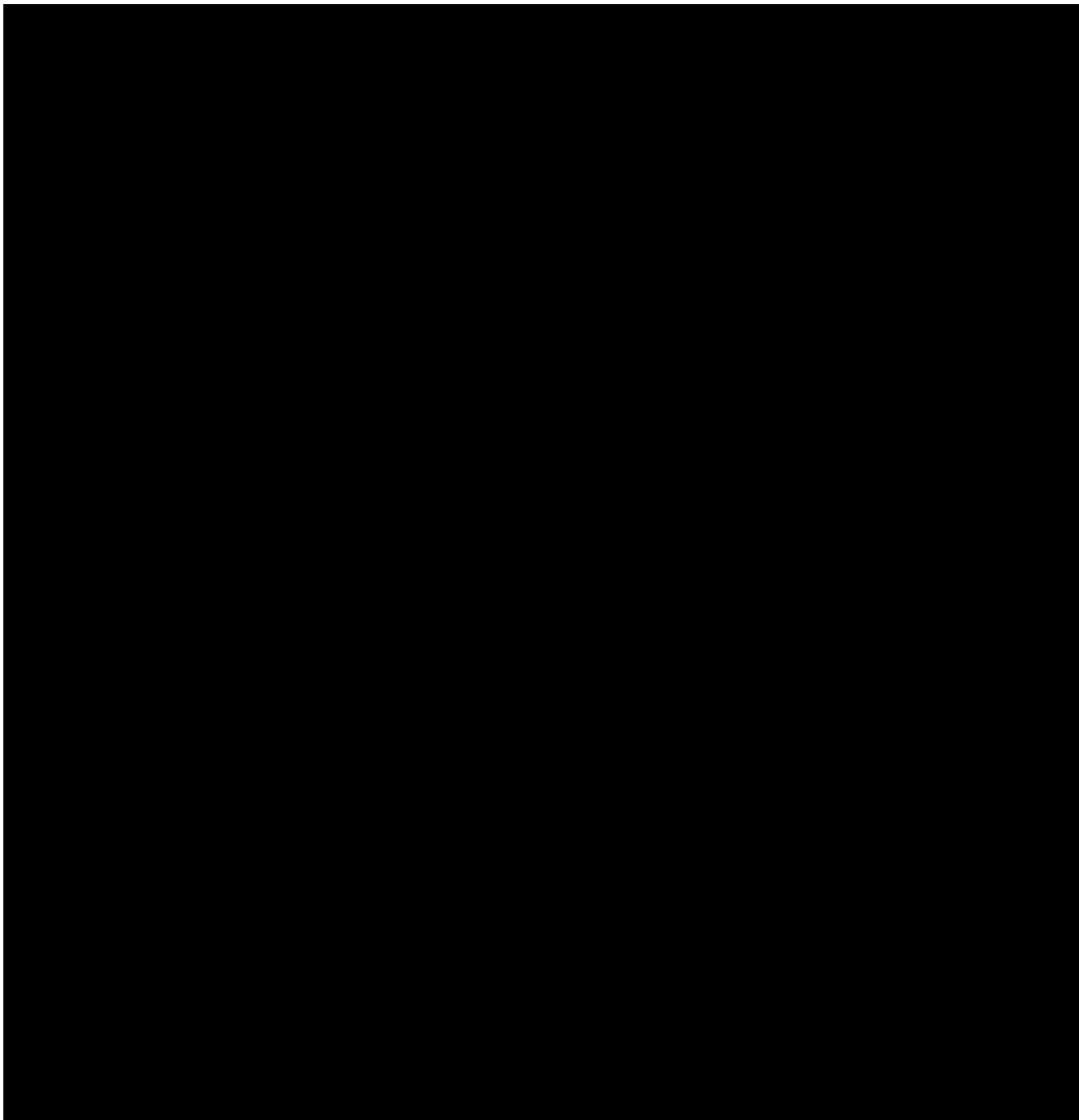
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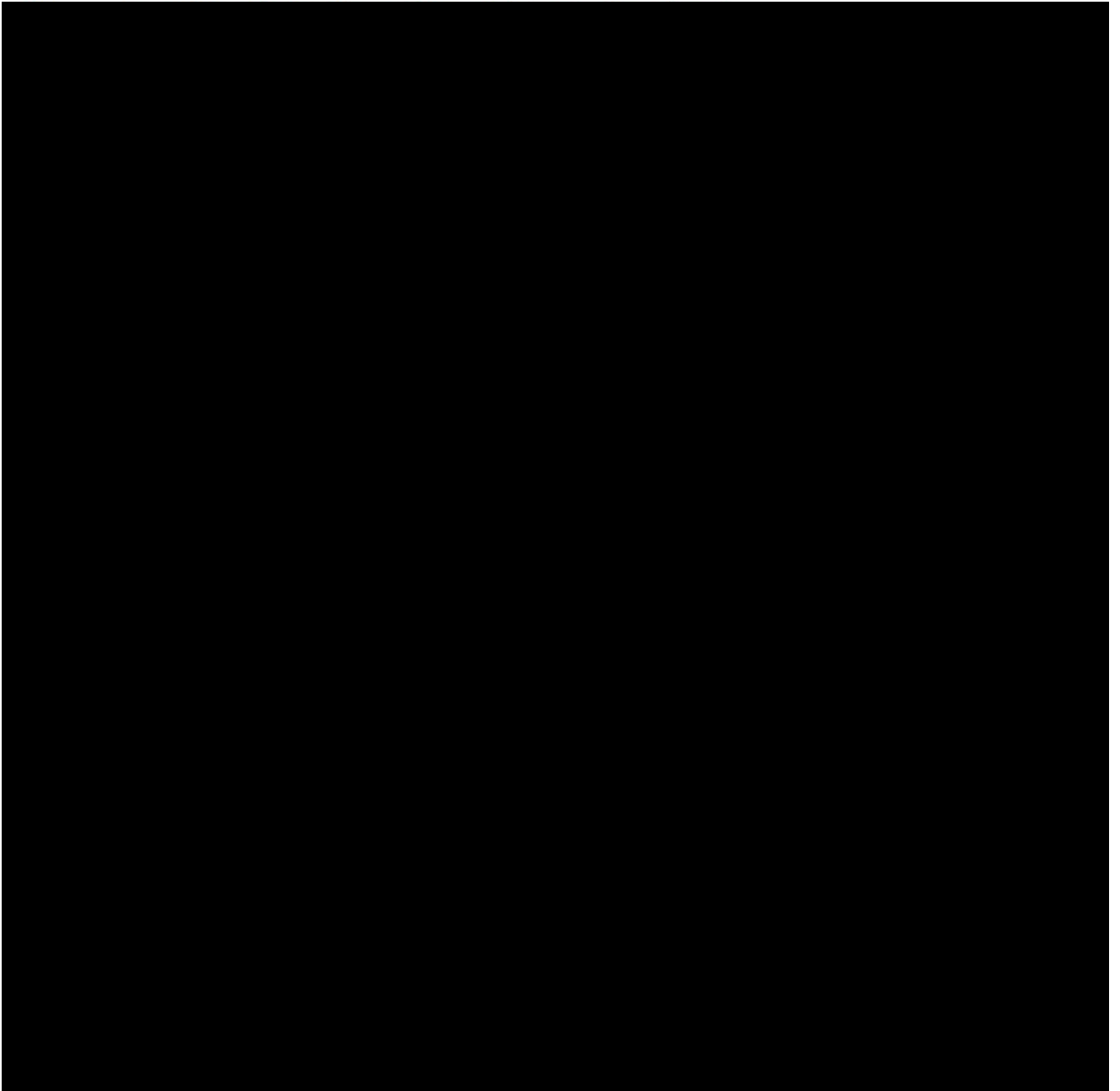


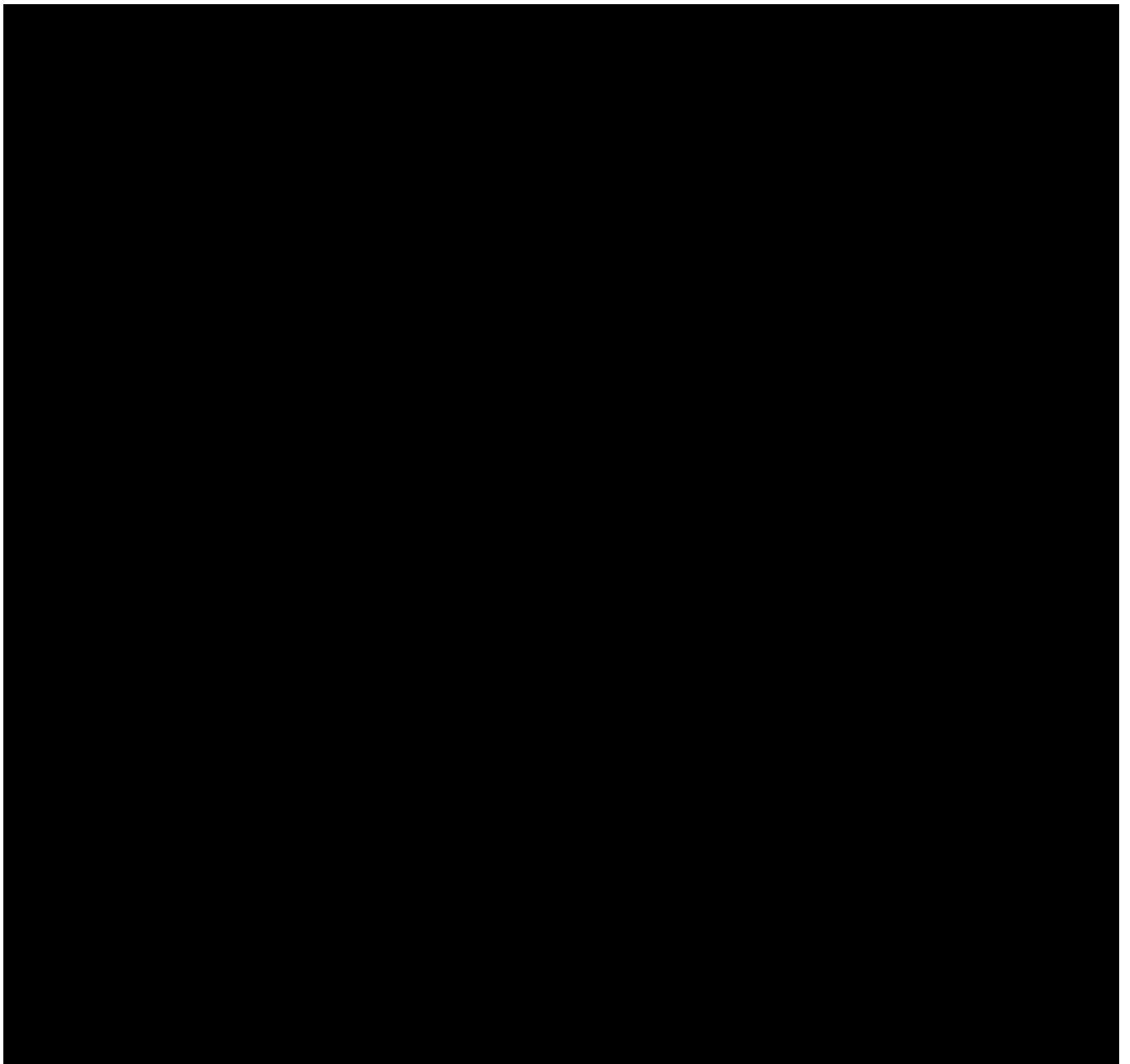


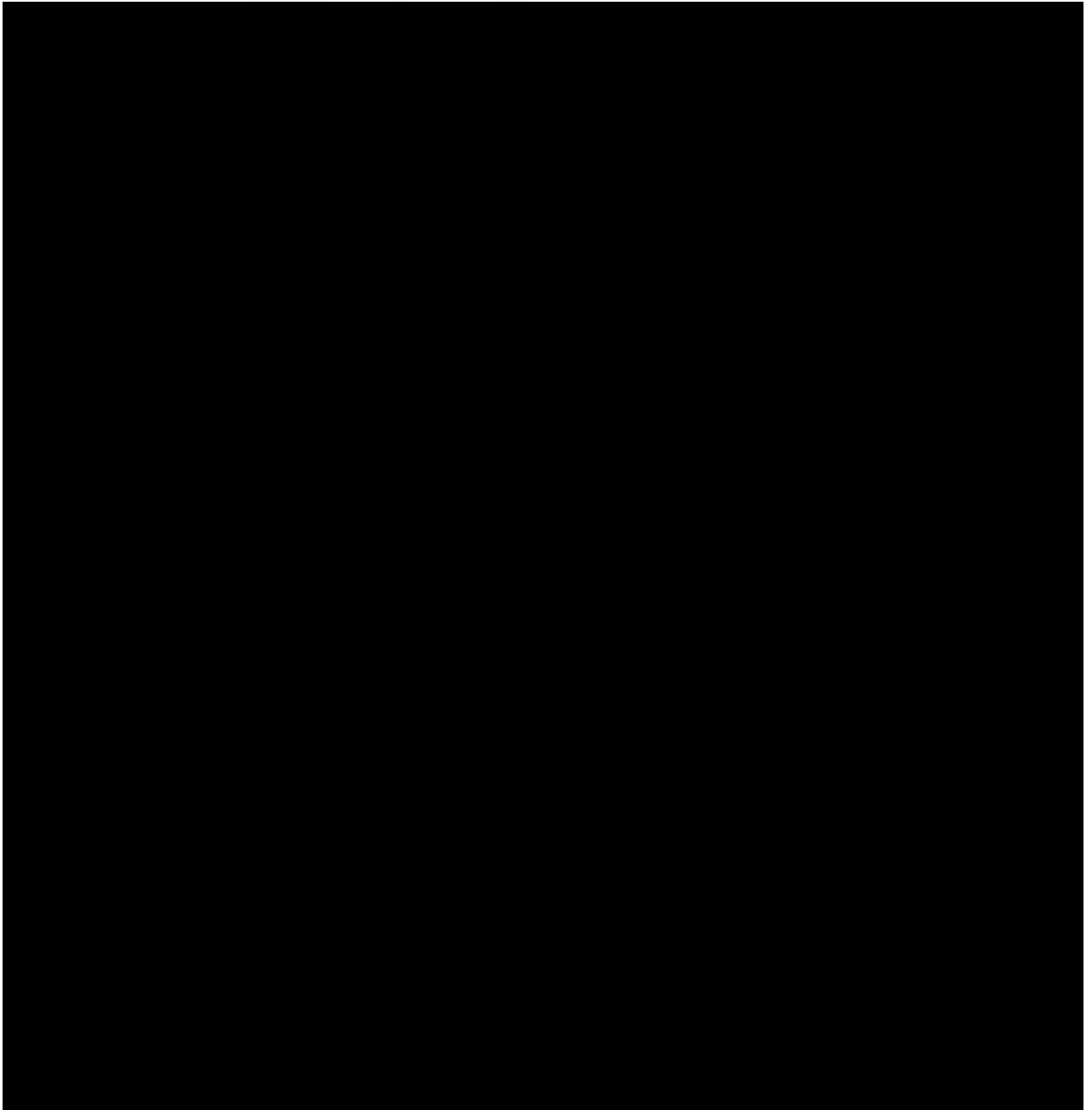












Schedule 8 – Service Readiness Schedule

The criteria set out below constitute the Service Readiness Criteria. Unless stated otherwise, in respect of the Stage, ServiceCo must satisfy each Services Readiness Criterion to the satisfaction of FACS (in its absolute discretion).

| Service Readiness Criteria | | | |
|----------------------------|------------------------|--|---|
| Item | Subject matter | Criterion | Stage to which criterion applies |
| 1 | Registration | Each of: 1. ServiceCo; 2. the Asset Management Services Provider; and 3. the Tenancy Management Services Provider, has become a Registered CHP, with the tier of registration being that identified in the Contract Particulars. | All Stages. |
| 2 | [Not used] | [Not used] | |
| 3 | Address of Dwellings | FACS has received an updated Dwellings Schedule that identifies the address and deposited plan reference of the Dwellings that will be used to deliver the relevant Stage. | Each Stage for which ServiceCo had not provided the address of Dwellings in the Dwellings Schedule at the date of this Agreement. |
| 4 | Director's certificate | ServiceCo must provide FACS with a certificate executed by a director of ServiceCo with respect to each Stage that: 1. identifies the addresses of each Dwelling to be used for Social and Affordable Housing in that Stage; 2. to the extent the Stage is not comprised of Dwellings leased to ServiceCo from Private Market Lessors, attaches an occupation certificate in respect of each Dwelling to be used for: (i) Social Housing; and (ii) Affordable Housing; | A certificate for each Stage. |

Service Readiness Criteria

| Item | Subject matter | Criterion | Stage to which criterion applies |
|------|------------------------------|---|---|
| | | <ol style="list-style-type: none"> attaches a copy of the completion certificate issued in accordance with the construction contract between ServiceCo and the D&C Subcontractor in respect of any Relevant Infrastructure comprising the Stage which is not leased to ServiceCo from Private Market Lessors; confirms that ServiceCo has in place all resourcing required for the provision of the Service Package in respect of that Stage (including employees required for the Services and all systems); and confirms each employee required for the Services has passed the Employee Checks applicable to that employee. | |
| 5 | Compliance | <p>The Dwellings for the relevant Stage:</p> <ol style="list-style-type: none"> comply with the Design Requirements; and are located in accordance with the Site Selection Strategy. | Each Stage. |
| 6 | Supporting Infrastructure | <p>ServiceCo must ensure that:</p> <ol style="list-style-type: none"> [not used]; and all of the Supporting Infrastructure for the relevant Stage (if any) has achieved completion. | Each Stage. |
| 7 | Template documents | <p>ServiceCo and FACS have agreed the updates required (if any) to the following documents:</p> <ol style="list-style-type: none"> Tenant Needs Assessment Template; Tenant Support Services Plan Template; and Tenancy Survey Questionnaire, <p>(as those terms are defined in the Services Specification).</p> | The first Stage to achieve the Date of Service Readiness. |
| 8 | Service Delivery Phase Plans | <p>ServiceCo has:</p> <ol style="list-style-type: none"> submitted final drafts of the Service Delivery Phase Plans as required by and otherwise in accordance with the Service Delivery Phase Plans Schedule; and received approval of those final versions pursuant to the Review Procedures. | The first Stage to achieve the Date of Service Readiness. |

Schedule 9 – Review Procedures

1. Submission and review

1.1 Submission

- (a) ServiceCo must submit all Delivery Phase Plans and Delivery Phase Reports, Service Delivery Phase Plans and all documents, data or other information for review in accordance with the Review Procedures where this is required in accordance with the FACS Service Package Documents (**Submitted Documents**).
- (b) The Submitted Documents must be submitted to FACS or the FACS Representative (as applicable) for review or approval in accordance with this Schedule.
- (c) With each Submitted Document, ServiceCo must provide:
 - (i) details of the Submitted Document, its nature and the relevant clause or Schedule of the FACS Service Package Document in accordance with which it is submitted for review; and
 - (ii) any other information required in accordance with the FACS Service Package Document or otherwise reasonably required by FACS for the review of the Submitted Document in accordance with this Schedule.

1.2 Review

- (a) FACS must review each Submitted Document submitted in accordance with section 1.1 and provide any “comments” or “conditions” in writing to ServiceCo in accordance with this Schedule within the Review Period.
- (b) **Review Period** means 20 Business Days.
- (c) Subject to section 1.2(a), FACS and ServiceCo must meet on the next Business Day after the expiry of the relevant Review Period to discuss and confer on FACS’ “comments” or “conditions” in response to a Submitted Document.

2. Further information

ServiceCo must as soon as possible upon request by FACS:

- (a) submit any further information, data or documents;
- (b) make available appropriately qualified personnel; and
- (c) provide access to ServiceCo’s books, records and systems,

that FACS reasonably requires in order to review the Submitted Document and respond in accordance with this Schedule.

3. Document management

3.1 Copies of Submitted Documents

- (a) Unless otherwise stated in the FACS Service Package Documents, ServiceCo must provide:
 - (i) one electronic version in PDF format; and
 - (ii) if requested by FACS, one electronic version in original format (in accordance with section 3.1(a)),of each Submitted Document to FACS for review in accordance with this Schedule.
- (b) An electronic copy of a Submitted Document must be an electronic copy of that document in the format of the software in which the document was originally created which has been configured to allow the person to whom the electronic copy is provided to access and amend the information contained therein in the same manner as could the original creator of that document.

3.2 Register of Submitted Documents

ServiceCo must maintain a register of the date of submission and content of each Submitted Document and must regularly update that register to record:

- (a) each Submitted Document to which it receives a response or comment from FACS, including a copy of that response or comment; and
- (b) each Submitted Document to which it receives no response or comment or in respect of which it is deemed not to have received any response or comment in accordance with sections 5.1 or 5.2.

4. Review in stages

- (a) If Submitted Documents are to be reviewed in stages, each stage must be submitted for review and the review completed in accordance with this Schedule before any subsequent stage may be submitted for review.
- (b) If, for any reason, any stage is reviewed out of sequence as a consequence of any ServiceCo Act or Omission, FACS will be entitled to further review or complete a new review of those stages of the Submitted Documents that have already been reviewed in accordance with this Schedule.

5. Comments on Submitted Document

5.1 Response to Submitted Document

- (a) FACS may:
 - (i) provide "comments" or "no comments" in respect of a Submitted Document; or
 - (ii) provide "conditions" in respect of a Submitted Document.
- (b) If FACS provides "no comments" in respect of a Submitted Document or is deemed to provide no comments in respect of a Submitted Document in accordance with section 5.2, ServiceCo can proceed in accordance with the Submitted Document.

- (c) Subject to section 1.2(c), if FACS provides “comments” in respect of the Submitted Document in accordance with section 7, ServiceCo may not proceed with the Submitted Document unless it has addressed the “comments” in accordance with this section 5.
- (d) Subject to section 1.2(c), if FACS provides “conditions” in respect of the Submitted Document in accordance with section 7, ServiceCo may proceed on the basis of the Submitted Document but must also address the conditions provided in respect of the Submitted Document accordingly.

5.2 No comments on Submitted Document

- (a) If FACS has no comments on a Submitted Document, FACS may respond with a statement, “no comment”.
- (b) If FACS fails to respond to any Submitted Document within the Review Period in accordance with this Schedule, then FACS will be deemed to have returned the Submitted Document to ServiceCo with “no comment”.

5.3 Comments on Submitted Document

- (a) If FACS has comments on a Submitted Document it must indicate that its response is in the form of “comments”.
- (b) Subject to section 8, if FACS “comments” on a Submitted Document in accordance with section 7, ServiceCo must, subject to section 1.2(c):
 - (i) amend the Submitted Document in accordance with the comments of FACS to the extent necessary to ensure that:
 - A. the Submitted Document meets the requirements of the FACS Service Package Document; and
 - B. the issues identified in accordance with section 7 are addressed; and
 - (ii) resubmit the revised Submitted Document to FACS, and subject to section 5.3(c), the provisions of sections 1 to 5 will reapply to the amended Submitted Document until such time as the Submitted Document is returned to ServiceCo without any comment or is deemed to have been returned with “no comment” or FACS only provides conditions in respect of the Submitted Document.
- (c) Where the Submitted Document is a remedy program, referred to in clause 31.3 (*ServiceCo to provide remedy program and comply with Major Default Notice*) of this Agreement, FACS may in reviewing the remedy program, determine that it does not satisfactorily address the requirements set out in clause 31.3 (*ServiceCo to provide remedy program and comply with Major Default Notice*) of this Agreement or its concerns, in which case this will constitute a Major Default.

5.4 Submitted Document with conditions

- (a) If FACS considers that ServiceCo may proceed to undertake the Service Package Activities in accordance with the Submitted Document but that certain conditions must be satisfied, FACS must indicate that its response to the Submitted Document is in the form of “conditions”.
- (b) If FACS specifies that certain “conditions” must be satisfied in respect of the Submitted Document in accordance with section 7, ServiceCo may, subject to section 1.2(c), proceed with the Service Package Activities in accordance with

the Submitted Document but must otherwise satisfy the conditions within the time specified by FACS (acting reasonably) or if no time is specified, promptly.

5.5 Substantiate comments or conditions

If FACS provides ServiceCo with comments or conditions in connection with the Submitted Document in accordance with section 7, FACS must provide sufficient detail to ServiceCo to substantiate those comments or conditions.

6. Right to proceed

- (a) ServiceCo may not proceed with those Service Package Activities relevant to a Submitted Document unless:
 - (i) the Submitted Document is returned with “no comments” or is deemed to be returned with “no comment”; or
 - (ii) the Submitted Document includes “conditions” and is not the subject of comments and those conditions state that ServiceCo may proceed with the Submitted Document.
- (b) If ServiceCo is entitled to proceed with a Submitted Document, ServiceCo must deliver the Service Package in accordance with the Submitted Document and any conditions in respect of the Submitted Document, unless it is necessary to depart from the Submitted Document to comply with a FACS Service Package Document, in which case ServiceCo must update the Submitted Document accordingly and the provisions of sections 1 to 5 shall apply to such re-submission.

7. Grounds on which FACS may comment on or provide conditions to a Submitted Document

7.1 General

FACS may provide comments on, or conditions to, a Submitted Document if:

- (a) the Submitted Document:
 - (i) is incomplete, inaccurate, of poor quality, ambiguous, unclear or otherwise is not in a condition to allow FACS, in its reasonable opinion, to adequately review it;
 - (ii) does not comply with the relevant Laws or Approvals; or
 - (iii) is otherwise not in accordance with, or is not submitted in accordance with, the requirements of the FACS Service Package Documents; or
- (b) FACS is of the view, acting reasonably, that implementing or proceeding on the basis of the Submitted Document would:
 - (i) adversely affect any of FACS' rights under a FACS Service Package Document, FACS' ability to enforce any such rights, any of its statutory functions, or its ability to perform its obligations under a FACS Service Package Document;
 - (ii) not enable ServiceCo to comply with its obligations under the FACS Service Package Documents; or

- (iii) likely result in an increase to FACS' Liabilities under a FACS Service Package Document.

7.2 Delivery Phase Program

If the Submitted Document is the Delivery Phase Program, in addition to its rights in accordance with section 7.1, FACS may provide comments or conditions in connection with the Delivery Phase Program and ServiceCo must amend the Delivery Phase Program accordingly if:

- (a) the Delivery Phase Program is inconsistent with or is otherwise not in accordance with the Programming Requirements; or
- (b) compliance with the Delivery Phase Program would mean that Service Readiness would not be achieved by the relevant Date for Service Readiness.

7.3 Remediation plan

If the Submitted Document is a remedy program under clause 31.3 (*ServiceCo to provide remedy program and comply with Major Default Notice*) of this Agreement, in addition to its rights under section 7.1 and section 5.3(c), FACS may provide comments or reject a remedy program where it does not satisfy its concerns.

8. Disputed amendments

- (a) If ServiceCo does not agree with any comments or conditions of FACS in respect of a Submitted Document, ServiceCo and FACS must meet to try to resolve the difference of opinion in good faith.
- (b) If, following good faith negotiations, ServiceCo still disputes that any amendments are required to the Submitted Document, either party may refer the matter to expert determination in accordance with clause 37 (*Expert determination*) of this Agreement.

9. No limitation on obligations

- (a) FACS does not owe any duty of care to ServiceCo to review at all, or in reviewing, commenting or failing to comment on, accepting, approving, endorsing, providing conditions for rejecting a Submitted Document, to detect defects, errors, omissions or non-compliances with the FACS Service Package Documents, any Law or any Approval.
- (b) Notwithstanding this Schedule, where in this Agreement the words "review", "comment", "accept", "endorse", "approve", "consent", "condition" or "reject" (or other grammatical forms of those words) are used in relation to documents of any kind, including Submitted Documents, or where such words are used by FACS, then those words, their use and the acts or omissions associated with them (including pursuant to this Schedule) do not in any way:
 - (i) relieve ServiceCo from, or alter, affect or reduce, the obligations and Liabilities of ServiceCo in accordance with the FACS Service Package Documents or at Law;
 - (ii) constitute any representation that any Submitted Document complies with the FACS Service Package Documents;
 - (iii) prejudice FACS' rights against ServiceCo, whether under the FACS Service Package Documents or otherwise at Law; or

- (iv) affect the time for performance of FACS' obligations in accordance with the FACS Service Package Documents.
- (c) The review, acceptance, endorsement or approval of, comment or failure to comment on, provision of conditions or consent to, any Submitted Document will not be evidence that any Services have been or will be undertaken or performed in accordance with the FACS Service Package Documents.
- (d) ServiceCo agrees that:
 - (i) ServiceCo will not be entitled to make any Claim against FACS, whether under the Agreement or at Law, for any Liabilities incurred by ServiceCo in connection with any review, comment or failure to comment on, provision of conditions to, or acceptance, approval, endorsement or rejection of, a Submitted Document; and
 - (ii) without limiting section 9(d)(i), ServiceCo will not be entitled to make any Claim against FACS in connection with any delay in the review of a Submitted Document.

Schedule 10 – Insurance

1. General insurance requirements

ServiceCo must, or where relevant, must procure that its Subcontractors:

- (a) **(reputable insurers)**: effect all Insurances with an insurance company having the Required Rating;
- (b) **(premiums)**: punctually pay all premiums and other amounts payable in connection with the Insurances, and give FACS copies of receipts for payment of premiums (or other evidence of such payment) if and when requested by FACS;
- (c) **(no alteration)**: not alter, extend, discontinue or cancel any Insurance, or allow any Insurance to lapse, where this would result in the relevant Insurance not meeting the requirements of this Agreement, without the prior approval of FACS;
- (d) **(not prejudice)**: not do or permit, or omit to do, anything which prejudices any Insurance;
- (e) **(rectify)**: promptly rectify anything which might, if not rectified, prejudice any Insurance;
- (f) **(fully disclose)**: fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances;
- (g) **(comply)**: comply at all times with the terms of each Insurance; and
- (h) **(do everything to enable FACS recovery)**: do everything reasonably required by FACS or any of its Associates to whom the benefit of any Insurance extends, to enable FACS or its Associates (as the case may be) to claim, and to collect or recover, money due under that Insurance.

2. Notification and making of claims

ServiceCo must:

- (a) **(notification)**: promptly notify FACS of any occurrence that may give rise to a material claim in connection with the Service Package under any Insurances, except where an insured's right of indemnity under the relevant Insurances would be prejudiced by giving such notice;
- (b) **(subsequent developments)**: keep FACS informed of subsequent developments concerning the occurrence under section 2(a); and
- (c) **(pursue claims)**: diligently pursue any Claim which it has under any Insurance which has arisen in connection with the Service Package.

3. Evidence of Insurances

Whenever reasonably requested by FACS, ServiceCo must give FACS evidence satisfactory to FACS that the Insurances have been procured and continue to be maintained in accordance with this Agreement, to enable FACS to satisfy itself that all of the insurance requirements of the Service Package under this Agreement are being complied with.

4. Deductibles

ServiceCo must pay or bear all amounts by way of deductibles or excesses which apply to a Claim made under any Insurances.

5. Application of Insurance proceeds

All proceeds of any Insurances (except business interruption policies) must be applied:

- (a) towards replacement or repair of the Relevant Infrastructure (including Dwellings) or the relevant Site, the subject of the Insurance under which a Claim has been made; or
- (b) to discharge a Liability or Claim, or make good the Liability the subject of the Insurance under which a Claim has been made.

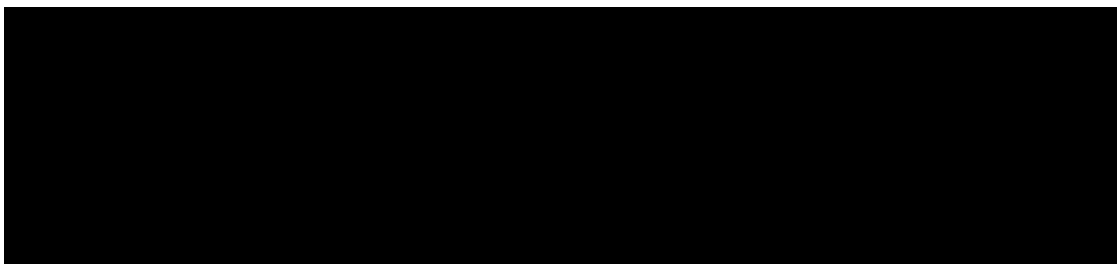
6. Insurances during the Delivery Phase

ServiceCo must procure, or cause to be procured, and thereafter maintained, each of the Insurances which would be procured and maintained by ServiceCo during the Delivery Phase with respect to any Site or Service Package if ServiceCo was using Best Services Practices.

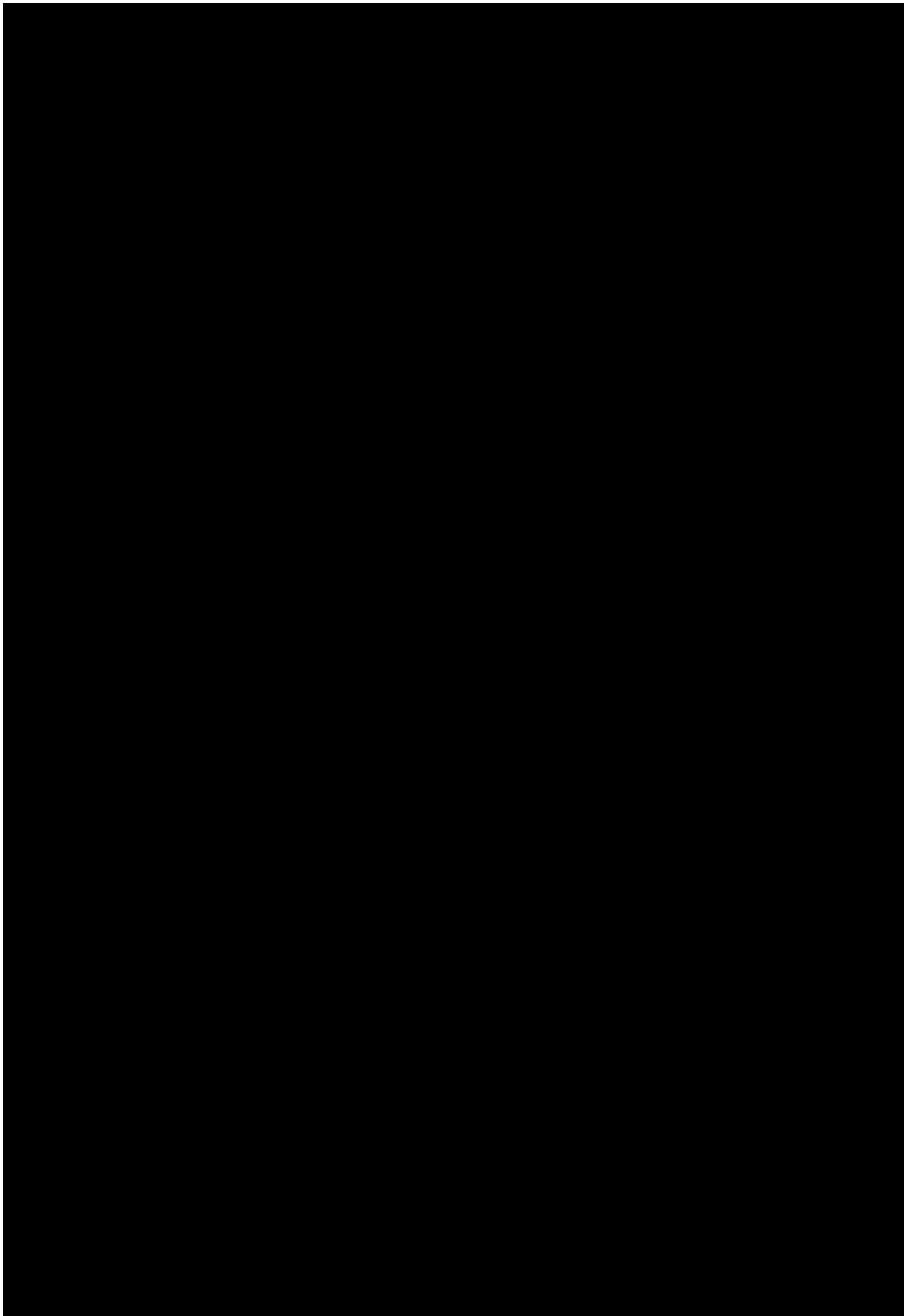
7. Insurances during the Service Delivery Phase

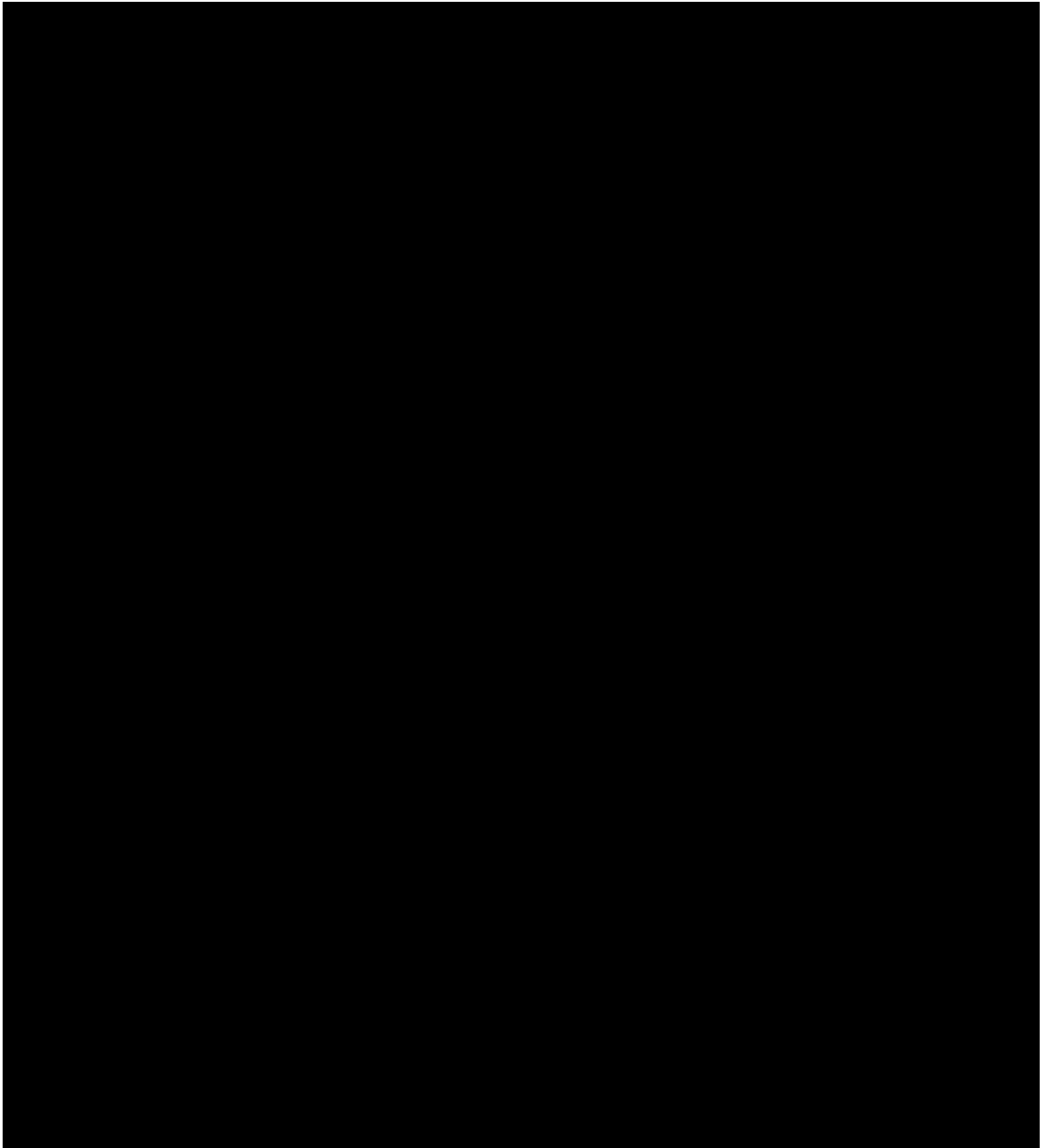
ServiceCo must procure, or cause to be procured, and thereafter maintained, each of the Insurances with respect to any Site or Service Package which would be procured and maintained by ServiceCo during the Service Delivery Phase if ServiceCo was using Best Services Practices, including, at a minimum:

| Insurance | Sum insured |
|-----------|-------------|
|-----------|-------------|









Confidential

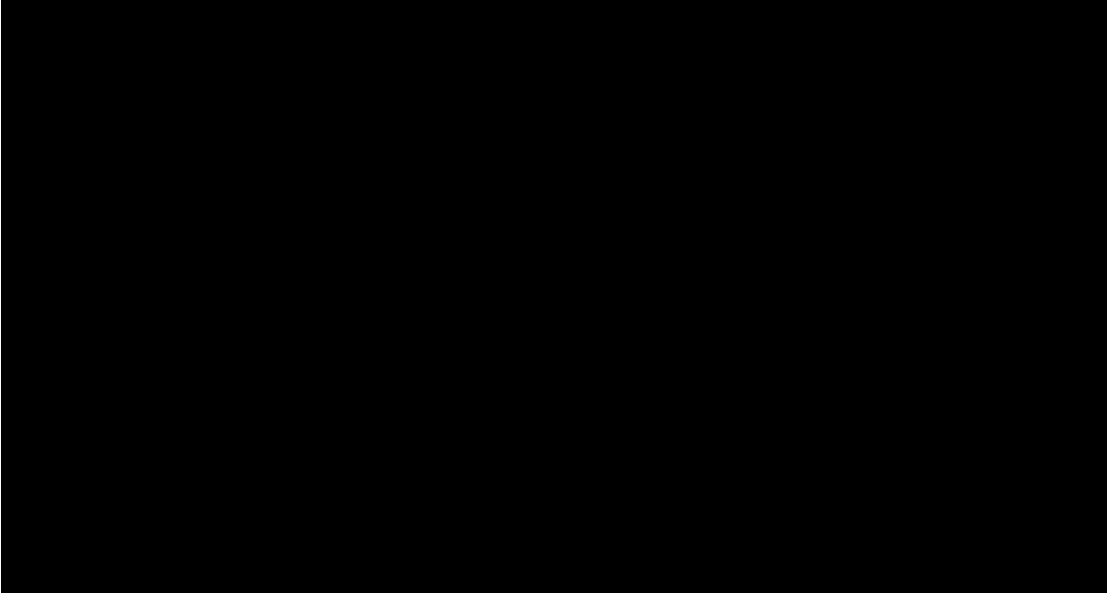
Schedule 12 – [not used]

Confidential

Schedule 13 – [not used]

Confidential

Schedule 14 – Ownership Schedule



Schedule 15 – Programming Requirements

1. The Delivery Phase Program

- (a) The Delivery Phase Program must be prepared in accordance with the detailed requirements set out in this Agreement, including this Schedule, and otherwise in accordance with any other requirements reasonably requested by FACS.
- (b) ServiceCo must prepare, implement, and update as required a Delivery Phase Program. The Delivery Phase Program must identify, on a Stage basis, timelines for the following activities and key milestone dates:
 - (i) acquisition of Sites and Dwellings;
 - (ii) entry into key agreements in respect of legal access to Sites for provision of the Services;
 - (iii) applications for, and obtaining of, Development Consents (including rezoning) and satisfaction of Development Consent conditions;
 - (iv) commencement of construction or re-purposing of Dwellings (or both);
 - (v) completion of construction or re-purposing of Dwellings (or both);
 - (vi) entry into leases in respect of Dwellings for provision of the Services;
 - (vii) the Date for Service Readiness; and
 - (viii) those of the above that are Delivery Phase Milestones.

2. General requirements for the preparation of the Delivery Phase Program

2.1 Software system

- (a) ServiceCo must prepare the Delivery Phase Program by using a recognised specialist proprietary programming computer software system which has been approved in advance by FACS.
- (b) Any references to the provision of an electronic copy of a document produced by computer software means an electronic copy of that document in the format of the software in which the document was originally created or configured so as to allow the person to whom the electronic copy is provided to access and amend the information contained therein in the same manner as could the original creator(s) of that document.
- (c) Without limiting the general nature of this section 2, FACS approves the use of the proprietary computer software known as "Microsoft Project" (2010 or higher), produced by Microsoft Corporation.

3. Updating the Delivery Phase Program

3.1 Updates to the Delivery Phase Program

Without limiting clause 14.2 (*Delivery Phase Milestones and Delivery Phase Program*) of this Agreement, ServiceCo must update and submit to the FACS Representative for review in accordance with the Review Procedures updates of the Delivery Phase Program to accurately reflect the progress of the Delivery Phase Activities at the following intervals:

- (a) within 20 Business Days of Commercial Close to reflect the date of Commercial Close and each Date for Service Readiness;
- (b) quarterly, as a component of the Quarterly Delivery Phase Report, to accurately reflect the status and any change in the progress of the Delivery Phase Activities (including any delays which have or may have occurred in respect of the progress of the Delivery Phase Activities) or any other changes to the activities, times, durations or other information contained in the Delivery Phase Program to accurately reflect the actual status and progress of the Delivery Phase Activities;
- (c) within 5 Business Days of:
 - (i) ServiceCo being granted an extension to any Date for Service Readiness and Milestone Date in accordance with clause 23 (*Delivery Phase – delay*) of this Agreement and the Change Compensation Principles;
 - (ii) ServiceCo being directed to carry out a Modification in accordance with clause 26 (*Modifications*) of this Agreement; or
 - (iii) any change to a Milestone Date under clause 14.2(a)(iii) (*Delivery Phase Milestones*) or clause 19(d)(iii) (*Substitution of Dwellings*) of this Agreement;
- (d) within 2 Business Days of ServiceCo deciding to make any material changes to the information contained in the Delivery Phase Program; and
- (e) otherwise within 5 Business Days of any request by the FACS Representative at any time, and such updates must comply with this Schedule and the other requirements of this Agreement and must not adjust any Date for Service Readiness (unless an extension of time has been granted in accordance with this Agreement).

3.2 Content and format of updated Delivery Phase Program

- (a) ServiceCo must submit to FACS the updated Delivery Phase Program in the following forms:
 - (i) 2 paper copies (which must be submitted on an A1 size sheet reduced to A3 and appropriately time scaled across the sheet so as to be legible and to detail the sequence, duration and interaction of design, procurement and construction);
 - (ii) 1 electronic version in .pdf format; and
 - (iii) 1 electronic version in original, executable Microsoft Project file format.

- (b) The updated Delivery Phase Program must:
- (i) clearly identify the percent complete and the remaining duration of each activity;
 - (ii) clearly identify the activities that had started and which activities had finished during the reporting period and the dates on which those activities started and finished;
 - (iii) be updated to the end of the previous reporting period using the software to record actual dates and the percent complete of activities;
 - (iv) identify whether ServiceCo will not achieve Service Readiness until after any Date for Service Readiness; and
 - (v) incorporate and display the version of the Delivery Phase Program produced at the end of the previous reporting period as a baseline reflecting the actual status and progress of the Delivery Phase Activities.

3.3 Submission of report with any updated Delivery Phase Program

- (a) With each update of any Delivery Phase Program, ServiceCo must submit to FACS a written report reconciling the updated Delivery Phase Program with the version of the Delivery Phase Program produced for the previous reporting period.
- (b) The report referred to in section 3.3(a) must, as a minimum:
- (i) summarise the changes made to the Delivery Phase Program and any impacts those changes may have on key activities and the Milestone Dates;
 - (ii) identify and explain, for activities that are on the critical path, the reason for any changes to:
 - A. the duration of activities since the previous reporting period;
 - B. the presence or absence of program activities; and
 - C. the timing of activities;
 - (iii) summarise the material changes to any activities that are not on the critical path;
 - (iv) identify the estimated timing for the achievement of the completion of the activities and Date(s) of Service Readiness; and
 - (v) contain any other information reasonably requested by FACS.

Schedule 16 – Delivery Phase Plans and Reports

1. Purpose and background

- (a) The purpose of this Schedule is to set out in detail ServiceCo's obligations in respect of the Delivery Phase Plans and Reports.
- (b) In this Schedule, each individual plan, program, protocol, procedure, report or notification forming part of the Delivery Phase Plans and Reports is referred to as a "Plan".

Table 1 Quarterly Delivery Phase Report

| Plan | Content of Plan | Time for provision |
|---------------------------------|---|--|
| Quarterly Delivery Phase Report | <p>The Quarterly Delivery Phase Report must comprise the following information:</p> <ol style="list-style-type: none"> (ServiceCo report): a written overview of the Delivery Phase Activities and the Service Package more generally; (Delivery Phase Activities): details of the progress of the Delivery Phase Activities and compliance with the Delivery Phase Program, including: <ol style="list-style-type: none"> (Delivery Phase Milestones): progress in relation to the Delivery Phase Milestones; (work completed): details of work completed in the previous quarter; (work underway): details of work in progress; and (work planned for the future): details of work planned for the remainder of the Delivery Phase; (updated Delivery Phase Program): pursuant to section 3.1(b) of Schedule 15, a copy of the Delivery Phase Program updated in accordance with this Agreement; (updated Delivery Plan): a copy of the updated Delivery Plan; (Service Readiness preparation): a report on the activities associated with Service Readiness; and (other information): such other information reasonably requested by the FACS Representative. | Within 5 Business Days of the end of the relevant Quarter. |

Table 2 Delivery Phase Plans and Report

| Plan | Content of Plan | Time for provision |
|-----------------------------------|---|--|
| Health and Safety Management Plan | <p>The Health and Safety Management Plan is contained in Annexure A (<i>Bid Design Deliverables</i>) of this Agreement.</p> <p>The Health and Safety Management Plan must:</p> <ol style="list-style-type: none"> 1. demonstrate how ServiceCo will comply with all WHS Legislation, including by reference to: <ol style="list-style-type: none"> (i) known hazards and risks in relation to the Relevant Infrastructure (including the Services); and (ii) ServiceCo's support measures; 2. describe how ServiceCo will ensure that all Subcontractors comply with the WHS Legislation; 3. describe the actions ServiceCo will take to address any risks or potential risks to the health and safety of people at the Relevant Infrastructure; and 4. cover each of the Delivery Phase and Service Delivery Phase. | On or prior to the date of this Agreement or as otherwise required by the FACS Representative during the Delivery Phase. |
| Delivery Phase Program | <p>The Delivery Phase Program is contained in Annexure A (<i>Bid Design Deliverables</i>) of this Agreement.</p> <p>ServiceCo must update the Delivery Phase Program in accordance with Schedule 15 of this Agreement.</p> | On or prior to the date of this Agreement and updated as required in accordance with Schedule 15. |
| Delivery Plan | <p>The Delivery Plan is contained in Annexure A (<i>Bid Design Deliverables</i>) of this Agreement.</p> <p>The Delivery Plan will provide the foundation for the contents of the Delivery Phase Program and must include the following information:</p> <ol style="list-style-type: none"> 1. delivery methodology: <ol style="list-style-type: none"> (i) approach to the delivery of the Delivery Phase Program; and (ii) governance processes to ensure that the Delivery Phase Milestones are monitored and achieved; 2. human resource planning: <ol style="list-style-type: none"> (i) identification of key ServiceCo personnel and service providers, their expertise and experience, and responsibilities; and | On or prior to the date of this Agreement and updated as in accordance with this Agreement (including as part of the Quarterly Delivery Phase Report). |

- (ii) identification of Subcontractor(s) integral to the delivery of the Delivery Phase Program;
 - 3. **procurement and administration of Key Subcontracts:** description of ServiceCo's approach to the procurement and administration of Key Subcontracts;
 - 4. **development and construction management:**
 - (i) description of ServiceCo's approach to development and construction management; and
 - (ii) description of ServiceCo's processes and procedures that guide development and construction management activities;
 - 5. **quality management:** outline procedures to ensure quality assurance in the delivery of Sites and Dwellings to the Design Requirements and other applicable requirements of this Agreement;
 - 6. **stakeholder and communication management:**
 - (i) identify key stakeholders and their interests during the Delivery Phase;
 - (ii) identify the issues involved in the management of each stakeholder during the Delivery Phase as a result of unplanned events and the proposed approach to managing these issues; and
 - (iii) identify proactive and reactive communication and media strategies, how these will be implemented, and processes and protocols that will be adopted to keep FACS informed; and
 - 7. **risk management:**
 - (i) assess key risks associated with the implementation of the Delivery Phase and their likely impact on key Delivery Phase Activities and Delivery Phase Milestones;
 - (ii) assess key risks that underpin assumptions that have been made in relation to accessing Sites and Dwellings, including an assessment of relevant real estate markets and land and/or dwelling availability; and
 - (iii) outline appropriate risk mitigation strategies to address key risks and their potential impacts.
-

Schedule 17 – Service Delivery Phase Plans

1. Definitions

For the purposes of this Schedule, terms not defined in clause 1 (*Definitions*) of this Agreement are defined in section 1 (*Definitions*) of the Services Specification.

2. Purpose and background

- (a) The purpose of this Schedule is to set out in detail ServiceCo's obligations in respect of the Service Delivery Phase Plans.
- (b) In this Schedule, each individual plan, program, protocol, policy, procedure, strategy report or notification forming part of the Service Delivery Phase Plans is referred to as a "Plan".

3. General obligations

3.1 ServiceCo to provide Plans

ServiceCo must provide or update each Plan during the Service Delivery Phase:

- (a) so that it is in a form that is consistent with and builds upon Annexure B (Bid Services Deliverables) for those Service Delivery Phase Plans that relate to the delivery of a Service Package component;
- (b) so that it contains the content specified in the second column of the relevant table in this Schedule;
- (c) within the time period specified in the third column of the relevant table in this Schedule; and
- (d) using the delivery method specified by the FACS Representative from time to time by written notice to ServiceCo.

3.2 Quarterly Plans

Each Plan that is required to be provided on a quarterly basis must:

- (a) include the required information for that Quarter and on a cumulative basis in respect of the then current Financial Year; and
- (b) be accompanied by a statement of compliance with all relevant legal requirements and a listing of any related investigations, violations, citations by the Registrar or resulting resolutions which have occurred during that Quarter or subsequently up to the date of that Plan.

3.3 Annual Plans

Each Plan that is required to be provided on an annual basis must:

- (a) include the required information for that Operating Year; and
- (b) be accompanied by a statement of compliance with all relevant legal requirements and a listing of any related investigations, violations, citations by the Registrar or resulting resolutions which have occurred during that Operating Year or Financial Year (as relevant) or subsequently up to the date of that Plan.

4. Other reporting obligations

4.1 ServiceCo's other reporting obligations not affected

ServiceCo acknowledges that:

- (a) it is required by other parts of this Agreement to provide certain plans, programs, protocols, policies, procedures, strategies, reports or notifications to FACS (including the Performance and Data Reporting Services);
- (b) it may also have obligations to FACS in respect of performance reporting, performance reviews and audits under a funding deed or other funding arrangement that it has entered into with FACS; and
- (c) failure to refer to any plan, program, protocol, policy, procedure, strategy, report, review, audit or notification within this Schedule does not affect those obligations.

4.2 Information submitted to Registrar

ServiceCo must provide to FACS a copy of all documents or any other information submitted by ServiceCo to a Registrar (including any Registrar not located in NSW) or LAHC within 5 Business Days of submitting that information to the extent the documents or other information relate to the Service Package or this Agreement.

5. Plans

Table 1 Service Delivery Phase Plans

| Plan | Content of Plan | Time for provision |
|------------------------------------|---|--|
| Affordable Housing Allocation Plan | <p>As a minimum, the Affordable Housing Allocation Plan should set out ServiceCo's proposed approach to allocating Affordable Housing to Tenants to meet FACS' objective of facilitating the transition of Social Housing Tenants to available Affordable Housing, where appropriate. The Affordable Housing Allocation Plan should include, at a minimum, the approach to:</p> <ol style="list-style-type: none"> 1. identifying, prioritising and allocating Social Housing Tenants who are eligible for Affordable Housing in accordance with the NSW Affordable Housing Guidelines; and 2. when Affordable Housing vacancies arise: <ol style="list-style-type: none"> (i) allocation priority given to those Social Housing Tenants (known to ServiceCo) who are able to transition. The Social Housing Tenants can be from within | As required in accordance with this Agreement or by the FACS Representative during the Service Delivery Phase. |

| Plan | Content of Plan | Time for provision |
|---|---|--|
| | <p>the Program or external to the Program; and</p> <p>(ii) where no Social Housing Tenants are able to transition, filling Affordable Housing vacancies from elsewhere in a way that complies with current Best Services Practice.</p> | |
| Tailored Support Coordination Engagement Strategy | <p>As a minimum, the Tailored Support Coordination Engagement Strategy should include the following information:</p> <ol style="list-style-type: none"> the activities or protocols for engaging with Tenants and Household Members who are reluctant or refuse to participate in all or part of the activities undertaken as part of the Tailored Support Coordination Services; and the approach to responding to situations whereby the refusal of Tenants and Household Members to engage will significantly impact on the undertaking of the core activities of the Tailored Support Coordination Services, including timely reporting of any refusal to FACS. | As required in accordance with this Agreement or by the FACS Representative during the Service Delivery Phase. |
| Performance and Data Reporting Plan | <p>As a minimum, the Performance and Data Reporting Plan should incorporate the following information:</p> <ol style="list-style-type: none"> an overview of the information management systems in respect of housing asset and client data that ServiceCo will use to comply with the Performance and Data Reporting requirements and whether these are compatible with the existing data systems within FACS (including CHIMES); the proposed process for collecting, recording and maintaining all information required to comply with the Performance and Data Reporting requirements, including records on the Dwellings, Tenants and Household Members, Tenancies, outcomes and the general provision of the Services; the process for transmitting the required data to FACS in accordance with the specified reporting requirements; and how ServiceCo will address the requirements under the Privacy Legislation and Best Services Practices, where relevant. | As required in accordance with this Agreement or by the FACS Representative during the Service Delivery Phase. |

| Plan | Content of Plan | Time for provision |
|--|---|--|
| Site and Community Integration Management Plan | <p>The Community Integration Management Plan should set out ServiceCo's proposed approach to managing Social Housing and Affordable Housing in an integrated community.</p> <p>As a minimum this should include:</p> <ol style="list-style-type: none"> 1. approach to managing shared access to common areas and Supporting Infrastructure shared between Private, Social and Affordable Tenancies on a Site by Site basis; 2. where applicable, its proposed approach to delivering Asset Management Services and Tenancy Management Services with respect to mixed tenure developments and the management of Tenant interactions, including a description of the key risks associated with such developments and appropriate strategies to manage these risks; 3. approach to managing tenancies in a manner that promotes community integration; and 4. in any proposed locations where there is an existing level of social disadvantage and/or social housing concentration, either at a Site level, or at a precinct or suburb level, the approach to managing Social Housing Tenancies so as to: <ol style="list-style-type: none"> (i) not exacerbate the existing level of social disadvantage; and (ii) best facilitate achievement of the Target Outcomes. | As required in accordance with this Agreement or by the FACS Representative during the Service Delivery Phase. |

Schedule 18 – Services Specification

The Services Specification sets out FACS' outcomes and requirements for the Program, including FACS' requirements for the Services comprised in the Service Package.

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1. Definitions

For the purposes of this Specification, the definitions in clause 1 (*Definitions*) of this Agreement will apply as supplemented by the following definitions:

Aboriginal Housing Office Standards means the document entitled 'Aboriginal Housing Office Standards for New Supply, New Acquisition and Repairs & Maintenance' dated July 2014 (sixteenth edition) issued by the Aboriginal Housing Office, as amended or replaced from time to time.

Actively Seeking Work means the Tenant or Household Member has taken active steps to find employment in the preceding four weeks. Active steps include:

- (a) registering or being registered with an employment services provider;
- (b) writing, telephoning or applying to an employer;
- (c) answering an advertisement for employment; or
- (d) advertising or tendering for employment.

Affordable Housing Allocation Plan means the Service Delivery Phase Plan of that name.

Affordable Housing Rent means a rental amount determined in accordance with the NSW Affordable Housing Guidelines.

Annual Data Report means an annual submission prepared in compliance with the data requirements and reporting periods set out in section 6.5 and in Appendix D.

Annual Outcomes Report means an annual submission prepared in compliance with the requirements set out in section 6.6 and Appendix G.

Annual Performance Report has the meaning given in section 6.4.

Apartment Design Guide means the document entitled 'Apartment Design Guide' dated July 2015 issued by the NSW Department of Planning and Environment, as amended or replaced from time to time.

Asset Performance Standards for Existing Dwellings means the document entitled 'Asset Performance Standards for Existing Dwellings' dated July 2009 (version 6.2i) issued by FACS, as amended or replaced from time to time.

Breach means that the Tenant has breached the Residential Tenancy Agreement.

Catastrophic Void means major structural or safety issues have arisen in relation to a Dwelling, which require either:

- (a) maintenance or a major maintenance update to that Dwelling; or
- (b) a rebuild of that Dwelling,

and those major issues were not brought about by an act or omission of ServiceCo or an Associate of ServiceCo.

Condition Survey means the condition survey undertaken in accordance with this Specification for each Dwelling to identify the maintenance required to meet the Asset Performance Standards for Existing Dwellings.

CRA means Commonwealth Rent Assistance.

End of Tenancy means the Residential Tenancy Agreement has been terminated for any reason, including when:

- (a) the Tenant provides notice that they are vacating the Dwelling and provides vacant possession, including where ServiceCo relocates or transfers a Tenant, a Tenant mutually exchanges properties with another Tenant, or the Tenant is moving into private rental;
- (b) the Tenancy has been relinquished or an order for termination has been obtained, and a provisional lease or recognition as a Tenant will be granted;
- (c) the Tenant receives a final 'apprehended violence order' prohibiting them from access to their Dwelling;
- (d) the Tenant abandons the Dwelling;
- (e) the Tenant has passed away and ServiceCo has obtained vacant possession; or
- (f) ServiceCo asks the Tenant to vacate the Dwelling, including where the Tenant has breached their Residential Tenancy Agreement and ServiceCo has obtained an order for termination of the Tenancy and possession of the Dwelling, a three or six month fixed term or a provisional lease has ended, the Tenant is no longer eligible to live in the Dwelling following an eligibility review of a fixed term lease, the Tenant is on a continuous lease and they or their partner/spouse owns a Dwelling that they could live in or sell, or the Tenant rejects a final offer of alternative housing.

End of Tenancy Report has the meaning given in section 5.8.

Excess Subsidy Rebate has the meaning given in the Payment Schedule.

FACS Policies means those policies of FACS identified in Appendix A, as amended or replaced from time to time.

Full Employment Outcome means an individual has satisfied the requirements for a 'full outcome' as set out in a 'jobactive Deed' or 'Disability Employment Services Deed' (whichever is relevant).

General Cohort Service Package means a Service Package which does not target any Specific Cohort.

Housing Pathways Transfer Policy means the document entitled 'Transfer Policy' dated November 2016 issued by FACS, as amended or replaced from time to time.

Indeterminate Exit means an End of Tenancy has occurred and the Tenant has:

- (a) moved into long-term or short-term care; or
- (b) been incarcerated.

Key Performance Indicator or **KPI** means the indicators set out in Appendix C.

LGA means a local government area.

Liveable Housing Design Guidelines means the document entitled 'Liveable Housing Design Guidelines' dated July 2013 (third edition) issued by Liveable Housing Australia, as amended or replaced from time to time.

Market Rent means the market rent for a Dwelling determined in accordance with the NSW Community Housing Rent Policy.

Maximum Turnaround Time means:

- (a) 28 days for an Tenantable Dwelling; and
- (b) 35 days for an Untenantable Dwelling,

where the start date is the day after a Tenant vacates the relevant Dwelling.

Method of Measurement means methodologies to collect data for use in computation of the Outcomes Indicators.

Mutual Obligation Requirements means activity test or participation requirements under the *Social Security Act 1991* (Cth).

National Construction Code means the document entitled 'National Construction Code' dated February 2016 (2016 version 1) issued by the Australian Building Codes Board, as amended or replaced from time to time.

National Regulatory Code Evidence Guidelines means the document entitled 'National Regulatory Code Evidence Guidelines' dated January 2014 (first edition) issued by the National Regulatory System for Community Housing Directorate, as amended or replaced from time to time.

National Regulatory Code Registration's Return Guide means the document entitled 'National Regulatory Code Registration's Return Guide' dated January 2014 (first edition) issued by the National Regulatory System for Community Housing Directorate.

Negative Exit means a Breach or an End of Tenancy has occurred and the Tenant will be:

- (a) homeless;
- (b) housed in temporary accommodation including crisis accommodation, transitional housing, a caravan park or a residential park; or
- (c) housed in Social Housing, when that Tenant has previously been housed in Affordable Housing,

in the period immediately after their Tenancy has ended.

Neutral Exit means an End of Tenancy has occurred and the Tenant is deceased, the Tenant has exited into another Social Housing Dwelling, the Dwelling is inhabitable for any reason or the Tenant has re-signed.

Non-Exit means an End of Tenancy has occurred and the Tenant has transferred or been relocated for any reason.

Non-Tenancy means an End of Tenancy has occurred and the Tenant never moved in or the Tenancy was made in error.

NSW Affordable Housing Guidelines means the document entitled 'NSW Affordable Housing Ministerial Guidelines' dated July 2015 issued by FACS, as amended or replaced from time to time.

NSW Community Housing Access Policy means the document entitled 'NSW Community Housing Access Policy' dated June 2016 issued by FACS, as amended or replaced from time to time.

NSW Community Housing Eligibility Policy means the document entitled 'NSW Community Housing Eligibility Policy' dated July 2014 (second edition) issued by FACS, as amended or replaced from time to time.

NSW Community Housing Rent Policy means the document entitled 'NSW Community Housing Rent Policy' dated July 2014 (second edition) issued by FACS, as amended or replaced from time to time.

NSW Community Housing Water Charging Guidelines means the document entitled 'NSW Community Housing Water Charging Guidelines' dated July 2012 (first edition) issued by FACS, as amended or replaced from time to time.

Outcomes Definition means statement of the meaning of the changes that are expected as a result of the Program for all.

Outcomes Description means a high level description of the changes that are expected as a result of the Program for all.

Outcomes Indicator means measures of how Tenants and Household Members are progressing towards and whether they have achieved the changes that are expected as a result of the Program for all.

Overcrowding means the household requires one or more additional bedrooms to meet the proxy occupancy standard.

Partial or Pathway Employment Outcome means an individual has satisfied the requirements for a Partial or Pathway Outcome as set out in a 'jobactive Deed' or 'Disability Employment Services Deed' (whichever relevant).

Performance and Data Reporting Plan means the Service Delivery Plan of that name.

Performance Incident means a failure to meet any of the Key Performance Indicators.

Positive Exit means an End of Tenancy has occurred as the result of a Tenant initiated exit or provider initiated exit and the Tenant will be housed in:

- (a) private ownership or private rental in the period immediately after their tenancy has ended; or
- (b) Affordable Housing in the period immediately after their Social Housing tenancy has ended.

Program means phase 1 of the Social and Affordable Housing Fund.

Quarterly Data Report means a quarterly submission prepared in compliance with the data requirements and reporting periods set out in section 6.5 and Appendix D.

Quarterly Performance Report has the meaning given in section 6.3.

Relevant Stakeholders means a person or an entity who has an interest in the Program.

ServiceCo Policies and Procedures has the meaning given to in section 4.2(b).

Severely Overcrowded has the meaning given in the Housing Pathways Transfer Policy.

Social and Affordable Housing and Social and Affordable Dwellings means:

- (a) Social Housing; and
- (b) Affordable Housing.

Social Housing Allocation Policies and Procedures has the meaning given in section 4.5.

Specific Cohort means a group of Applicants on the NSW Housing Register with common defining characteristics.

State Environmental Planning Policy No 65 means the document entitled 'State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Delivery (SEPP 65)' dated July 2015 (eighth edition) issued by the NSW Government, as amended or replaced from time to time.

State Environmental Planning Policy (Affordable Rental Housing) means the document entitled 'State Environmental Planning Policy (Affordable Rental Housing) dated July 2009 issued by the NSW Government, as amended or varied from time to time.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) means the document entitled 'State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004' dated October 2015 (fifteenth edition) issued by the NSW Government, as amended or varied from time to time.

Support Services means provision of social supports that are specific to addressing the needs and vulnerabilities of a Tenant or Household Member.

Tailored Support Coordination Engagement Strategy means the Service Delivery Phase Plan of that name.

Target Occupancy Date has the meaning given in section 2.5.

Target Outcomes means improving Tenants' and Household Members' independence, including:

- (a) stability, as a means to supporting individuals to live independently; and
- (b) economic independence, including successfully transitioning from Social and Affordable Housing.

Target Turnaround Time means:

- (a) 14 days for a Tenatable Dwelling; or
- (b) 28 days for an Untenatable Dwelling,

where the start date is the day after a Tenant vacates the relevant Dwelling.

Tenancy means the occupation of a Dwelling under a Residential Tenancy Agreement.

Tenancy Policy Supplement means the document entitled 'Tenancy Policy Supplement' June 2016 issued by FACS, as amended or varied from time to time.

Tenancy Survey Questionnaire means a questionnaire that contains the questions and 'answer bank' options set out in Appendix B, as amended (if at all) in accordance with section 5.9.

Tenancy Termination Code means the HOMES 'Tenancy Termination Reason' and 'Where Next Housed' codes set by FACS.

Tenant Needs Assessment has the meaning given in section 5.2.

Tenant Needs Assessment Template means a template in the form of Appendix H, as amended (if at all) in accordance with section 5.9.

Tenant Needs Reassessment has the meaning given in section 5.3.

Tenant Satisfaction Survey has the meaning given in section 4.13.

Tenant Support Services Plan means a plan that satisfied the requirements of section 5.4.

Tenant Support Service Plan Template means a template in the form of Appendix I, as amended (if it all) in accordance with section 5.9.

Tenant Survey means a survey of Tenants conducted in accordance with section 5.7.

Tenantable means that an unoccupied Dwelling can be ready for occupation by a Tenant within seven days of the exit of the previous Tenant, taken to be where a Dwelling:

- (a) requires no work or minor maintenance work only in that seven day period, for example, re-hanging a kitchen cupboard; or
- (b) a Dwelling is new (with the seven day period commencing on the day that the occupancy certificate is issued),

irrespective of whether:

- (c) it is difficult to secure Tenants for that Dwelling, because it is geographically isolated or there are a lack of suitable Tenants; or
- (d) the Dwelling is in a domicile that is occupied by more than one household.

Transition Readiness Assessment has the meaning given in section 4.7(b).

Turnaround Time means the period of time between a Tenant exiting a Dwelling and another Tenant commencing occupation of that Dwelling.

Under-Occupancy has the meaning given in the Housing Pathways Transfer Policy.

Untenantable means that an unoccupied Dwelling cannot be ready for occupation by a Tenant within seven days of the exit of the previous Tenant, taken to be where a Dwelling requires moderate maintenance works (including but not limited to painting the walls, re-carpeting, refitting the kitchen or bathroom) and that work have to be deferred or otherwise cannot be completed within that seven day period, irrespective of whether:

- (a) it is difficult to secure Tenants for that Dwelling, because it is geographically isolated or there is a lack of suitable Tenants; or
- (b) the Dwelling is in a domicile that is occupied by more than one household, but excluding where a Catastrophic Void has occurred.

2. Accommodation Services

2.1 Key outcomes

ServiceCo must deliver the following Accommodation Services outcomes:

- (a) Accommodation Services are delivered that are new to the social and affordable housing sector. This may include Accommodation Services delivered through:
 - (i) new Dwellings constructed for the Program;
 - (ii) Dwellings acquired or leased from the private market; or
 - (iii) re-configuring and re-developing existing dwellings or buildings;
- (b) quality Accommodation Services have been provided that meet the diverse needs of Tenants and Household Members and the Target Outcomes;
- (c) Tenants' changing housing needs are responded to fairly and flexibly; and
- (d) Tenants and Household Members' are satisfied with the Accommodation Services.

2.2 Dwelling design

2.2.1 Design Requirements

- (a) ServiceCo must:
- (i) in respect of each Stage, ensure that the proportion of Dwellings in that Stage that meet (or exceed) the 'silver level' of the Liveable Housing Design Guidelines, is equal to or greater than the proportion of Dwellings specified to meet the 'silver level' in section 2 of the Dwellings Schedule;
 - (ii) ensure that all Dwellings that it makes available comply with other relevant industry standards and relevant Laws including:
 - A. the National Construction Code;
 - B. State Environmental Planning Policy No 65;
 - C. the Apartment Design Guide; and
 - D. local government Laws and NSW Government Laws in relation to planning and environment,in each case, as each such standard or equivalent standard was current at the time of construction of the Dwelling; and
 - (iii) ensure that all Dwellings that it makes available are Fit for Purpose in accordance with section 2.6.
- (b) The requirements in section 2.2.1(a)(ii)(C) apply to all Dwellings that consist of more than one level, including those that are not apartments.

2.2.2 Other requirements

- (a) ServiceCo must comply with:
- (i) all NSRCH requirements in respect of 'housing assets'; and
 - (ii) to the extent that it applies to a Social and Affordable Housing Dwelling, the State Environmental Planning Policy (Affordable Housing Policy).
- (b) Not used.

2.3 Social Housing tenancy mix



ServiceCo must ensure that a minimum of [REDACTED] of aggregate Social Housing Tenants and Affordable Housing Tenants are Social Housing Tenants.

2.4 Affordable Housing integration

ServiceCo must ensure that Affordable Housing is incorporated into the Service Package in a manner consistent with the Target Outcomes, facilitating the transitioning out of Social and Affordable Housing.

2.5 Utilisation of Dwellings

- (a) ServiceCo must maximise the utilisation of Dwellings at all times.

- (b) Subject to section 2.5(d), ServiceCo must:
 - (i) endeavour to meet the applicable Target Turnaround Time for a Dwelling;
 - (ii) notwithstanding section 2.5(a), ensure that the Turnaround Time for a Dwelling does not exceed the applicable Maximum Turnaround Time.
- (c) Where the Turnaround Time for a Dwelling exceeds the applicable Target Turnaround Time but does not exceed the applicable Maximum Turnaround Time, ServiceCo must provide an explanation for exceeding the applicable Target Turnaround Time to the FACS Representative in accordance with section 6.3.
- (d) Sections 2.5(a) to 2.5(c) do not apply in the event of a Catastrophic Void. If a Catastrophic Void occurs, ServiceCo must notify the FACS Representative immediately and provide to the FACS Representative a plan for rectifying the situation. The plan must include a 'Target Occupancy Date' which is the date by which the Dwelling will be occupied by a Tenant (**Target Occupancy Date**).
- (e) The FACS Representative will determine (acting reasonably) whether the Target Occupancy Date proposed by ServiceCo pursuant to section 2.5(d) is reasonable, and notify ServiceCo of its determination. If the FACS Representative does not consider that the Target Occupancy Date is reasonable, it will stipulate the Target Occupancy Date and the plan will be deemed to be amended accordingly.
- (f) Nothing in section 2.5(d) or section 2.5(e) will limit or otherwise affect the obligations of ServiceCo under clause 24 (*Service Delivery Phase – Intervening Events*) of this Agreement.

2.6 Fit for Purpose

ServiceCo must ensure that at all times on and from the Date of Service Readiness in respect of a Stage until the end of the Term the Relevant Infrastructure in respect of that Stage will:

- (a) be Fit For Purpose by reference to the purposes, function, uses and requirements which apply as at the Date of Service Readiness; and
- (b) comply with:
 - (i) all applicable Laws; and
 - (ii) all applicable Standards.

2.7 Number and location of Dwellings

ServiceCo must:

- (a) make available the number of Dwellings specified in section 1 of the Dwellings Schedule as Social and Affordable Housing, for use as Social and Affordable Housing;
- (b) in respect of Social and Affordable Housing it makes available under section 2.7(a), ensure that it provides Dwellings that meet the bedroom configurations in section 1 of the Dwellings Schedule; and

- (c) locate Social Housing and Affordable Housing Dwellings at the locations specified the Dwellings Schedule.

3. Asset Management Services

3.1 Key outcomes

ServiceCo must deliver the following Asset Management Services outcomes:

- (a) a pro-active asset management strategy;
- (b) effective provision of responsive repairs to maintain Tenant and Household Members' safety and security and the functionality and amenity of the Dwellings;
- (c) effective scheduling of responsive and planned maintenance in response to ongoing Condition Surveys and assessment activity;
- (d) responsive management of the relationship with Tenants and Household Members, particularly in relation to sensitivity to Tenant and Household Members' needs and characteristics and respect for privacy;
- (e) Tenants and Household Members are satisfied with the Asset Management Services;
- (f) protocols, policies and procedures prepared, updated and implemented so as to effectively operationalise the intent of relevant FACS Policies; and
- (g) out of hours service is provided for emergency repairs.

3.2 Asset Maintenance Plan

ServiceCo must prepare, implement, document, update and at all times comply with an 'Asset Maintenance Plan' in respect of the Service Package in accordance with the Housing Assets Performance Outcomes in the National Regulatory Code Evidence Guidelines.

3.3 Condition Survey

ServiceCo must undertake a Condition Survey in accordance with the Housing Assets Performance Outcomes in the National Regulatory Code Evidence Guidelines with the additional requirements that:

- (a) the Condition Survey includes an assessment of the Dwellings in accordance with the Asset Performance Standards for Existing Dwellings; and
- (b) where ServiceCo manages other properties outside of the Program, the Condition Survey must clearly identify Dwellings within the Program; and
- (c) the results of the Condition Survey must be reported to the FACS Representative in accordance with section 6.4.

3.4 Response times

ServiceCo must comply with the response times set out in Appendix F when performing the Asset Management Services.

4. Tenancy Management Services

4.1 Key outcomes

ServiceCo must deliver the following Tenancy Management Services outcomes:

- (a) high quality, responsive and accessible Tenancy Management Services have been provided, and tailored to the diverse needs of Tenants and Household Members and the Target Outcomes;
- (b) an effective and accessible single point of contact has been developed for all Tenant and Household Member matters;
- (c) the rights and entitlements of Tenants and Household Members (including under any Residential Tenancy Agreements) have been fully maintained, and the obligations of Tenants are enforced;
- (d) Tenants' and Household Members' privacy and confidentiality have been maintained and are preserved;
- (e) Tenants' and Household Members' changing housing needs are responded to fairly and flexibly;
- (f) Tenants and Household Members are satisfied with the Tenancy Management Services;
- (g) Tenancy Management Services are delivered in a culturally appropriate manner and are consistent with good practice principles for working with Aboriginal people; and
- (h) protocols, policies and procedures are prepared, updated and implemented so as to effectively operationalise the intent of relevant FACS Policies.

4.2 Application of housing policies

- (a) ServiceCo must provide the Tenancy Management Services in accordance with:
 - (i) all FACS Policies and new FACS Policies that FACS introduces from time to time as directed by the FACS Representative; and
 - (ii) the National Regulatory Code and other state or national standards that apply to Registered CHPs and the Service Package Activities.
- (b) ServiceCo must implement its own policies and procedures in accordance with sections 4.5, 4.7, 4.8, 4.9, 4.12 and 4.13 (**ServiceCo Policies and Procedures**).

4.3 Changes to housing policies

ServiceCo must ensure that throughout the Term it updates the ServiceCo Policies and Procedures to reflect the FACS Policies and complies with those updated ServiceCo Policies and Procedures.

4.4 Residential Tenancy Agreements

ServiceCo must enter, or must ensure that a Tenancy Management Services Provider enters into, a Residential Tenancy Agreement with each Tenant in accordance with the requirements of the *Residential Tenancies Act 2010* (NSW).

4.5 Social Housing allocation

- (a) Notwithstanding any other provision in this Specification, ServiceCo must only allocate Social Housing to Applicants who meet the eligibility requirements established by the NSW Community Housing Eligibility Policy.
- (b) ServiceCo must only make offers of Social Housing to Applicants.
- (c) ServiceCo must develop, implement and update its own Social Housing Allocation Policies and Procedures which must be consistent with:
 - (i) the requirements of the NSW Community Housing Eligibility Policy; and
 - (ii) the requirements of the NSW Community Housing Access Policy.
- (d) In allocating housing to Applicants, ServiceCo must comply with the Housing Pathways Policies, with the following additional requirements:
 - (i) not used;
 - (ii) where ServiceCo has a General Cohort Service Package, it must not use restrictions or bypass codes to target a Specific Cohort;
 - (iii) where ServiceCo has a 'Local Allocation Plan' as part of its Social Housing Allocation Policies and Procedures, the Local Allocation Plan must be:
 - A. developed in accordance with section 4.5(c);
 - B. fair and non-discriminatory; and
 - C. developed and implemented in a manner that does not:
 - 1) not used;
 - 2) where ServiceCo has a General Cohort Service Package, systematically target one or more Specific Cohorts.
- (e) Not used.
- (f) Without limiting clause 26.1(b) (*Omitted Service Package Activities*) of this Agreement, where a Dwelling is vacant and there are no Appropriate Applicants for that Dwelling, ServiceCo must:
 - (i) notify FACS in writing that the Dwelling is vacant and that there are no Appropriate Applicants for that Dwelling;
 - (ii) advise FACS of its proposed mitigation strategy in respect of the vacant Dwellings (which must include all reasonable steps to mitigate the effect of the vacancy); and
 - (iii) meet with FACS within 10 Business Days to discuss and agree its mitigation strategy in respect of the vacant Dwelling,

in which case, the vacancy will not cause a Service Provision Performance Incident, provided that ServiceCo complies with the mitigation strategy agreed under paragraph (iii).

- (g) To the extent that ServiceCo complies with section 4.5(f):
 - (i) ServiceCo will be entitled to relief from any Service Failure which would otherwise be triggered by the operation of that mitigation strategy; and
 - (ii) the Monthly Service Payment is reduced to the extent that the mitigation strategy produces a net income for ServiceCo.

4.6 Affordable Housing allocation

- (a) ServiceCo must allocate Affordable Housing in accordance with:
 - (i) the NSW Affordable Housing Guidelines; and
 - (ii) the Affordable Housing Allocation Plan.

4.7 Transition Readiness Assessment

- (a) ServiceCo must identify:
 - (i) Social Housing Tenants who may be ready to transition to paying rent amounts that are more consistent with Market Rent or Affordable Housing Rent in accordance with this section 4.7; or
 - (ii) Affordable Housing Tenants who may be ready to transition to paying Market Rent.
- (b) ServiceCo must conduct annual Tenant Transition Readiness Assessments. To meet this requirement, ServiceCo must:
 - (i) review each Tenant's rent and income in accordance with the applicable rent review requirements for Social Housing and Affordable Housing under the NSW Community Housing Rent Policy or the NSW Affordable Housing Guidelines;
 - (ii) where a Social Housing Tenant has been assessed as no longer meeting the maximum Social Housing income eligibility limit in accordance with the Tenancy Policy Supplement, ServiceCo must undertake an assessment of the Tenant's capacity to pay and sustain rent that is more consistent with Market Rent or Affordable Housing Rent for the relevant Dwelling. Any such assessment must consider all information obtained through the Transition Readiness Assessment, any recent rent and income review, the Tenant Needs Assessment and the Tenant Needs Reassessment; and
 - (iii) where a Social Housing Tenant has been assessed as both no longer being entitled to a Social Housing rent subsidy and capable of paying and sustaining rent more consistent with Market Rent or Affordable Housing Rent for the relevant Dwelling, ServiceCo must review the Tenant's eligibility in accordance with the applicable eligibility requirements for Social Housing under the NSW Community Housing Eligibility Policy.
- (c) Where an Affordable Housing Tenant has been assessed as no longer meeting the relevant maximum eligibility income limit under the NSW Affordable Housing Guidelines, such Tenant will no longer be classified as an Affordable Housing Tenancy for the purposes of the Service Package and ServiceCo must use

reasonable endeavours to transition the Tenant into alternate private accommodation and end the Tenancy at the earliest time permitted under:

- A. the *Residential Tenancies Act 2010* (NSW) and the *Residential Tenancy Regulation 2010* (NSW);
 - B. the terms of the relevant Residential Tenancy Agreement; and
 - C. relevant FACS Policies.
- (d) Where a Social Housing Tenant is assessed as no longer meeting the Social Housing eligibility criteria under section 4.7(b)(iii), ServiceCo must use reasonable endeavours to transition the Tenant into alternate accommodation or rent settings that are consistent with the outcome of the assessment undertaken in section 4.7(b)(ii), including:
 - (i) transitioning the Tenant to an Affordable Housing Tenancy while allowing the Tenant to remain housed in the same Dwelling he or she was originally allocated, in which case the Tenant will be classified as an Affordable Housing Tenant for the purposes of the Service Package;
 - (ii) transitioning the Tenant and relevant Household Members to alternative affordable housing or private housing accommodation, available outside of the Service Package, and end the Tenancy at the earliest time permitted under:
 - A. the *Residential Tenancies Act 2010* (NSW) and the *Residential Tenancy Regulation 2010* (NSW);
 - B. the terms of the relevant Residential Tenancy Agreement; and
 - C. relevant FACS Policies.
- (e) Notwithstanding its obligations under this section, if ServiceCo is unable to effect a Tenant transition as described in section 4.7(d)(i) or 4.7(d)(ii), each affected Tenant will be classified as a Retained Social Housing Tenant for the purposes of the Service Package:
 - (i) at the time any applicable rent change comes into effect; or
 - (ii) 60 days after the completion of the Tenant Transition Readiness Assessment,whichever occurs earliest.

4.8 Rent

ServiceCo must:

- (a) ensure that any rent charged in respect of a Dwelling to:
 - (i) a Social Housing Tenant (including a Retained Social Housing Tenant) is in accordance with the Community Housing Rent Policy; and

- (ii) an Affordable Housing Tenant is in accordance with the Community Housing Rent Policy and the Affordable Housing Guidelines;
- (b) repay FACS any amount calculated in accordance with the Excess Subsidy Rebate in section 7 (*Excess Subsidy Rebate*) of the Payment Schedule;
- (c) develop, implement and update a rent policy which is consistent with the requirements of the Community Housing Rent Policy, the Affordable Housing Guidelines and sections 4.7 and 4.8(b); and
- (d) conduct a rent and income review for each Tenant:
 - (i) within twelve months of that Tenant signing a Residential Tenancy Agreement;
 - (ii) within twelve months of that Tenant's preceding Transition Readiness Assessment; or
 - (iii) at the frequency required by the NSW Community Housing Rent Policy,

whichever occurs earliest.

4.9 Tenant complaints and appeals

ServiceCo must develop, implement and update its own Tenant complaints and appeals policies and procedures which must be compliant with the requirements under the Tenant and Housing Services Performance Outcome in the National Regulatory Code Evidence Guidelines.

4.10 Tenant evictions

- (a) Any evictions by ServiceCo or the Tenancy Management Services Provider (as applicable) under section 90 and section 91 of the *Residential Tenancies Act 2010* (NSW) as amended by section 154 (or any equivalent provisions that replace them) must be signed off by ServiceCo at the CEO level or by a delegated senior member of staff.
- (b) ServiceCo must, and must ensure that any Tenancy Management Services Provider (where applicable) must, exercise extra care to ensure that termination is appropriate. The NSW Community Housing Access Policy, under section 4.4 "Termination of resident and tenancy agreements", provides further guidance on termination under section 85 of the *Residential Tenancies Act 2010* (NSW).

4.11 Tenancy exits

ServiceCo must facilitate Positive Exits from Social Housing and Affordable Housing where appropriate through active engagement and Tailored Support Coordination Services, including provision of tenancy references to enable access to private rental properties.

4.12 Tenant engagement

ServiceCo must develop, implement and update and at all times comply with a 'Tenant Engagement Protocol' which must be compliant with the requirements under the Tenant and Housing Services Performance Outcome in the National Regulatory Code Evidence Guidelines.

4.13 Tenant Satisfaction Survey

- (a) ServiceCo must undertake a Tenant Satisfaction Survey in accordance with the Tenant and Housing Services Performance Outcomes in the National Regulatory Code Evidence Guidelines with the following additional requirements:
 - (i) the Tenant Satisfaction Survey must be undertaken annually;
 - (ii) the Tenant Satisfaction Survey must only assess the Tenants' satisfaction with respect to Accommodation Services, Asset Management Services and Tenancy Management Services provided for the purposes of the Program;
 - (iii) the results of the Tenant Satisfaction Survey must clearly identify Tenants' responses with respect to section 4.13(a)(ii) and be quarantined from any responses relating to other properties managed by the Proponent outside of the Program; and
 - (iv) the results of the Tenant Satisfaction Survey must be reported to the FACS Representative in accordance with section 6.4.
- (b) The response and return rate for the Tenant Satisfaction Survey must be equal to or exceed the thresholds set out in the 'Tenancy Management Metrics' section of the National Regulatory Code Registration's Return Guide to be considered valid.

5. Tailored Support Coordination Services

5.1 Key outcomes

ServiceCo must deliver the following Tailored Support Coordination Services outcomes:

- (a) facilitated access to quality support has been provided to Tenants and Household Members, with the intensity of Tailored Support Coordination Services provided by ServiceCo being tailored to their diverse needs and Target Outcomes;
- (b) Tenants and Household Members are satisfied with the Tailored Support Coordination Services;
- (c) Tenants and Household Members have been appropriately assessed and assisted to access appropriate Support Services;
- (d) Tailored Support Coordination Services are delivered in a culturally appropriate manner and are consistent with good practice principles for working with Aboriginal people; and
- (e) effective arrangements have been established with NSW Government agencies and non-government organisations to provide support to Tenants and Household Members.

5.2 Tenant Needs Assessments

- (a) ServiceCo must undertake an assessment of each Tenant and related initial Household Member within six weeks of that Tenant signing a Residential Tenancy Agreement (**Tenant Needs Assessment**).

- (b) ServiceCo must undertake a Tenant Needs Assessment of each new Household Member within six weeks of ServiceCo approving that person as an additional occupant of the relevant Dwelling.
- (c) The Tenant Needs Assessment must be undertaken in accordance with and recorded in the form of the Tenant Needs Assessment Template in Appendix H.
- (d) Where a Household Member is under the age of 12 years, ServiceCo must undertake that person's Tenant Needs Assessment in conjunction with the Tenant Needs Assessment of the person that has parental responsibility or is the carer or legal guardian (as applicable) for that Household Member, unless specific special needs, safety issues or other identified risks warrant that ServiceCo undertakes a separate Tenant Needs Assessment for the person.

5.3 Tenant Needs Reassessment

- (a) ServiceCo must undertake a follow up assessment for each Tenant and related Household Member within twelve months of the date of the Tenant Needs Assessment (**Tenant Needs Reassessment**) or preceding Tenant Needs Reassessment or at the frequency determined in the Tenant Needs Assessment or preceding Tenants Needs Reassessment, whichever occurs earlier.
- (b) ServiceCo must undertake a Tenant Needs Reassessment for any Tenant and related Household Members in the event that an unforeseen circumstance occurs that has a significant impact on that Tenant's ability to progress toward the Target Outcomes, within six weeks of being notified of such circumstance.
- (c) The Tenant Needs Reassessment must be carried out in accordance with the requirements set out in section 5.2(c).
- (d) Where a Household Member is under the age of 12 years, ServiceCo must undertake that person's Tenant Needs Reassessment in conjunction with the Tenant Needs Reassessment of the person that has parental responsibility or is the carer or legal guardian for that Household Member (as applicable), unless specific special needs, safety issues or other identified risks warrant that ServiceCo undertakes a separate Tenant Needs Reassessment for the person.

5.4 Tenant Support Services Plan

- (a) Subject to section 5.4(b), ServiceCo must develop and implement a Tenant Support Services Plan for each Tenant and related initial Household Member within twelve weeks of the Tenant signing a Residential Tenancy Agreement. The contents of the Tenant Support Services Plan should be client focused, developed in collaboration with the individual and tailored to the needs and goals of the Tenant and Household Members.
- (b) ServiceCo must develop and implement a Tenant Support Services Plan for each new Household Member within twelve weeks of ServiceCo approving that person as an additional occupant of the relevant Dwelling.
- (c) The Tenant Support Services Plan requires the agreement of the Tenant or Household Member to which it relates. Where a Tenant Support Services Plan relates to a Household Member whose ability to provide agreement is inhibited, the person having parental responsibility or that is the carer or guardian for that Household Member (as applicable) may provide agreement on their behalf for the purposes of this section 5.4(c).

- (d) The Tenant Support Services Plan must be undertaken in accordance with and recorded in the form of the Tenant Support Services Plan Template in Appendix I.
- (e) ServiceCo must ensure that each Tenant Support Services Plan is updated annually as a minimum, and in any event within six weeks after:
 - (i) a Tenant Needs Assessment (or a Tenant Needs Reassessment) is carried out;
 - (ii) new information is provided by the relevant Tenant or Household Members; or
 - (iii) any unforeseen circumstances (of the nature described in section 5.3(b)) affecting the Tenant or a Household Member occurs.
- (f) Where a Household Member is under the age of 12 years, ServiceCo must:
 - (i) develop and implement that person's Tenant Support Services Plan in conjunction with the Tenant Support Services Plan of the person having parental responsibility or that is the carer or legal guardian (as applicable) for that Household Member, unless specific special needs, safety issues or other identified risks warrant that ServiceCo develop a separate Tenant Support Services Plan for the person; and
 - (ii) seek agreement of the Tenant Support Services Plan from the person having parental responsibility or the carer or legal guardian (as applicable) for the relevant Household Member.

5.5 Facilitating access to Support Services

- (a) ServiceCo must ensure that throughout the Term it identifies, facilitates and records referrals to appropriate Support Services for Tenants and Household Members.
- (b) ServiceCo must ensure that the record keeping incorporates (at a minimum):
 - (i) details of the Support Services the Tenant or Household Members have been referred to by ServiceCo;
 - (ii) any information on the status of a referral, including whether the Tenant or Household Member has experienced any delay accessing the Support Service;
 - (iii) alternate referrals or key actions for unfulfilled referrals;
 - (iv) explanations for rejections, delays or other incidents that prevent Tenants or Household Members accessing the referred Support Service; and
 - (v) feedback on Support Service providers from ServiceCo, Tenants or Household Members.

5.6 Tailored Support Coordination Engagement Strategy

ServiceCo must develop, implement and comply with the Tailored Support Coordination Engagement Strategy.

5.7 Tenant Survey

- (a) ServiceCo must conduct an annual Tenant Survey to measure Tenants' and Household Members':
 - (i) overall satisfaction with the Tailored Support Coordination Services; and
 - (ii) progress towards their goals and the Target Outcomes.
- (b) The Tenant Survey must:
 - (i) be undertaken annually;
 - (ii) at a minimum, assess Tenants and Household Members using the Tenant Survey Questionnaire; and
 - (iii) be offered to Tenants and Household Members aged 16 years or older.
- (c) ServiceCo must use reasonable endeavours to develop and implement an accessible survey method for all Tenants and Household Members who choose to participate in the Tenant Survey, including when:
 - (i) a Household Member under the age of 16 requests to participate in the Tenant Survey with or without the attendance of a parent, guardian or carer;
 - (ii) a Tenant or Household Member requires the assistance of a parent, guardian, carer or other third party to participate;
 - (iii) a Tenant or Household Member requires culturally and linguistically appropriate survey material; or
 - (iv) other barriers prevent a Tenant or Household Member from participating.
- (d) For the results of the Tenant Survey to be considered valid:
 - (i) the response rate must be equal to or exceed 10% of the total number of Tenants and Household Members housed by ServiceCo who are aged 16 years or older; and
 - (ii) the return rate for the Tenant Survey must be equal to or exceed 25% of the total number of surveys distributed by ServiceCo.
- (e) ServiceCo must report the results of the Tenant Survey to the FACS Representative in accordance with section 6.4.
- (f) ServiceCo acknowledges and agrees that FACS will review the thresholds and tolerance bands in KPI 204 at the end of the first Reviewable Service Term and FACS may alter those threshold and tolerance bands as part of the Reviewable Services regime contained in clause 20 (*Reviewable Services*) of this Agreement.

5.8 End of Tenancy Reports

- (a) ServiceCo must provide an End of Tenancy Report:

- (i) for each Tenant and related Household Member (where practicable) who transitions out of a Dwelling when a Tenancy ends, in which case the report must be completed prior to the Dwelling being allocated to a new Tenant; and
 - (ii) for each Tenant or related Household Member (where practicable) who transitions out of a Dwelling without the Tenancy ending, in which case the report must be completed within 6 weeks of ServiceCo first becoming aware of the transition.
- (b) The End of Tenancy Report must:
 - (i) as a minimum ascertain and record the key circumstance of the transition (which may or may not be linked to an End of Tenancy) and where the Tenant or Household Member is next housed in accordance with FACS' Tenancy Termination Codes:
 - A. a 'sub-reason' should be included as a 'where next housed' code to differentiate Affordable Housing; and
 - B. 'sub-reasons' may be developed in addition to FACS' Tenancy Termination Codes provided the core structure of those codes remains unchanged;
 - (ii) record any changes to the status of the Tenant or Household Member since the last Tenant Needs Assessment or Tenant Needs Reassessment, including:
 - A. employment;
 - B. education;
 - C. level of educational attainment; and
 - D. safety and risk; and
 - (iii) record any additional relevant information regarding the key circumstances of the Tenant or Household Member in transition, including when the 'Other' Tenancy Termination Code has been used.
- (c) In circumstances where ascertaining the information in section 5.8(b) directly from a Tenant or Household Member is not possible including when:
 - (i) the Tenant or Household Member is deceased or incapacitated;
 - (ii) a Tenant or Household Member has abandoned the Dwelling without notice; or
 - (iii) the Tenant does not comply fully with tenancy end procedures,

ServiceCo must use reasonable endeavours to complete the End of Tenancy Report using alternate information sources (including drawing on ServiceCo employees knowledge where necessary).

5.9 Updates to template documents

- (a) If either party wishes to amend the Tenant Survey Questionnaire, the Tenant Support Services Plan Template or the Tenant Needs Assessment Template:

- (i) that party must notify the other party of such and, subject to section 5.9(b), the parties must meet to discuss the proposed amendments to the relevant document; and
 - (ii) if the parties agree any amendments to a document, ServiceCo must update the document accordingly and use that updated document for the purposes of its obligations under this section 5.
- (b) The parties may meet as required during the Delivery Phase and up to once each Operating Year during the Service Delivery Phase for the purposes of section 5.9(a).

6. Performance and Data Reporting

6.1 Key outcomes

ServiceCo must deliver the following Performance and Data Reporting outcomes:

- (a) accurate and timely reporting of performance monitoring and data collection requirements; and
- (b) Tenants' privacy and confidentiality have been maintained and preserved.

6.2 Performance and Data Reporting Plan

ServiceCo must implement the Performance and Data Reporting Plan, which describes how it will implement the Performance and Data Reporting requirements as set out in this section 6.

6.3 Quarterly Performance Report

- (a) ServiceCo must prepare, implement and document a Quarterly Performance Report for every quarter of the Operating Year.
- (b) For those Key Performance Indicators specifying a quarterly reporting period as set out in Appendix C, the Quarterly Performance Report must specify the following information and the number of incidents reported to or identified by ServiceCo within each Quarter during an Operating Year, including:
 - (i) the number of repeat Performance Incidents reported over successive Quarters;
 - (ii) the number of Performance Incidents including:
 - A. the unique incident number;
 - B. the nature of the Performance Incident; and
 - C. the date of the Performance Incident if applicable;
 - (iii) information in relation to Turnaround Times that exceeded the Target Turnaround Times (but were within the Maximum Turnaround Times) in accordance with section 2.5(c); and
 - (iv) any other information reasonably required by the FACS Representative to assess the performance of ServiceCo.

- (c) In respect of KPI 303, 304 and 305, FACS recognises that the obligations of ServiceCo underpinning these KPIs require the cooperation of, and voluntary participation from, Tenants and Household Members. On this basis:
 - (i) if a Tenant Needs Assessment or a Tenant Needs Reassessment was conducted, or a Tenant Support Services Plan developed, outside of the timeframes stipulated in this Specification (or not developed at all) due to circumstances beyond the reasonable control of ServiceCo; and
 - (ii) ServiceCo used reasonable endeavours to implement its Tailored Support Coordination Engagement Strategy in respect of these Tenants and Household Members,

then, if ServiceCo submits additional information for FACS' that demonstrates the above, a Performance incident exception can be reported for the purposes of section 6.3(b).

6.4 Annual Performance Report

- (a) ServiceCo must prepare, implement, and document an Annual Performance Report for every Operating Year.
- (b) For those Key Performance Indicators specifying an annual reporting period as set out in Appendix C, the Annual Performance Report must specify the following information and the number of incidents reported to or identified by ServiceCo within an Operating Year, including:
 - (i) the number of repeat Performance Incidents reported over successive Operating Years; and
 - (ii) the number of Performance Incidents including:
 - A. the unique incident number;
 - B. the nature of the Performance Incident; and
 - C. the date of the Performance Incident if applicable.
- (c) The Annual Performance Report must include the following information:
 - (i) a consolidated summary and reconciliation of information provided in each Quarterly Performance Report for that Operating Year;
 - (ii) results of the Tenant Satisfaction Surveys and Tenant Surveys carried out by ServiceCo during the Operating Year to which the report relates and proposed strategies to improve satisfaction;
 - (iii) results of the Condition Survey carried out by ServiceCo during the Operating Year. To the extent that ServiceCo did not conduct a Condition Survey in respect of any Dwellings within the Program during the relevant Operating Year, ServiceCo must submit evidence that all Dwellings under the Program will be surveyed within a three Operating Year period in accordance with the Housing Assets Performance Outcomes in the National Regulatory Code Evidence Guidelines; and
 - (iv) any other information reasonably required by the FACS Representative to assess the performance of ServiceCo.

6.5 Outcomes Data Reporting

- (a) ServiceCo must collect the outcomes data that is required to meet the data requirements in Appendix D. The parties acknowledge and agree that where data collection requires the cooperation of, and voluntary participation from, Tenants and Household Members, ServiceCo must use reasonable endeavours to obtain the information, but in doing so, may not be able to collect it.
- (b) ServiceCo must prepare, implement, document and update:
 - (i) a Quarterly Data Report for every quarter of the Operating Year; and
 - (ii) an Annual Data Report for every Operating Year,for submission of the outcomes data in compliance with the data requirements and reporting periods as set out in Appendix D.

6.6 Annual Outcomes Report

- (a) ServiceCo must complete and submit an Annual Outcomes Report to the FACS Representative at the end of each Operating Year.
- (b) The Annual Outcomes Report must incorporate the minimum information specified in Appendix G for each of the Outcome Descriptions contained in the Outcomes Measurement and Reporting Framework specified in Appendix E.

6.7 Reporting requirements

- (a) ServiceCo must meet all reporting requirements in accordance with the Performance and Data Reporting Plan.
- (b) ServiceCo must provide the Quarterly Performance Report, Annual Performance Report, Quarterly Data Report, Annual Data Report and Annual Outcomes Report in both electronic and hard copy formats, or as otherwise specified by the FACS Representative.

6.8 Program evaluation

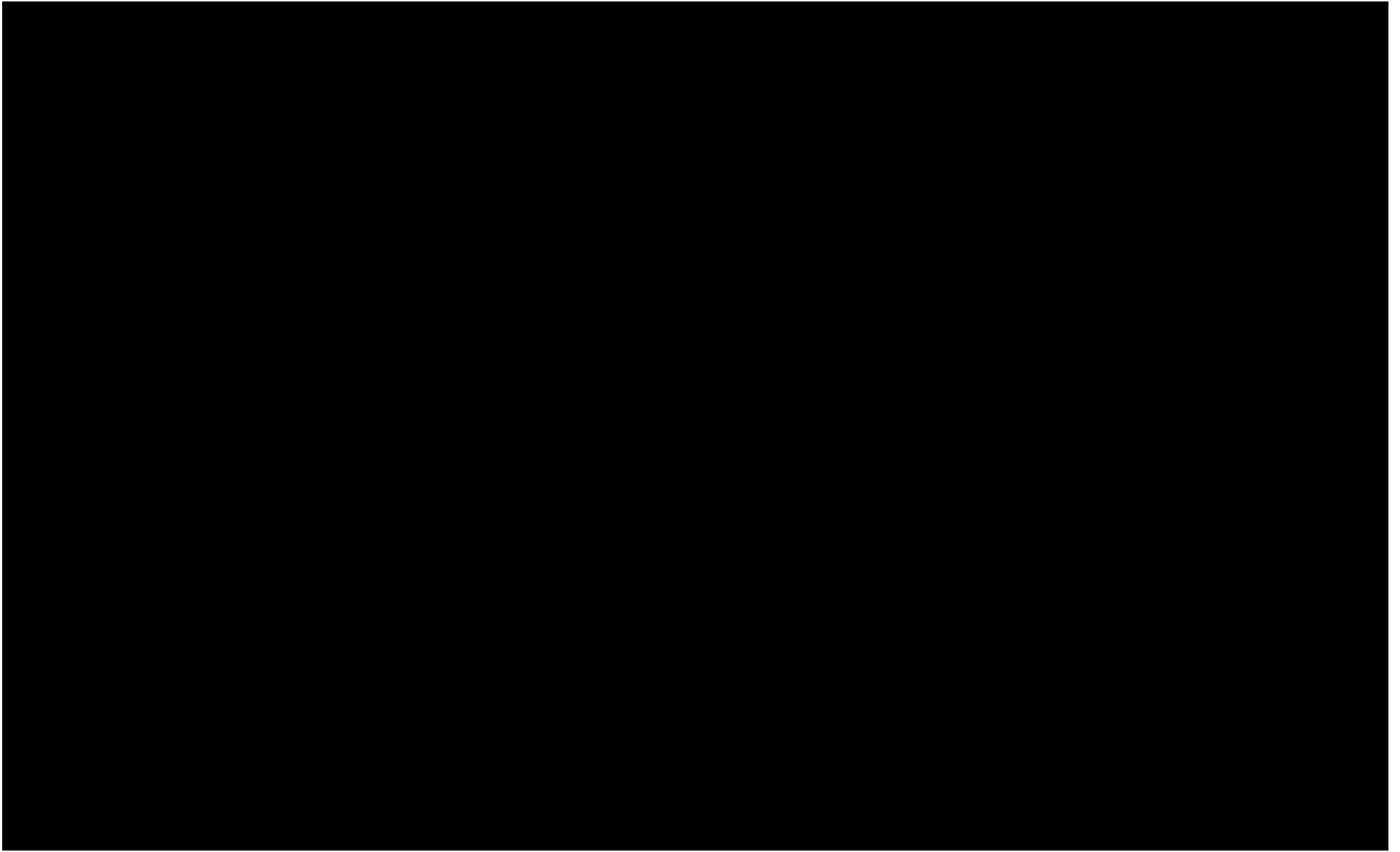
ServiceCo must participate in evaluation and research activities with FACS as required by the FACS Representative, including providing all reasonable information available to ServiceCo to support FACS' evaluation and research activities.

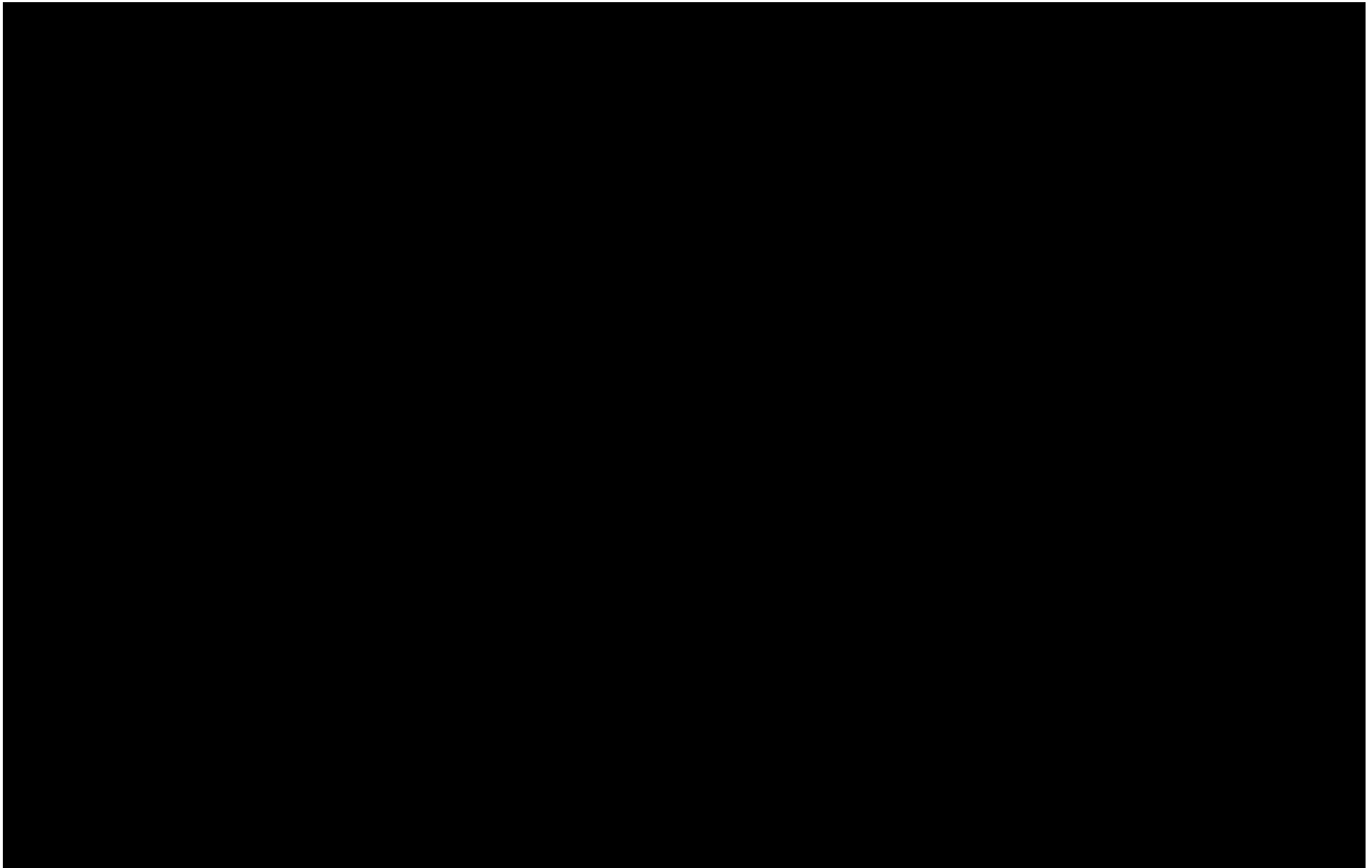
Appendices

Appendix A: FACS Policies

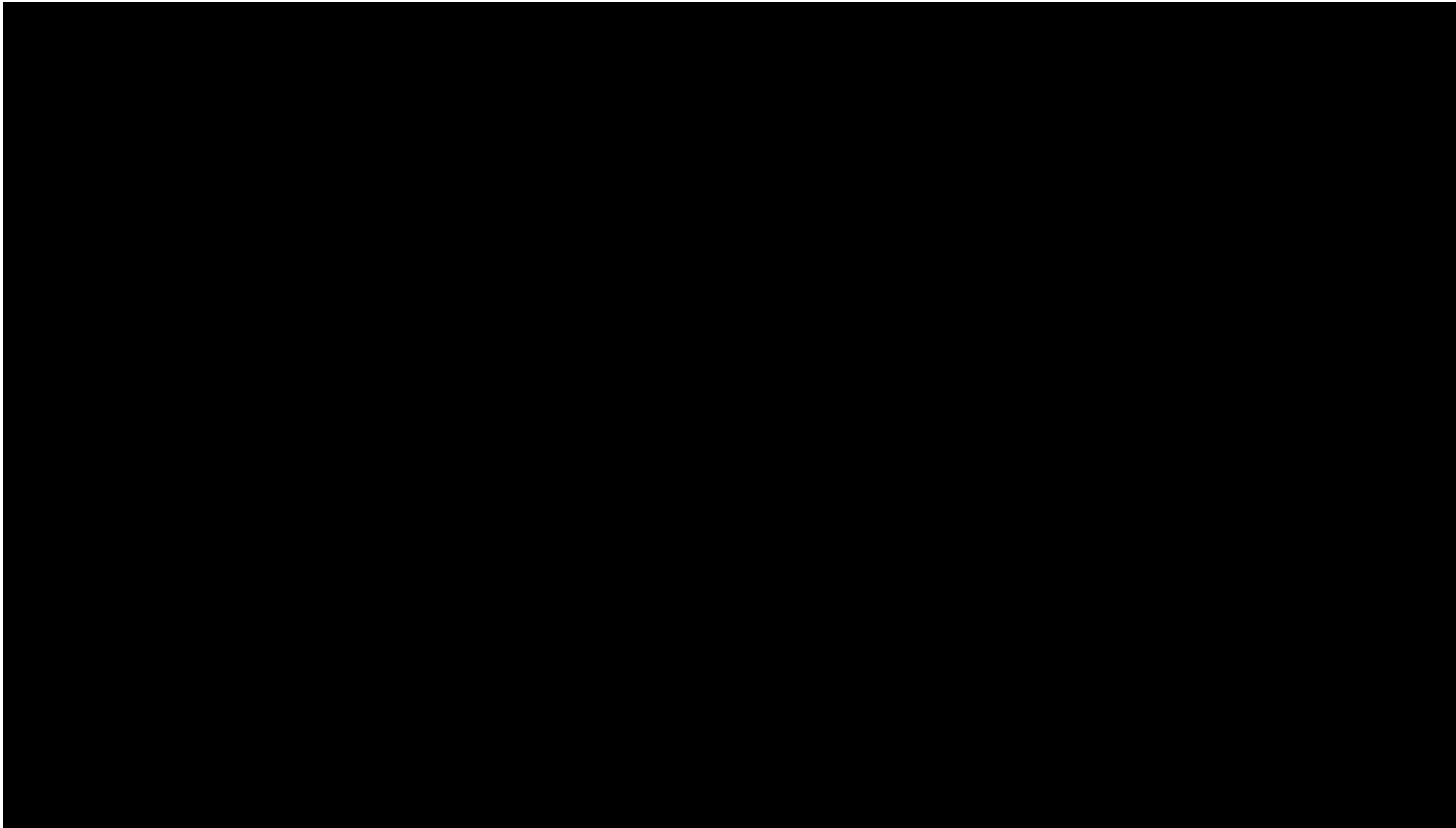
FACS Policies means the following policies as amended or replaced from time to time:

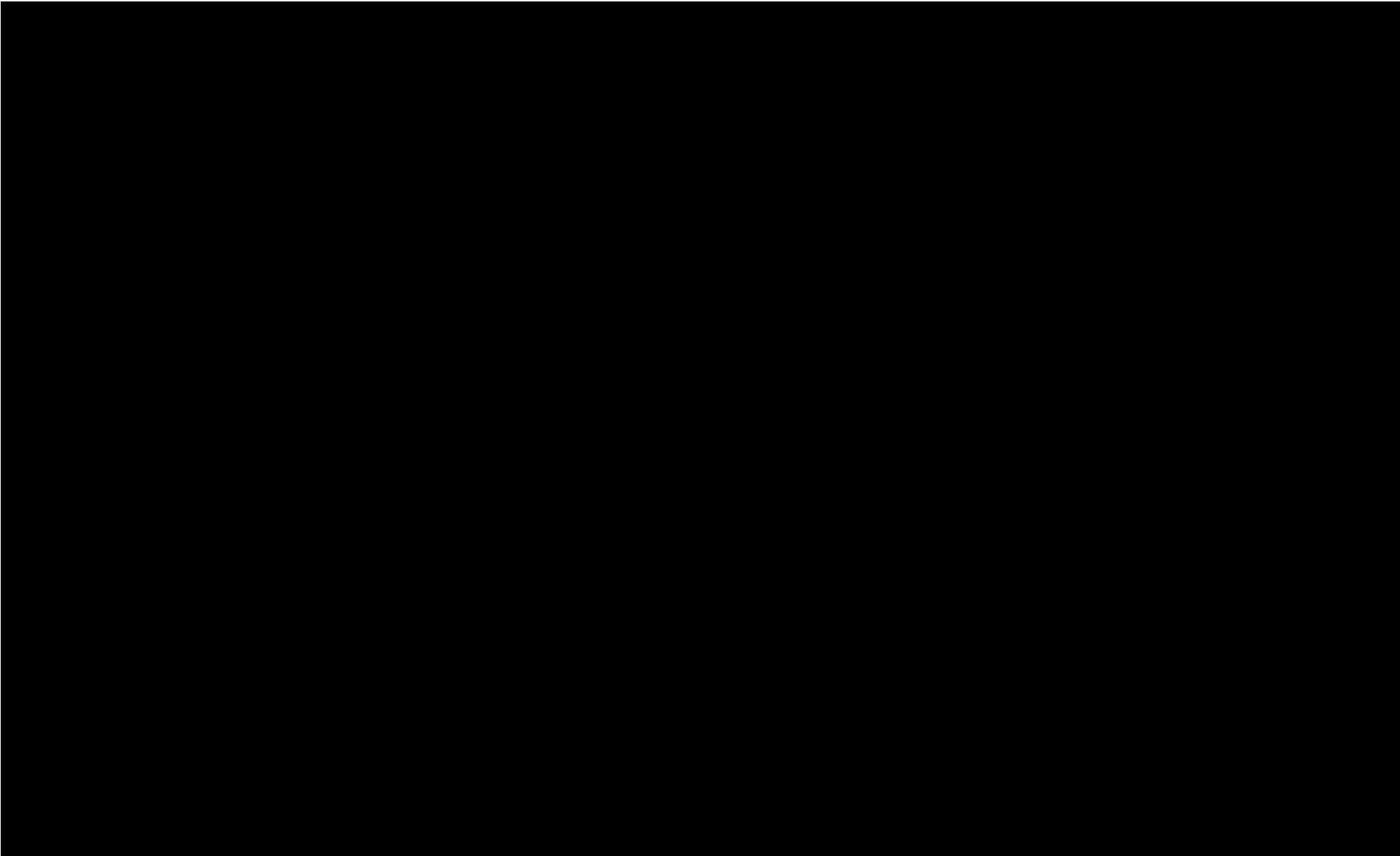
- (a) Asset Performance Standards for Existing Dwellings;
- (b) NSW Community Housing Rent Policy;
- (c) NSW Community Housing Eligibility Policy;
- (d) NSW Community Housing Access Policy;
- (e) NSW Community Housing Water Charging Guidelines;
- (f) NSW Affordable Housing Guidelines;
- (g) the following policies in relation to Housing Pathways:
 - (i) the Housing Pathways Transfer Policy;
 - (ii) the 'Children and Young People at Risk Policy' dated January 2016;
 - (iii) the 'Community Housing Complaints, Issues and Appeals Management Framework';
 - (iv) the 'Domestic and Family Violence Policy Statement' dated September 2014;
 - (v) the 'Eligibility for Social Housing Policy' dated October 2016;
 - (vi) the 'Housing Assistance Options Policy' dated October 2016;
 - (vii) the 'Matching and Offering a Property to a Client Policy' dated October 2016;
 - (viii) the 'Social Housing Assistance Policy for Registered Persons' dated October 2016;
 - (ix) the 'Social Housing Eligibility and Allocations Policy Supplement' dated June 2016; and
 - (x) the Tenancy Policy Supplement,each issued by FACS (**Housing Pathways Policies**); and
- (h) other policies and guidelines as notified by the Housing Agency (as defined under the Community Housing Act).

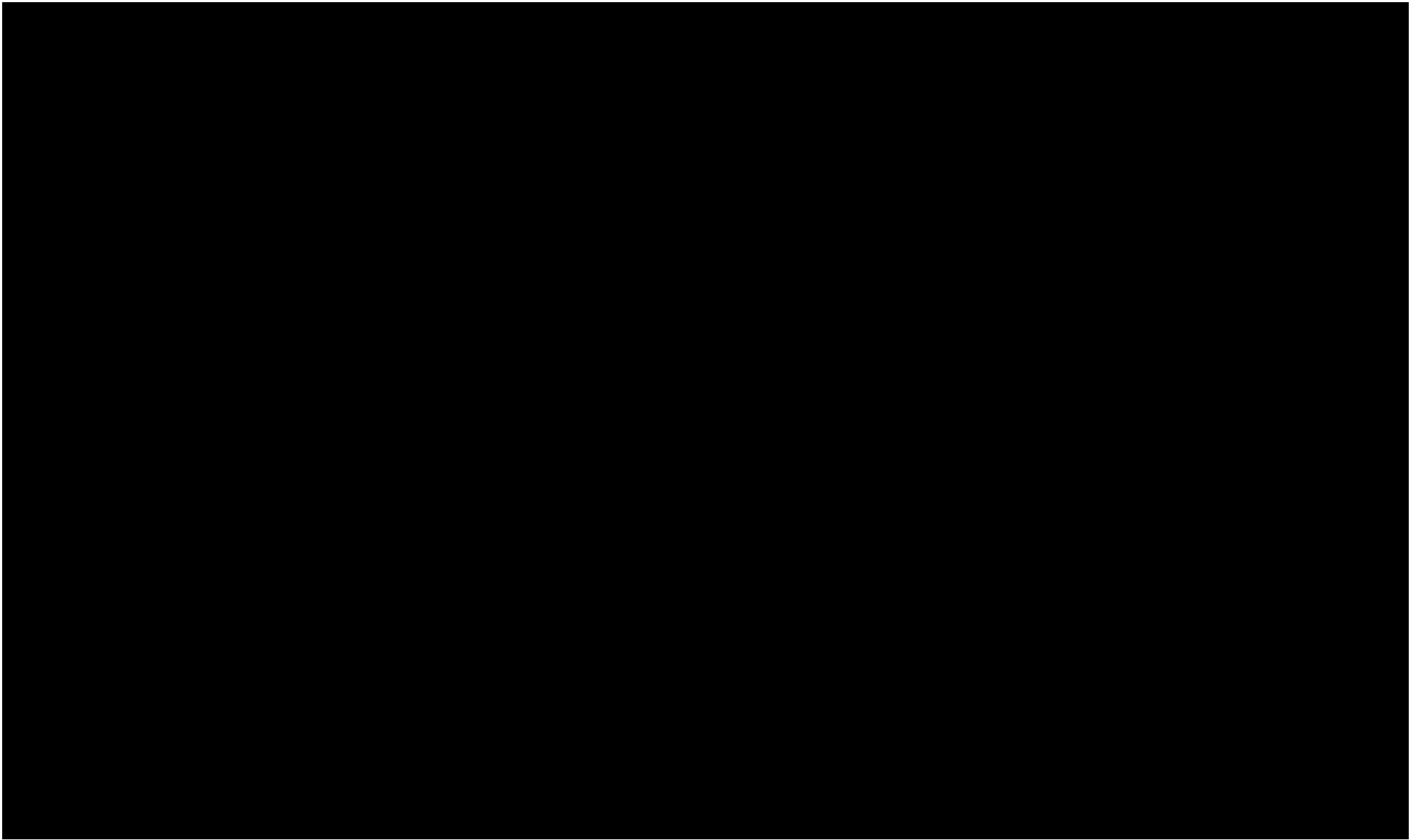


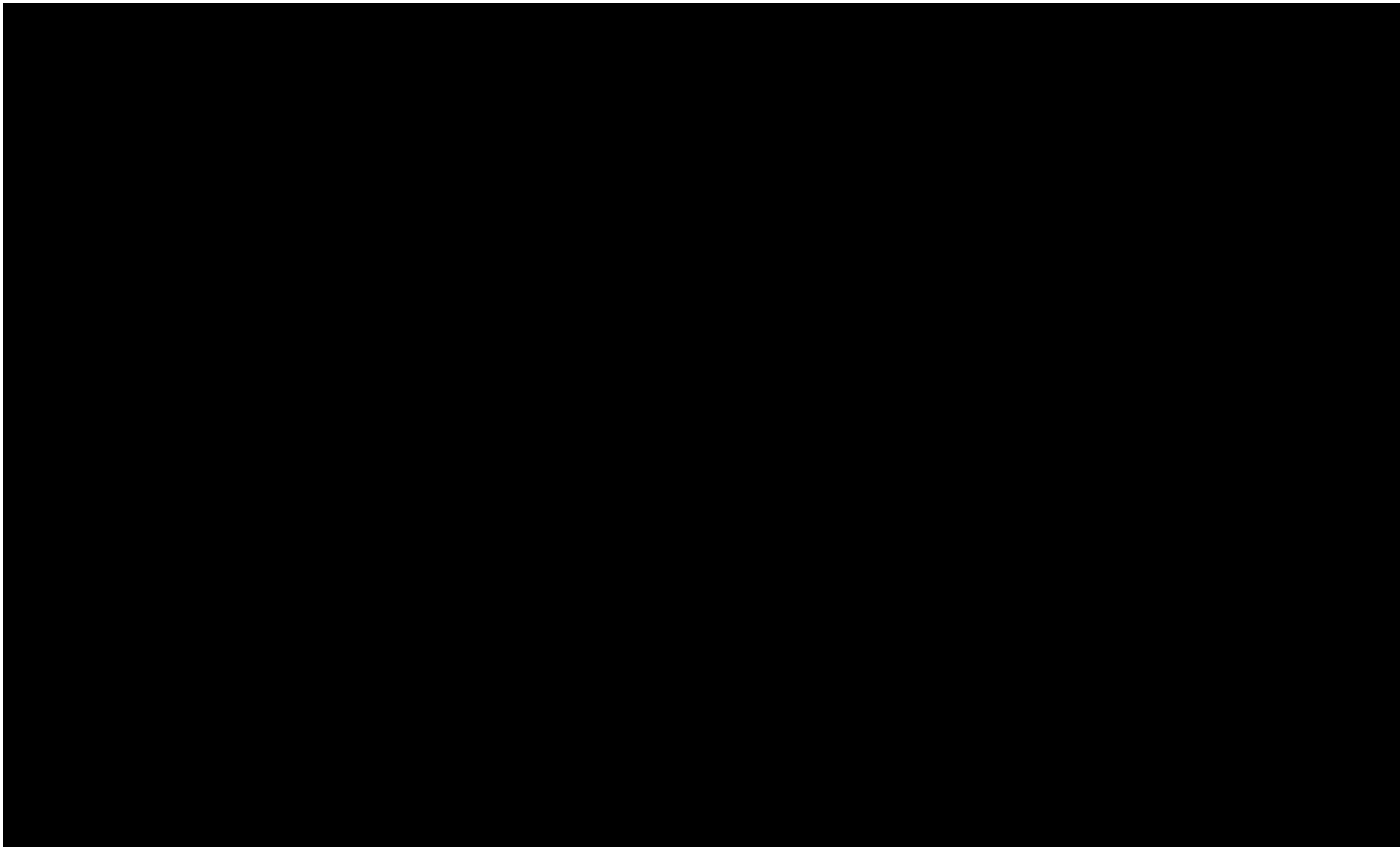


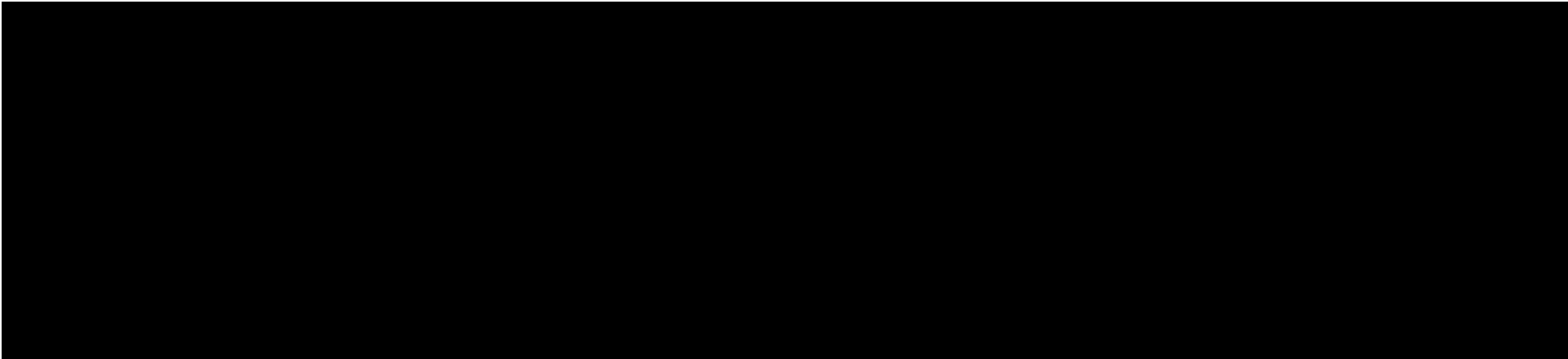












Appendix D: Outcomes Measurement and Reporting Requirements

| Ref. | Reporting Requirement | Data Requirement | Unit Record Level | Reporting period | Submission Method |
|------|------------------------------|---|-------------------------------|------------------|-------------------------------|
| 1 | Assistance Type | (a) ServiceCo must report the type of assistance provided for each Dwelling: Affordable Housing, general housing (Social Housing) or other | Dwellings | Quarterly | Submit to FACS Representative |
| 2 | CALD Status | (b) ServiceCo must report if the Tenant or Household Members born overseas and has a first language other than English or if one of their parents has those characteristics. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 3 | Complaints | (c) ServiceCo must report the number and nature of complaints received related to neighbourhood disturbances, anti-social behaviour, domestic and family disputes/violence and similar alleged offences at Sites or involving Tenants. (d) ServiceCo must report the number and nature of complaints made against ServiceCo. | SAHF Portfolio | Quarterly | Submit to FACS Representative |
| 4 | Disability Modifications | (e) ServiceCo must report whether the Dwelling has been modified for use by Tenants with a disability and if so, the extent to which the Dwellings have been modified. (f) ServiceCo must report the number of requests from Tenants or Household Members to have the Dwelling modified for use by Tenants with a disability and if so, the extent to which the Dwelling has been modified. | Dwellings | Quarterly | Submit to FACS Representative |
| 5 | Disability Status | (g) ServiceCo must report whether each Tenant or Household Members has a physical/diverse, sensory/speech, intellectual/learning or psychiatric impairment. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 6 | Dwelling Configuration | (h) ServiceCo must report the number of bedrooms in the Dwelling. | Dwellings | Quarterly | Submit to FACS Representative |
| 7 | Dwelling Details | (i) ServiceCo must report the unique identifier, unit number, street number, suburb, postcode and LGA for each Dwelling. (j) ServiceCo must report the unique identifier for any Dwelling not condition surveyed. (k) ServiceCo must report the unique identifier for any Dwelling that was surveyed and did not meet the Asset Performance Standards for Existing Dwellings. | Dwellings | Quarterly | Submit to FACS Representative |
| 8 | End of Tenancy Report | (l) For all Tenancies that end, ServiceCo must report the Tenancy Termination Reason and Where Next Housed recorded (including any additional sub reasons used). | Tenancy | Quarterly | Submit to FACS Representative |
| 9 | Former Tenant | (m) ServiceCo must report any Tenants or Household Members that were previously Social Housing or Affordable Housing Tenants and are Applicants to or have re-entered a Dwelling (when possible). | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 10 | Housing Status at allocation | (n) ServiceCo must report whether the Tenant or Household Members were homeless (had no housing) or were residing in temporary or emergency accommodation at the time of allocation. | Household | Quarterly | Submit to FACS Representative |
| 11 | Income at Signing | (o) Assessable income: ServiceCo must report the value of weekly income from all sources (excluding CRA) for all Tenants and Household Members for the first week of the Tenancy. The income used to establish eligibility of a household for receipt of housing assistance. (p) Household income: ServiceCo must report the main income source of the household (wages, Centrelink payments, other or unknown) for the first week of the Tenancy. | Household | Quarterly | Submit to FACS Representative |

| Ref. | Reporting Requirement | Data Requirement | Unit Record Level | Reporting period | Submission Method |
|------|------------------------------|---|-------------------------------|------------------|-------------------------------|
| 12 | Income | (q) Household income – ServiceCo must report the main income source of the household (wages, Centrelink payments, other or unknown) (with the most up to date information for the reporting period). (r) Assessable income – ServiceCo must report the value of weekly income from all sources (excluding CRA) for all Tenants and Household Members for the last week of the reporting period as specified and used by the agency to establish eligibility of a household for receipt of housing assistance. (s) CRA income – ServiceCo must report the weekly amount of CRA each household and Tenant is entitled to receive in the fortnight prior to data extraction. | Household | Quarterly | Submit to FACS Representative |
| 13 | Indigenous Status | (t) ServiceCo must report if a Tenant or Household Member identifies themselves as Indigenous, Aboriginal or Torres Strait Islander | Tenants | Quarterly | Submit to FACS Representative |
| 14 | Likelihood Of Transition | (u) ServiceCo must report the likelihood of the Tenant and Household Members successfully transitioning out of Social Housing or Affordable Housing in the short-term and/or long-term, as recorded in the Tenant Needs Assessment or Tenant Needs Reassessment (whichever is most recent). | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 15 | Market Rent | (v) ServiceCo must report the value of the weekly Market Rent for the dwelling (w) ServiceCo must report the method for determining Market Rent | Dwellings | Quarterly | Submit to FACS Representative |
| 16 | Tenant Details | (x) ServiceCo must report the date of birth and gender of each Tenant and Household Member. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 17 | Rent Charged | (y) ServiceCo must report the weekly rent charged to the Tenant for the last week of the reporting period (excluding CRA and charges for utilities, meals, cleaning, laundry or other facility costs). The rent charged is the amount of money the Tenant has been asked to pay. It may differ from Market Rent and may not have been received. | Dwellings | Quarterly | Submit to FACS Representative |
| 18 | Rental Arrears | (z) ServiceCo must report the value of any rental and non-rental arrears a Tenant accrues with ServiceCo. | Tenancy | Quarterly | Submit to FACS Representative |
| 19 | Targeted Assistance | (aa) Not used. | Dwellings | Quarterly | Submit to FACS Representative |
| 20 | Tenancy Details | (bb) ServiceCo must report a unique Tenancy identifier, Dwelling identifier, household identifier, start date and end date for each Tenancy. | Tenancy | Quarterly | Submit to FACS Representative |
| 21 | Tenant Needs Assessment | (cc) ServiceCo must report on the number of Tenants Needs Assessments that were not conducted or were conducted outside of the required timeframe and the extenuating circumstances (if any) that led to it not being conducted or being conducted outside of the required timeframe. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 22 | Tenant Support Services Plan | (dd) ServiceCo must report on the number of Tenant Support Services Plans that were not conducted or were completed outside of the required timeframes and the extenuating circumstances (if any) that led to it not being conducted or being conducted outside of the required timeframe. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 23 | Tenant Needs Reassessment | (ee) ServiceCo must report on the number of Tenants Needs Reassessments that were not conducted or were conducted outside of the required timeframe and the extenuating circumstances (if any) that led to it not being conducted or being conducted outside of the required timeframe. | Tenants and Household Members | Quarterly | Submit to FACS Representative |

| Ref. | Reporting Requirement | Data Requirement | Unit/Record Level | Reporting period | Submission Method |
|------|-----------------------|---|-------------------------------|------------------|-------------------------------|
| 24 | Tenant Survey | (ff) ServiceCo must provide valid results for the required Tenant Survey and Tenant Satisfaction Survey. (gg) ServiceCo must provide details of the surveys sample representativeness, including any differences between the demographic characteristics of respondents and the demographic profile of all Tenants housed by ServiceCo. (hh) ServiceCo must provide the date of last survey, number of surveys distributed, how many surveys were sent / Tenants phoned / invitations to interview attempted, numbers of surveys returned, the number of completed surveys received and if interviews were carried out. | SAHF Portfolio | Annual | Submit to FACS Representative |
| 25 | Tenant Status | (ii) ServiceCo must report the employment, education, level of educational attainment, safety and risk status of Tenants and Household Members following the completion of the Tenant Needs Assessment, Tenant Needs Reassessment and End of Tenancy Report. | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 26 | Transfer | (jj) ServiceCo must report whether each Tenancy is a transfer from public housing or another Community Housing Provider. (kk) ServiceCo must report whether a Tenancy is an internal transfer (where a household has moved from one Dwelling to another Dwelling that the same ServiceCo manages during the reporting period). | Tenants and Household Members | Quarterly | Submit to FACS Representative |
| 27 | Transfer Details | (ll) ServiceCo must report the number of transfer requests, the number of requests that were successful and the primary reasons for transfer as articulated by the Tenant or Household Members. | Tenants and Household Members | Quarterly | Submit to FACS Representative |

Appendix E: Outcomes Measurement and Reporting Framework

| | Definitions of Outcomes | Suggested Outcomes Indicators | Potential Method of Measurement |
|------------|--|--|---|
| 1. | Outcome Domain: Stability | | |
| 1.1 | Outcomes Description: Permanency - individuals have a home for the duration of their need | | |
| 1.1.1 | Individuals exit housing positively | Number of Positive Exits, Negative Exits and total exits (Indeterminate Exit, Non-Exit, Neutral Exit, and Non-Tenancy) | End of Tenancy Report |
| 1.1.2 | Individuals exit into housing stability | Number of individuals who return for housing assistance as Applicants after previously exiting | Tenant details, Housing Pathways |
| 1.1.3 | Individuals are supported to sustain stable housing that is affordable, safe and secure | Length of tenancies in the same Dwelling Most frequent response (mode) to Tenant Survey question 8, 9 and 14 and distance travelled during a Tenancy | Dwelling details, Tenancy details and Tenant Survey |
| 1.1.4 | Stable housing for individuals who were homeless or at risk of homelessness | Number of individuals who were homeless or at risk of homelessness (at allocation) located in the same Dwelling 12 months after signing the Residential Tenancy Agreement | Tenant Needs Assessment, Dwelling details, Tenancy details and housing status at allocation |
| 1.1.5 | Individuals are satisfied with the appropriateness and location of their Dwelling | Level of satisfaction individuals have with the appropriateness and location of their Dwelling | Tenant Survey, Dwelling details |
| 1.1.6 | Individuals are satisfied with the adequacy of Dwelling modifications and the response to any disability modification requests made to ServiceCo | Percentage of individuals who report satisfaction with the adequacy of disability modifications and the response to any disability modification requests made to ServiceCo | Tenant Survey, Dwelling details |
| 1.1.7 | Individuals do not negatively exit or request transfers as a result of dissatisfaction with Dwelling features, location or Support Services | Number of Negative Exits or Tenant requested transfers where the primary reason given is dissatisfaction with Dwelling features, location or Support Services | Dwelling details, Tenancy details, End of Tenancy Report and transfer documentation |
| 1.1.8 | Individuals are relocated or transferred to a new Dwelling located in the same LGA or school catchment as the previous Dwelling | Percentage of transfers or relocations where the new Dwelling is located in the same LGA or school catchment as the previous Dwelling | End of Tenancy Report and transfer documentation |
| 1.1.9 | Avoidance of Under-Occupancy and Overcrowding | Number of Dwellings assessed as Under-Occupancy, Overcrowded or Severely Overcrowded | Dwelling details, Tenancy details, Dwelling configuration and Tenant details |
| 1.2 | Outcome Description: Support Services - individuals have access to Support Services that meet their needs | | |
| 1.2.1 | Individuals report that the Support Services they currently access meet their needs | Number of individuals who report that the Support Services they currently access meet their needs | Tenant Survey |
| 1.2.2 | Individuals are satisfied with ServiceCo's performance facilitating access to Support Services | Level of satisfaction of individuals have with ServiceCo's performance facilitating access to Support Services | Tenant Survey |
| 1.3 | Outcomes Description: Social Wellbeing - individuals participate and are included in their community | | |
| 1.3.1 | Individuals have strong support networks | Most frequent response (mode) to Tenant Survey question 6 and distance travelled during a Tenancy | Tenant Survey |

| | Definitions of Outcomes | Suggested Outcomes Indicators | Potential Method of Measurement |
|-------|---|---|--|
| 1.3.2 | Individuals participate in community activities | Most frequent response (mode) to Tenant Survey question 7 and distance travelled during a Tenancy | Tenant Survey |
| 1.4 | Outcomes Description: Physical Wellbeing - individuals are safe at home and in the community | | |
| 1.4.1 | Individuals feel safe and secure in their home and in the community | Most frequent response (mode) to Tenant Survey question 8 and 9 and distance travelled during a Tenancy | Tenant Survey |
| 1.4.2 | Individuals do not experience violence and anti-social behaviour (especially school aged children or young people who may be at risk of significant harm) | Number of reported violent/anti-social incidents, Number of End of Tenancies triggered by Tenant requested transfers due to the Tenant or Household Members being at risk, harassed or equivalent, and the number of End of Tenancies triggered by Breaches where the reason given was eviction or termination as a result of anti-social behaviour | End of Tenancy Report and complaints records |
| 2. | Outcomes Domain: Economic independence | | |
| 2.1 | Outcomes Description: Economic - individuals are able to improve their economic conditions through employment | | |
| 2.1.1 | Individuals in, or seeking employment, have a higher median weekly income | Median weekly income for employed individuals (excluding CRA) | Tenant Needs Assessment, Tenant Needs Reassessment, review of Tenant eligibility and consent to share information with the Department of Human Services |
| 2.1.2 | Unemployed or underemployed individuals achieve a Partial or Pathway Employment Outcome or Full Employment Outcome (where relevant) | Number of individuals who progress to achieve a Partial, Pathway or Full Employment Outcome for a 4, 12, 13 or 26 week period (where relevant) | Tenant Needs Assessment, Tenant Needs Reassessment, End of Tenancy Report and consent to share information with local employment services providers and the Department of Human Services |
| 2.1.3 | Unemployed or underemployed individuals are Actively Seeking Work and meet any employment services Mutual Obligation Requirements (where relevant) | Number of individuals Actively Seeking Work and/or have registered with an employment service provider and meet their Mutual Obligation Requirements (where relevant) | Tenant Needs Assessment, Reassessment, End of Tenancy Report and consent to share information with local employment services providers and the Department of Human Services |
| 2.1.4 | Individuals are able to manage their finances in a way that avoids rental arrears | Number of tenancies with a rental arrears balance above zero Number of tenancies with rental arrears in excess of the 'metric rent outstanding' threshold set in the National Regulatory System for Community Housing Registration Return Guide | Tenancy charges or rent monitoring |
| 2.2 | Outcomes Description: Learning and Education - individuals have access to education | | |
| 2.2.1 | Improved education outcomes of school aged children and young people | Comparative literacy and numeracy (NAPLAN) scores for school aged children and young people and the Index of Community Socio-educational Advantage Weighted average literacy and numeracy (NAPLAN) scores for the schools attended by school aged children and young people | Tenant Needs Assessment, Tenant Needs Reassessment, consent to share information with local schools, MySchool.edu.au and the Australian Curriculum, Assessment and Reporting Authority |
| 2.2.2 | School aged children and young people are enrolled in and satisfactorily attend school | Proportion of school aged children and young people who are enrolled in and satisfactorily attend school | Tenant Needs Assessment, Tenant Needs Reassessment, and consent to share information with local schools and the Department of Education |

| | Definitions of Outcomes | Suggested Outcomes Indicators | Potential Method of Measurement |
|-------|---|--|--|
| 2.2.3 | School aged children and young people complete Year 10 and go on to complete Year 12 | Proportion of school aged children and young people who complete Year 10 and go on to complete Year 12 | Tenant Needs Assessment, Tenant Needs Reassessment, and consent to share information with local schools and the Department of Education |
| 2.2.4 | Individuals enrol in further education or training (includes university, TAFE, vocational training or equivalents) (where relevant) | Number of individuals who enrol in further education or registered training (includes education activities as part of employment services) | Tenant Needs Assessment, Tenant Needs Reassessment and consent to share information with local RTOs, TAFE NSW, and local employment services providers |
| 2.2.5 | Individuals complete further education or training (includes university, TAFE, vocational training or equivalents) | Number of individuals who complete further education or registered training (includes education activities completed as part of employment services) | Tenant Needs Assessment, Tenant Needs Reassessment and consent to share information with local RTOs, TAFE NSW, and local employment services providers |
| 2.3 | Outcomes Description: Personal Wellbeing - individuals are empowered to make choices and have control over their lives | | |
| 2.3.1 | Individuals progress towards a positive outlook on life | Most frequent response (mode) to Tenant Survey question 3 and distance travelled during a Tenancy | Tenant Survey |
| 2.3.2 | Individuals progress towards choosing how they live their lives | Most frequent response (mode) to Tenant Survey question 4 and distance travelled during a Tenancy | Tenant Survey |
| 2.3.3 | Individuals progress towards having comfort about the balance between what they do for themselves and what they rely on others for | Most frequent response (mode) to Tenant Survey question 5 and distance travelled during a Tenancy | Tenant Survey |

Appendix F: Response times

| Timeframe | Issue | Example of issue |
|---|---|---|
| <p>Urgent</p> <p>Attend & make safe within 4 hours</p> <p>90% compliance is assessed as reasonable performance target</p> | <p>Urgent repairs</p> <p>Any fault which could lead to death or injury to persons or serious damage to the property</p> | <ul style="list-style-type: none"> • gas leaks; • fire; • live bare electrical wires in an accessible location; • lock-out of seniors and incapacitated tenants; • burst water pipe; • failure of critical security functions; • commercial fire detection; • commercial duress detection; • making facility secure after forced entry; • no lights or power to facility; • serious water penetration to facility; • serious storm damage; • fully blocked sewerage (health hazard); • smoke alarm continually activating; • electronic security not operating correctly; • major structural damage endangering the occupants; or • critical hygiene waste disposal systems. |
| <p>Priority</p> <p>Within 24 hours</p> <p>80% compliance is assessed as reasonable performance target</p> | <p>Priority repairs</p> <p>Faults which cause serious inconvenience to the client such as:</p> | <ul style="list-style-type: none"> • blocked drains (minor, not health hazard); • toilet cistern not working or overflowing; • broken locks (external doors); • broken windows; • no hot water; • full stove not working; • no power to multiple power points; • no power to multiple lights; • smoke alarm missing or inactive; • automatic entry doors at a commercial property not operating correctly; • hot/cold water dispensing units not operating; or • security lights not working. |

| | | |
|--|---|--|
| <p>Normal</p> <p>Within 7 days</p> <p>80% compliance is assessed as reasonable performance target</p> | <p>Normal repairs</p> <p>Faults which cause inconvenience to the client, or may in the long term, affect the value of the Facility such as:</p> | <ul style="list-style-type: none"> • slow dripping taps; • element not working on stove; • water hammer; • doors jamming; • leaking gutters or downpipes; or • power and lights not working (single points). |
| <p>Non-urgent</p> <p>Within 21 days</p> <p>80% compliance is assessed as reasonable performance target</p> | <p>Non-urgent repairs</p> <p>Maintenance of a non-urgent nature</p> | |

Appendix G: Annual Outcomes Report Template

| | | |
|--|---|--|
| Outcome Domain: | <i>[ServiceCo to enter relevant Outcome Domain]</i> | |
| Outcome Description: | <i>[ServiceCo to enter relevant Outcome Description – use one table per Outcome Description]</i> | |
| Reporting period | <i>[ServiceCo to enter the reporting period the commentary below pertains to]</i> | |
| Results/achievements for the reporting period: | <p>The analysis provided by ServiceCo in this report must be consistent with the Outcomes Measurement and Reporting Framework set out in Appendix E. FACS recognises that the Outcomes Measurement and Reporting Framework has been designed to accommodate all potential Tenants housed by the Program and the applicability of components of the Framework will differ from person to person. FACS intends that ServiceCo focuses its report on those outcomes which are most relevant to the goals and needs of the Tenants and Household Members currently being housed by ServiceCo.</p> <ul style="list-style-type: none"> (i) As a minimum, the Annual Outcomes Report should incorporate the following minimum information requirements: (ii) commentary that focuses on any relevant insights from analysis of outcomes data, as well as providing an explanation for the results to assist interpretation (where possible); (iii) any instances and evidence of factors outside of the control of ServiceCo impacted the results in any way; and (iv) any instances and evidence of ServiceCo believes the result is attributable to the Program or Services provided by ServiceCo or its support partners (or, where there are no support partners, Support Service providers). <p>ServiceCo must only present segmented cohorts results using demographics and avoid using any criteria for segmentation that may be disputable and provide the Method of Measurement used (including computation approach) to any outcomes results cited. This should include the numerator/denominator and any exclusions that have been applied to the numerator/ denominator.</p> | |
| Future performance: | <ul style="list-style-type: none"> (v) ServiceCo must provide commentary on the degree to which performance against Outcome Domains or Outcome Descriptions could be improved in the short-term and/or long-term by ServiceCo or other Relevant Stakeholders, including FACS; and (vi) ServiceCo must provide commentary on the cost/difficulty of strategies/approaches required to improve performance. | |
| Outstanding issues | | Proposed solution/actions to rectify outstanding issues |
| <ul style="list-style-type: none"> (vii) ServiceCo must describe issues it has faced: <ul style="list-style-type: none"> ○ collecting data, including involving Tenants and other Relevant Stakeholders; and ○ analysing or drawing conclusions with the data. (viii) ServiceCo must raise any concerns it has on the validity of particular Outcome Descriptions, Outcomes Indicators or Methods of Measurement. | | <p>For each of the outstanding issues (if any), ServiceCo must provide appropriate solutions or actions to rectify the issue, including any analysis on the implications of suggested changes, solutions or actions.</p> |

Appendix H: Tenant Needs Assessment Template

Note:

The following form will be used to collect Needs Assessment information from Tenants and Household Members.

| | | | |
|---------------------------|--|-----------------------|---|
| Name | | Tenancy status | Primary Tenant Household Member <i>Please circle</i> |
| Address of tenancy | | | |
| Date of Assessment | | | |

| Initial Tenant Needs Assessment | | | | | |
|--|--|----------|----------|---------------|----------------|
| Section 1 - Overall Health and Wellbeing | | | | | |
| How would you describe your overall health and wellbeing? | Poor 1 2 | Fair 3 4 | Good 5 6 | Very Good 7 8 | Excellent 9 10 |
| How do you feel your health and wellbeing could be improved? For example exercise, quit smoking/drinking, improved diet, less stress, better social network, improved relationships. | | | | | |
| Section 2 - Physical Wellbeing | | | | | |
| Do you experience/suffer with physical conditions that you feel affect your ability to function? | Yes No <i>Please circle</i> <i>Please provide additional details of these conditions</i> | | | | |
| Is your condition being treated/managed? | Yes No <i>Please circle</i> <i>Please provide additional details of how it is treated or managed</i> | | | | |

| | |
|--|---|
| Is the condition likely to degenerate (i.e. become worse over time)? | <div>Yes</div> <div>No</div> <div>Please circle</div> <div>Please provide additional details</div> |
| Section 3 – Mental and Emotional Wellbeing | |
| What are you most stressed about? | |
| Do you experience/suffer from any mental health conditions? | <div>Yes</div> <div>No</div> <div>Please circle</div> <div>Please provide additional information</div> |
| Are you currently receiving any treatment for your mental health condition/s? | <div>Yes</div> <div>No</div> <div>N/A</div> <div>Please circle</div> <div>Please provide additional information</div> |
| Do you experience/suffer from any addictions? (i.e. drugs or alcohol). | <div>Yes</div> <div>No</div> <div>Please circle</div> <div>Please provide additional information</div> |
| Are you currently receiving any treatment for the addiction/s? | <div>Yes</div> <div>No</div> <div>N/A</div> <div>Please circle</div> <div>Please provide additional information</div> |
| What support including support services, family, friends etc. do you have in place to support you managing your condition/addiction? | |
| What do you feel could be done to improve your mental health (even if you do not suffer from a diagnosed mental illness/condition)? | |

| Section 4 – Current Financial Situation | | | | | |
|---|--|-------------|----------|---------------|-------------------|
| How would you describe your current financial situation? | Poor 1 2 | Fair 3 4 | Good 5 6 | Very Good 7 8 | Excellent 9 10 |
| Do you have any outstanding debts? | Yes No Please circle Please provide additional information | | | | |
| Do you have any outstanding fines? (including fines you are currently paying off) | Yes No Please circle Please provide additional information | | | | |
| How well do you believe you budget for your expenses? | Poor 1 2 | Fair 3 4 | Good 5 6 | Very Good 7 8 | Excellent 9 10 |
| Are you aware of any financial assistance you may be eligible to receive? | Yes No Please circle Please provide additional information | | | | |
| Would you consider financial counselling/budgeting? | Yes No Please circle Please provide additional information | | | | |
| Section 5 – Employment | | | | | |
| Are you currently undertaking paid or unpaid work? | Yes No Please circle Please provide additional information | | | | |

| | | | | |
|--|-----------------------------|--|------------------------------------|---------------------------------------|
| If you answered no to the previous question, when was the last time you participated in either paid or unpaid work? | | | | |
| Do you feel you have the capacity to participate in paid or unpaid work? | Yes <i>Please circle</i> | No <i>Please provide additional information</i> | | |
| What do you think would prevent you from participating in paid or unpaid work? | | | | |
| If you were to work, regardless of your capacity to work, in what area would you like to undertake paid or unpaid work? | | | | |
| Section 6 – Education and Training | | | | |
| What level of school education did you complete? | | | | |
| Do you hold any other qualifications? (If yes, please list) | | | | |
| Would you like to participate in any further education and or training? | Yes <i>Please circle</i> | No <i>Please provide additional information</i> | | |
| What would stop you from participating in any further education and or training? | | | | |
| Section 7 – Support and Community Engagement | | | | |
| What support networks do you have in place? | <i>Family</i> | <i>Friends</i> | <i>Support Services</i> | <i>Other</i> |
| Please provide details of the support networks you have circled | | | | |
| What support networks do you have in place? –please circle relevant | <i>Support Service Name</i> | <i>Caseworker Name</i> | <i>Caseworker Contract Details</i> | <i>Level of Satisfaction with the</i> |

| | | | | |
|--|---------------------------------------|----|--|------------------------|
| | | | | Support Service |
| Please provide details of the support networks you have circled? | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Do you currently attend any community activities? | Yes | No | | |
| | Please circle | | | |
| | Please provide additional information | | | |
| What do you think would prevent you from participating in community activities? | | | | |
| What type of transport do you have access to? | | | | |
| What do you enjoy doing for leisure and relaxation? | | | | |
| <u>Section 8</u> – Housing | | | | |
| What was your previous housing situation before being made an offer of housing with Compass? | | | | |
| How often have you experienced homelessness and what do you believe was the cause of your homelessness? | | | | |
| What is your housing goal? | | | | |
| What would stop you from achieving this housing goal? | | | | |
| What do you believe could cause your current tenancy to be at risk? | | | | |

Please note completion of this section is optional

| | | | |
|--|--|---------------------------|----------------------------|
| Child's name | Child's age | School they attend | Current school year |
| Parent name | | | |
| Signature of parent providing consent for the assessment | | Date of consent | |
| Section to be completed by the Worker | | | |
| Insert the code for the core reason the tenancy has ended <i>For the relevant list of codes please refer to the attached HOMES Tenancy Termination Reasons Codes</i> | | | |
| Where will the tenant be housed next? | | | |
| Did the previous tenant needs assessment predict the exit? If no what has changed? | <p style="text-align: center;">Yes No Please circle Please provide additional information</p> | | |
| Did Compass contribute to the transition via the support offered? | <p style="text-align: center;">Yes No Please circle Please provide additional information</p> | | |
| Did the tenant enter into paid employment before exiting the property? | <p style="text-align: center;">Yes No Please circle Please provide additional information</p> | | |

| | |
|---|--|
| <p>Did the tenant achieve a qualification through training or education before exiting?</p> <p>If yes what level of qualifications?</p> | <p>Yes No</p> <p style="text-align: center;"><i>Please circle</i></p> <p><i>Please provide additional information</i></p> |
| <p>What is the likelihood of the tenant returning to social housing?</p> | <p>Unlikely to Return May Require Social Housing Again Has Remained in the Social Housing Market</p> |

| | | | |
|--------------------------|--|---------------------------|--|
| Worker's Name | | Worker's Signature | |
| Worker's Position | | Date of Signature | |

| | | | |
|-------------------------------------|--|--|--|
| Tenant/Household Member Name | | Tenant/Household Member Signature | |
| | | Date of Signature | |

| | | | |
|---------------------|--|--------------------------|--|
| Witness Name | | Witness Signature | |
| | | Date of Signature | |

Appendix I: Tenant Support Services Plan Template

Note:

The Tenant Support Services Plan will use the template below:

| | | | |
|---------------------------|--|-----------------------|---|
| Name | | Tenancy status | Primary Tenant Household Member <i>Please circle</i> |
| Address of tenancy | | | |
| Date of assessment | | | |

| Tenant Support Services Plan | |
|---|--|
| Section 1 – Health and Wellbeing Support | |
| Goal | |
| Challenges | |
| Current Support in Place | <div>Yes No</div> <div><i>Please circle</i></div> <div><i>Provide additional information</i></div> |
| Referral to a new support service | <div>Yes No</div> <div><i>Please circle</i></div> <div><i>Provide additional information</i></div> |
| Action required by whom and when | |
| Section 2 – Financial Support | |
| Goal | |
| Challenges | |
| Current Support in Place | <div>Yes No</div> <div><i>Please circle</i></div> <div><i>Provide additional information</i></div> |
| Referral to a new support service | <div>Yes No</div> <div><i>Please circle</i></div> <div><i>Provide additional information</i></div> |
| Action required by whom and when | |

| Section 3 – Education and Training Support | |
|--|--|
| Goal | |
| Challenges | |
| Current Support in | Yes No |
| Place | <i>Please circle</i> <i>Provide additional information</i> |
| Referral to a new support service | Yes No <i>Please circle</i> <i>Provide additional information</i> |
| Action required by whom and when | |
| Section 4 – Work Paid or Unpaid Support | |
| Goal | |
| Challenges | |
| Current Support in Place | Yes No <i>Please circle</i> <i>Provide additional information</i> |
| Referral to a new support service | Yes No <i>Please circle</i> <i>Provide additional information</i> |
| Action required by whom and when | |
| Section 5 – Housing Support | |
| Goal | |
| Challenges | |
| Current Support in Place | Yes No <i>Please circle</i> <i>Provide additional information</i> |
| Referral to a new support service | Yes No <i>Please circle</i> <i>Provide additional information</i> |
| Action required by whom and when | |

This Tenant Support Service Plan has been completed in consultation with (insert name of Tenant or Household Member) and both parties have agreed on the actions contained within the Tenant Support Services Plan.

(insert name of Tenant or Household Member) (Tenant or Household Member (delete whichever isn't relevant)) agrees that should there be a change in circumstances they will notify Compass Housing Services.

By signing this Tenancy Support Services Plan you understand you are consenting to the exchange of all relevant personal information pertaining to you between Compass Housing Services Co Ltd and all Support Services named within this Tenancy Support Services Plan.

This consent will be valid for the period of your fixed term lease agreement.

I _____ agree that all relevant information pertaining to me for the ongoing support of my tenancy may be disclosed to the relevant Compass Housing Services Co Ltd and other relevant parties as necessary. I understand this information will remain confidential and will not be disclosed to any party outside of the relevant parties (e.g. Referring Agency or Project Facilitation Group) unless for mandatory reporting requirements pursuant to Child Protection under the *Children and Young Persons (Care and Protection) Act 1998*.

| | | | |
|--------------------------|--|---------------------------|--|
| Worker's Name | | Worker's Signature | |
| Worker's Position | | Date of Signature | |

| | | | |
|-------------------------------------|--|--|--|
| Tenant/Household Member Name | | Tenant/Household Member Signature | |
| | | Date of Signature | |

| | | | |
|---------------------|--|--------------------------|--|
| Witness Name | | Witness Signature | |
| | | Date of Signature | |

Confidential

Schedule 19 – Expert Determination Agreement

Social and Affordable Housing Fund - Expert Determination Agreement

Department of Family and Community Services (FACS)

and

Compass Housing Services Co Ltd (ServiceCo)

ACN 002 862 213

and

[Insert] (Expert)

Expert Determination Agreement made on *[insert]*

Parties The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**)

Compass Housing Services Co Ltd of Suite 1/44 Beaumont Street, Hamilton, NSW, 2303
(**ServiceCo**)

[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause 37.2 (Selection of expert) of the Services Agreement or the equivalent clause in each Relevant Agreement] (**Expert**)

Recitals

- A. The background to the Service Package is set out in the Services Agreement.
- B. On *[insert]*, [the Parties agreed / (*insert party name*) chose] that the matter described in Schedule 1 be determined by an Expert appointed under clause *[insert relevant clause reference]* of the Relevant Agreement.
- C. In accordance with clause *[insert relevant clause reference]* of the Relevant Agreement, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement and the Services Agreement.

Operative provisions

1. Definitions

1.1 Services Agreement definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meanings given to them in the Services Agreement.

1.2 Definitions

Agreement means this agreement and includes all schedules, exhibits, attachments and annexures to it.

Code of Conduct means the code of conduct set out in section 2 of Schedule 2.

Matter means a dispute under, arising out of, or in connection with the Relevant Agreement and referred to expert determination under clause *[insert relevant clause reference]* of the Relevant Agreement.

Party means *[insert party names]*.

Services Agreement means the document entitled "Social and Affordable Housing Fund – Services Agreement" between FACS and ServiceCo dated *[insert date]*.

Relevant Agreement means *[insert the relevant Service Package Document under which the Matter arose]*.

Rules means the "Rules for Expert Determination Process" set out in Schedule 2.

Schedule of Fees and Disbursements means the fees and disbursements contained in Schedule 3.

1.3 Interpretation

In this Agreement:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Agreement and Schedule references)**: a reference to:
- (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(Party)**: a reference to a party includes that Party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Standards)**: a reference to a Standard includes that Standard as amended or updated from time to time;
- (i) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **(“includes”)**: “includes” and “including” will be read as if followed by the phrase “(without limitation)”;
- (k) **(“or”)**: the meaning of “or” will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **(“\$”)**: a reference to “\$”, AUD or dollar is to Australian currency;
- (n) **(Business Day)**: if the day on or by which anything is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(day)**: except as otherwise provided in this Agreement or where a reference is made to 'Business Days', day means a calendar day;
- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;

- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) **(obligations and Liabilities)**: a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (s) **(“may”)**: except to the extent that FACS is expressly required to act reasonably in exercising a power, right or remedy, the term “may”, when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion and FACS has no obligation to do so;
- (t) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (i) is reconstituted, renamed or replaced, or if its powers or functions are transferred to, or assumed by, another Entity, this Agreement is deemed to refer to that other Entity; or
 - (ii) ceases to exist, this Agreement is deemed to refer to that new Entity which serves substantially the same purpose or object as the former Entity;
- (u) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
- (v) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2. Appointment of Expert

- (a) **(Parties to appoint Expert)**: The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) **(Agreement of conditions)**: The Parties agree that:
 - (i) the Expert will act as an expert and not as an arbitrator;
 - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence do not apply to the determination; and
 - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules including the Code of Conduct.
- (c) **(Independence and bias)**: If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert’s capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

3. Confidentiality

- (a) Subject to clause 3(b), all proceedings and submissions relating to the determination (including the fact that any step in the determination is

occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential.

- (b) No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any person except:
 - (i) with the prior written consent of both Parties;
 - (ii) as may be required by Law;
 - (iii) for the purpose of subsequent arbitration; or
 - (iv) to the extent necessary to enforce the Expert's determination.

4. Costs and fees

- (a) **(Parties joint and severally liable):** As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.
- (b) **(Calculation of costs and fees):** The Parties agree, subject to the terms of the Relevant Agreement, as between themselves that:
 - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in any determination.

5. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all Claims or Liabilities in connection with any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

6. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

7. Governing Law and jurisdiction

- (a) **(Governing Law):** This Agreement is governed by, and must be construed according to, the Laws of New South Wales, Australia.
- (b) **(Jurisdiction):** Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

Schedule 1 - Matter

[Insert description of matter]

Schedule 2 - Rules for Expert Determination Process

1. Commencement

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules, including the Code of Conduct.

2. Code of Conduct

- (a) The function of the Expert is to make a determination of the Matter in accordance with the Relevant Agreement, the Services Agreement and this Agreement, including these Rules and the Code of Conduct.
 - (b) The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in these Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
 - (c) The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
 - (d) The Expert must disclose to both Parties all information and documents received.
 - (e) If a Party fails to make a written submission, the Expert may continue with the process.
 - (f) Subject to section 4 of these Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.
-

3. Written submissions

- (a) Within 5 Business Days after the date this expert determination process begins, the Party who gave notice under clause 37.1 (*Expert determination*) of the Services Agreement or the equivalent clause of the Relevant Agreement (**Party A**) must give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
 - (b) Within 5 Business Days after the statement in section 3(a) served, the other Party must give Party A and the Expert a written response to Party A's submissions.
 - (c) If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in section 3(b) within the time allowed by the Expert.
 - (d) If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.
-

4. Conference

- (a) The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney, Australia.
-

- (b) At least 5 Business Days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- (c) The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under section 4(b), the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the expert determination process.
- (d) The Parties:
 - (i) may be accompanied at a conference by legal or other advisers; and
 - (ii) subject to the terms of this Agreement and the Relevant Agreement, will be bound by any procedural directions given by the Expert in relation to the expert determination process.
- (e) The conference must be held in private.
- (f) If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

5. General

- (a) In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Relevant Agreement, this Agreement and these Rules.
- (b) Subject to section 4(c), meetings and discussions with the Expert must only take place in the presence of both Parties.
- (c) Without limiting clause 2(c) of this Agreement, the Expert must:
 - (i) inform the Parties of:
 - A. any relationship or interest with the Parties or their respective Associates;
 - B. any interest the Expert has in the matters in dispute; and
 - C. any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially,
 immediately upon becoming aware of any such circumstance; and
 - (ii) upon making any disclosure under this section 5(c), unless and until the Parties agree otherwise, terminate the proceedings.

6. The determination

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 days after the Expert's acceptance of appointment, the Expert must:
 - (i) determine the Matter between the Parties; and
 - (ii) notify the Parties of that determination.
- (b) The determination of the Expert must:
 - (i) be in writing, stating the Expert's determination and giving reasons;

- (ii) be made on the basis of the submissions (if any) of the Parties, the conference (if any) and the Expert's own expertise; and
 - (iii) meet the requirements of the Relevant Agreement.
- (c) To the extent permitted by Law, the Expert's determination will be final and binding on the Parties, unless a notice of dissatisfaction is given in accordance with clause 37.4(a) (*Notification*) of the Services Agreement.

7. Costs

Security for costs of the Expert must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

8. Modification

These Rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

9. Proportionate liability

Notwithstanding anything else, to the extent permissible by Law, the Expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to Expert determination.

Schedule 3 - Schedule of Fees and Disbursements

[Insert Expert's fees and disbursements]

SIGNED as an agreement

[Insert execution blocks]

Schedule 20 – Option to Lease

1. Definitions

For the purposes of this Schedule, the following definitions shall apply:

Lease means a lease comprised of:

- (a) Lease – form 07L (as updated from time to time or, if that registrable form is no longer used, the standard registrable lease form that has replaced it) completed in accordance with section 2.5(c); and
- (b) conditions substantially in the form contained in Annexure A to this Schedule as completed in accordance with section 2.5(c).

Option Condition means FACS has given notice of termination to ServiceCo under clause 32.4 (*Default Termination Event*) of this Agreement.

Option Fee means [REDACTED]

Option Notice Service Date means the date on which notice is given by FACS in accordance with section 2.3.

Option Period means the period beginning on the date of satisfaction of the Option Condition and ending at 5.00pm on the date that is 10 days after the market rent is determined in accordance with section 2.2 or any other date the parties may agree.

Option to Lease means the option to lease granted by ServiceCo under section 2.1.

Valuer means a valuer who has the following qualifications:

- (a) current membership of the API or the Royal Institution of Charter Surveyors; and
- (b) at least 5 years' experience in valuing real property and infrastructure similar to the Sites and Relevant Infrastructure.

2. Option to Lease

2.1 Grant of Option to Lease

- (a) In consideration of the payment of the Option Fee by FACS to ServiceCo, ServiceCo grants an option to FACS to lease any Dwelling which, at the date of the exercise of the option, is subject to a Residential Tenancy Agreement with a Social Housing Tenant and the corresponding Relevant Infrastructure subject to:
 - (i) satisfaction of the Option Condition in respect of that Dwelling and the corresponding Relevant Infrastructure; and
 - (ii) the terms and conditions of this Agreement.
- (b) ServiceCo acknowledges receipt of the Option Fee.

2.2 Determination of market rent

- (a) Within 5 days of the satisfaction of the Option Condition, ServiceCo and FACS must meet in good faith to discuss and agree on the identity of an independent Valuer to be jointly engaged to determine the market rent for the following 12 Month period for the Dwellings and Relevant Infrastructure the subject of the Option Condition.
- (b) If the parties fail to jointly appoint a Valuer within 30 days after FACS gives notice under clause 32.4(a) (*Rights*) of this Agreement, either party may after written notice to the other refer the matter to the President of the API, to appoint a Valuer on behalf of the parties.
- (c) The parties agree that in determining the market rent for the following 12 Month period of the Dwellings and Relevant Infrastructure the subject of the Option Condition, the Valuer shall be instructed to take into account in determining the valuation comparable properties in proximity to the subject Dwellings and Relevant Infrastructure, however without regard to any particular use of the Dwellings for Social Housing and Affordable Housing.
- (d) The Valuer must give written reasons for the determination and the parties agree that the rent under any Lease is determined by the valuation of the Valuer. The valuation of the Valuer is final and binds the parties, unless in the event of manifest error, in which case clause 37 (*Expert determination*) of this Agreement applies.

2.3 Exercise of Option to Lease

- (a) FACS may exercise the Option to Lease during the Option Period by giving written notice to ServiceCo and identifying in its absolute discretion:
 - (i) any Dwellings (**Nominated Dwellings**) which FACS proposes to lease pursuant to the Option to Lease;
 - (ii) Relevant Infrastructure corresponding to those Dwellings (**Nominated Relevant Infrastructure**) which FACS proposes to lease pursuant to the Option to Lease;
 - (iii) the 'Commencement Date' of the Lease which may be up to 120 days from the date of the notice; and
 - (iv) the term of the Lease as nominated by FACS which may be up to, but not exceeding, five years, unless:
 - A. the end date of the Option Period is 5 years or less from the Final Expiry Date, then the maximum term of the lease can be no longer than the period left before the Final Expiry Date; or
 - B. ServiceCo consents to a longer term, in which case the term will be that longer term.

2.4 Appointment of nominee

- (a) At any time during the Option Period, but prior to the exercise of the Option to Lease, FACS may appoint a nominee to lease the Nominated Dwellings and Nominated Relevant Infrastructure by giving written notice of such nominee to ServiceCo which:

- (i) has been executed by both FACS and the nominee; and
- (ii) states that the nominee confirms it has taken a nomination of the Option to Lease and agrees that it is bound by the terms of this Schedule as if it were FACS,

(Nomination Notice).

- (b) On and from the date that FACS gives the Nomination Notice to ServiceCo the nominee will be bound by all of the obligations of FACS under this Schedule.

2.5 Exercise of Option to Lease

If the Option to Lease is validly exercised in respect of particular Dwellings and Relevant Infrastructure:

- (a) FACS (or FACS' nominee where one has been nominated under section 2.4) and ServiceCo are regarded as having entered into the Lease as lessee and lessor respectively;
- (b) the date of the Lease is the Option Notice Service Date;
- (c) FACS must deliver an unexecuted copy of the Lease with all necessary particulars completed to ServiceCo or ServiceCo's solicitors within 3 Business Days' after the Option Notice Service Date, such particulars to be completed as follows:
 - (i) the "Lessor" to be ServiceCo;
 - (ii) the "Lessee" to be FACS or FACS' nominee appointed under section 2.4;
 - (iii) the "Rent" is the rent determined under section 2.2(d);
 - (iv) the "Land" to be the title references for the Nominated Dwellings and Nominated Relevant Infrastructure;
 - (v) the "Premises" is the Nominated Dwellings and all infrastructure, fixtures and equipment comprised in the Nominated Relevant Infrastructure leased to FACS as part of the premises, unless otherwise specified in the Option Notice;
 - (vi) the "Term" is such period as is nominated by FACS in the notice given under section 2.3(a);
 - (vii) the "Commencement Date" is the date that is nominated by FACS in the notice given under section 2.3(a); and
 - (viii) the "Expiry Date" is the last day of the "Term" as determined in accordance with section 2.5(c)(vi).

2.6 No exercise of Option to Lease

If the Option to Lease is not exercised:

- (a) ServiceCo retains the Option Fee; and
- (b) this Schedule will cease to apply on and from the last day of the Option Period.

2.7 Caveat

- (a) FACS may lodge a caveat on the title to any Dwelling if the caveat refers only to FACS' interest under the Option to Lease.
- (b) If FACS lodges a caveat, FACS must immediately at its cost consent to any dealing by ServiceCo with the Dwelling that is permitted by this Agreement or that does not materially prejudice FACS' rights under this Agreement.

Confidential

Annexure A – Form of Lease

Annexure 'A' to a Lease dated [*insert date*]

Lessor: [*insert name of Lessor and ACN*]

Lessee: [*insert name of Lessee and ACN*]

Premises: [*insert*]

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1. Definitions and interpretation

1.1 Definitions

In this Lease:

API means the Australian Property Institute (New South Wales Division).

Bank Bill Rate for a period, means:

- (a) the rate, expressed as a yield per cent per annum (rounded up (if necessary) to four decimal places) that is quoted as the average bid rate on the Reuters monitor system page 'BBSY' (or any page that replaces that page) at about 10.10am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period; or
- (b) if there is a manifest error in the calculation of that average bid rate, or if no average bid rate is published for Bank Bills of that tenor by about 10.30am, then the Bank Bill Rate will be the rate reasonably determined by the Lessor, having regard to the rates otherwise bid for Bank Bills having a tenor as described above, at or around that time, to be the appropriate equivalent rate.

Building means the building located on the land in Item 1, the Premises and the Common Areas.

Business Day means Monday to Friday, excluding New South Wales public holidays.

Commencement Date means the date in Item 4.

Common Areas means the common property of the Owners Corporation (if applicable); and areas of the Building which are provided for common use (for example, car parking areas, footpaths, access ways, entrances, stairs, escalators, lifts, toilets, and loading docks).

Community Housing means subsidised accommodation for people on very low, low or moderate income or people with additional needs that is managed by not for profit organisations within the State of New South Wales. For the purpose of this Lease, Community Housing does not include crisis housing or transitional housing.

CPI means All Groups Consumer Price Index for the City of Sydney published by the Australian Bureau of Statistics. If the CPI no longer exists, it means an index that the President of the API decides reflects changes in the cost of living in Sydney.

Deal means assign, transfer, sell, sublet, licence, part with possession of, transfer, mortgage, charge, surrender, dispose of, grant a trust over or otherwise deal with or permit any dealing with any property or legal or equitable interest and **Dealing** has a corresponding meaning.

Existing Lease Guarantee means a security given to the Lessor with respect to an Existing Tenant's obligations under an Existing Tenant Lease.

Existing Tenants means a person or entity which holds an estate, interest or occupancy right in the Premises or any part of it pursuant to an Existing Tenant Lease.

Existing Tenant Leases means all leases (registered or unregistered), licences, permits to occupy or other occupancy rights (written or oral) which exist in relation to the Premises or any part of it as at the Commencement Date but excluding any such arrangements which exist between the Lessor and the Lessee.

Financial Year means 1 July to 30 June.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Item means an item in the Reference Schedule.

Lessee means the person named as lessee on the cover page and includes its successors, executors and administrators, its assigns approved by the Lessor and, where the context permits, includes any agent, contractor, employee, invitee, licensee, sub-contractor, sub-lessee or other person claiming through the Lessee.

Lessee's Predecessor means any previous lessee under this Lease and, where this Lease is one in a series of consecutive leases granted pursuant to the exercise of options, any lessee under an earlier lease in the series.

Lessee's Property means the fixtures, fittings, furnishings, plant and equipment and other items installed in or brought onto any part of the Building at any time (whether before or after the Commencement Date) by or on behalf of the Lessee or the Lessee's Predecessors and, where the context permits, includes any part of them.

Lessor means the person named on the cover page and includes its successors, executors, administrators and assigns and, where the context permits, includes its agents, contractors and employees.

Liabilities means any action, claim, damages, demand, expense, liability and loss of any kind.

New Lease Guarantee means a security given or transferred to the Lessee with respect to an Existing Tenant's obligation under an Existing Tenant Lease .

Overdue Rate means ■■■ per annum above the Bank Bill Rate.

Owners Corporation means any owners corporation created under the *Strata Schemes Management Act 1996* (NSW) which applies to the Land and includes, where the context allows, the manager, secretary, agents and employees of and any person authorised by the Owners Corporation.

Premises means (and where the context permits, includes part of) the premises described in Item 2 and includes the Lessor's fixtures, fittings, furnishings, plant and equipment within the premises.

Relevant Lease Covenants has the meaning given in clause 3.3.

Relevant ROA Covenants has the meaning given in clause 3.2.

Rent means the amount in Item 6, as varied under this Lease.

Services means any services and facilities (including air conditioning thermostats, ducts and outlets, fire sprinkler heads and piping, security and fire alarm equipment, lighting, central electrical switching arrangement, emergency lighting and exit signs) provided or installed by Authorities, the Lessor or any person authorised by the Lessor in the Premises or for the benefit of the Premises in any floor of the Premises or in any ceiling cavity or walls adjoining the Premises.

Tenant means the Existing Tenants.

1.2 Interpretation

In this Lease, unless the contrary intention appears:

- (a) other parts of speech and grammatical forms of a word or phrase defined in this Lease have a corresponding meaning;

- (b) examples are descriptive only, not exhaustive;
- (c) headings and material included in boxes do not form part of this Lease and are not legally binding;
- (d) a reference to a clause, party, or schedule is a reference to a clause of, and a party and schedule to, this Lease and a reference to this Lease includes any schedule;
- (e) no provision of this Lease will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Lease or that provision;
- (f) a covenant or agreement by two or more persons binds them jointly and severally;
- (g) a reference to a body, other than a party to this Lease, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) a reference to liquidation includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

1.3 Statutory provisions

- (a) The covenants powers and provisions implied in leases by virtue of the *Conveyancing Act 1919* (NSW) (as amended) are expressly negated except in so far as they or some part or parts thereof are included in the provisions expressed in this Lease.
- (b) The exemption under clause 156 of the *Residential Tenancies Act 2010* (NSW) applies to this Lease and this Lease is exempted from the operation of the *Residential Tenancies Act 2010* (NSW).
- (c) The parties acknowledge that to the extent of inconsistency between the provisions of this Lease and the *Residential Tenancies Act 2010* (NSW), the provisions of the *Residential Tenancies Act 2010* (NSW) will be deemed to apply.

2. Services provided by Lessor

2.1 Grant of Lease

The Lessor grants to the Lessee a lease of the Premises on the terms of this Lease for the Term.

2.2 Quiet enjoyment by Lessee

The Lessee may occupy and use the Premises without being disturbed by the Lessor (or any person claiming through it), except as permitted by this Lease.

2.3 Services supplied by Lessor

- (a) If the Lessor supplies any Services to the Premises or the Building, it must use its reasonable endeavours to ensure that they work efficiently.
- (b) Despite clause 2.3(a) or any other provision in this Lease, the Lessor is not liable for any failure to provide or maintain services where the failure is caused or contributed to by the Lessee.

2.4 Services provided by authorities

The Lessor must use its reasonable endeavours to ensure that water and electricity supplies and drainage, sewerage and telephone services to the Premises are maintained by the relevant authority where the Lessor has been providing those utilities at the Commencement Date.

2.5 Lessee's access

- (a) The Lessee may enter and use the Premises at any time, subject to this Lease, the Law, any encumbrances registered on the title to the Land and the requirements of statutory authorities.
- (b) By the Commencement Date, the Lessor must provide to the Lessee the access keys to enable the Lessee to use the Premises. At the end of this Lease, the Lessee must return to the Lessor all access keys issued to it.

3. Concurrent Lease and Existing Tenancies

3.1 Concurrent Lease

- (a) This Lease is concurrent with the Existing Tenant Leases and the Lessee acknowledges that the Lessee's right of occupation of the Premises is subject to that of the Existing Tenants under the Existing Tenant Leases while the Existing Tenant Leases remain in force.
- (b) The Lessee must perform the obligations of the Lessor which arise during the Term in connection with the Existing Tenant Leases in favour of the Existing Tenants and their respective successors and assigns (and the Lessee assumes all Liabilities of the Lessor which arise during the Term in connection with the Existing Tenant Leases).
- (c) The Lessee indemnifies the Lessor and must keep indemnified and hold harmless the Lessor in relation to any Liability arising in connection with a breach of clause 3.1(b) by the Lessee, other than Liability resulting from the wilful default of the Lessor under an Existing Tenant Lease.
- (d) Subject to this Lease, the Lessee may enforce all rights, powers and remedies of the Lessor under the Existing Tenant Leases to the exclusion of the Lessor.
- (e) The Lessee is entitled to all rent and other money paid or payable to the Lessor under the Existing Tenant Leases during the Term.
- (f) The Lessee must notify the Lessor promptly in writing upon becoming aware of any actual or prospective Liability relating to the Existing Tenant Leases. If the Lessee gives such notification, the Lessee may at its cost prosecute, defend or otherwise deal with any such Liability on behalf of the Lessor and the Lessor must provide such cooperation as is reasonable at the cost of the Lessee.

3.2 Residual Occupancy Arrangements

To the extent the Existing Tenant Leases comprise licences, permits to occupy or other occupancy rights which exist in relation to the Premises (**Residual Occupancy Arrangements**) and this Lease does not have the legal effect of putting the Lessee, during the Term, in the same position as the Lessor in terms of enforcing all covenants, rights, powers and remedies of the Lessor under the Residual Occupancy Arrangements, then:

(a) subject to clause 3.2(b), the Lessor assigns to the Lessee with effect from the Commencement Date:

- (i) the Lessor's interest in the Residual Occupancy Arrangements; and
- (ii) the benefit of the covenants by the Existing Tenants under the Residual Occupancy Arrangements,

(Relevant ROA Covenants),

and the Lessee accepts the assignment and assumes all Liabilities of the Lessor and must indemnify and keep the Lessor indemnified and held harmless from any Liability which arises during the Term in respect of the Residual Occupancy Arrangements; and

(b) if the benefit of any Relevant ROA Covenant is not assignable, then it is not assigned to the Lessee under this clause, and during the Term:

- (i) the Lessor holds the benefit of the Relevant ROA Covenant for the benefit of the Lessee; and
- (ii) if directed by the Lessee, the Lessor must use reasonable endeavours to enforce the Relevant ROA Covenant for and at the cost of the Lessee.

3.3 Relevant Lease Covenants

To the extent this Lease does not have the legal effect of putting the Lessee, during the Term, in the same position as the Lessor in terms of enforcing all covenants, rights, powers and remedies of the Lessor under the Existing Tenant Leases, then:

(a) subject to clause 3.3(b), the Lessor assigns to the Lessee with effect from the Commencement Date:

- (i) the Lessor's interest in the Existing Tenant Leases; and
- (ii) the benefit of the covenants by the Existing Tenants under the Existing Tenant Leases,

(Relevant Lease Covenants),

and the Lessee accepts the assignment and assumes all Liabilities of the Lessor and must indemnify and keep the Lessor indemnified and held harmless from any Liability which arises during the Term in respect of the Existing Tenant Leases; and

(b) if the benefit of any Relevant Lease Covenant is not assignable, then it is not assigned to the Lessee under this clause, and during the Term:

- (i) the Lessor holds the benefit of the Relevant Lease Covenant for the benefit of the Lessee; and

- (ii) if directed by the Lessee, the Lessor must use reasonable endeavours to enforce the Relevant Lease Covenant for and at the cost of the Lessee.

3.4 Insurance required by Existing Tenant Leases

The Lessor will use reasonable endeavours at the cost of the Lessee to procure that the Existing Tenants which are obliged under their Existing Tenant Leases to take out insurance policies which name or note the interests of the Lessor, or which must include the Lessor as a co-insured, amend such policies to include the Lessee as named, noted or co-insured parties (as the case may be) in addition to the Lessor.

3.5 Lessee dealing with Existing Tenant Leases

- (a) Subject to clause 3.5(b), the Lessee may:
 - (i) amend or vary any Existing Tenant Leases;
 - (ii) accept a surrender of all or any part of an Existing Tenant Lease;
 - (iii) agree to an Existing Tenant holding over under an Existing Tenant Lease; or
 - (iv) terminate an Existing Tenant Lease in accordance with its terms, without the Lessor's consent.
- (b) The Lessee must not, without the prior written consent of the Lessor, amend any Existing Tenant Lease in a manner that:
 - (i) requires the Lessor to pay or incur any cost or Liability;
 - (ii) imposes any additional or more onerous obligation or liability on the Lessor;
 - (iii) extends the term or grants an option to extend the term of the Existing Tenant Lease beyond the expiry of the Term; or
 - (iv) releases the Existing Tenant from any obligation to carry out capital works, or make good the leased premises at the end of the leased term under the Existing Tenant Lease.
- (c) If, pursuant to an agreement made with the Lessee, an Existing Tenant executes an instrument which amends, varies, surrenders or terminates an Existing Tenant Lease and the instrument is not inconsistent with clause 3.5(b), the Lessor must on request from the Lessee promptly execute that instrument as lessor.
- (d) The Lessor irrevocably appoints the Lessee as the attorney of the Lessor to sign any instrument referred to in clause 3.5(c). The attorneys may only sign an instrument on behalf of the Lessor if the Lessor fails to sign and return the instrument within 10 Business Days after receiving the instrument from the Lessee in executable form.
- (e) The Lessee must pay any duty in respect of such instrument.
- (f) Nothing in this clause 3.5 prevents the Lessee, in its own right, from providing or agreeing to provide any right or benefit to an Existing Tenant (for example, in a separate agreement between the Lessee and the Existing Tenant that is not an amendment or variation of an Existing Tenant Lease).

3.6 Lessor not to deal with Existing Tenant Leases

The Lessor must not:

- (a) amend or vary any Existing Tenant Leases;
- (b) accept a surrender of all or any part of an Existing Tenant Lease;
- (c) terminate an Existing Tenant Lease; or
- (d) purport to enforce or exercise any rights, powers or remedies of the Lessor under an Existing Tenant Lease,

except:

- (e) as permitted by this Lease; or
- (f) with the Lessee's prior written consent, which may be withheld in the Lessee's absolute discretion.

3.7 Assignment of Existing Lease Guarantees

- (a) On the Commencement Date, the Lessor assigns to the Lessee its interest in assignable Existing Lease Guarantees.
- (b) The Lessor does not warrant that the Existing Lease Guarantees are valid, enforceable or assignable to the Lessee.

3.8 Existing Lease Guarantees that are not assignable

If the Lessor holds an Existing Lease Guarantee for an Existing Tenant Lease and the Existing Lease Guarantee is not assignable, then:

- (a) from the Commencement Date:
 - (i) the Lessor holds its interest under the Existing Lease Guarantee for the benefit of the Lessee; and
 - (ii) if directed by the Lessee, the Lessor must:
 - A. return the Existing Lease Guarantee to the issuer of the Existing Lease Guarantee;
 - B. return the Existing Lease Guarantee to the Existing Tenant on whose behalf the Existing Lease Guarantee is issued; or
 - C. use its reasonable endeavours to claim under the Existing Lease Guarantees and pay the money received to the Lessee.

3.9 Registration

The Lessor must attend to registration of this Lease at the Lessee's cost in the relevant land register as soon as practicable after the Commencement Date, and the Lessee must provide such assistance as may be reasonably required by the Lessor to register the Lease.

3.10 Partial surrender of Lease upon expiry of Existing Tenant Lease

- (a) The Lessee must partially surrender that part of the Premises which is the subject of an Existing Tenant Lease so far as it relates to the land the subject Existing Tenant Lease to take effect the day immediately after the expiry date or early termination (as applicable) of the Existing Tenant Lease.
- (b) On and from the date of any partial surrender under clause 3.10(a), the Lessor and the Lessee agree that the Rent payable under this Lease is reduced by an amount equal to the proportion that the area of the Premises which has been surrendered under clause 3.10(a) bears to the total area of the Premises the subject of the Lease as at the date of the surrender.
- (c) The Lessee must prepare all documents necessary for the parties to comply with and implement this clause 3.10.
- (d) Following receipt of the documents from the Lessee, the Lessor must promptly execute the documents.
- (e) The Lessor must attend to stamping and registration of all documents at its cost and return an executed and stamped copy of the documents to the Lessee.

4. Payments by Lessee

4.1 Method of payment

- (a) The Lessee must pay all money owed to the Lessor under this Lease:
 - (i) by payment to the Lessor by any method of which the Lessor notifies the Lessee;
 - (ii) within 14 days after demand, unless otherwise specified in this Lease; and
 - (iii) without deduction or set off.
- (b) The Lessee must pay to the Lessor the Rent:
 - (i) whether or not the Lessor demands payment;
 - (ii) in equal monthly instalments (except for the first and last instalments, which will be apportioned in respect of time if necessary); and
 - (iii) in advance on the Commencement Date and on the 1st of each month.

4.2 Services

In addition to the amounts paid or payable under clauses 4.1 and 4.3, the Lessee must pay on time for all services supplied to the Premises, including water, excess water, electricity, gas, telephone, trade waste or other costs incurred as a result of the Lessee's use or occupation of the Premises.

4.3 Lessee's share of building costs

- (a) The Lessee must pay to the Lessor:

- (i) all rates, assessments, fees and charges (including charges for water and sewerage usage, drainage, trade waste and fire services), costs, levies, impositions and duties of any authority, body, department, government or instrumentality assessed, charged, imposed or levied in respect of the Premises, the land or services to the Premises or the land (regardless of ownership); and
 - (ii) any property tax assessed on the Premises, including the Lessor's land tax (calculated on the basis that the Premises is the only property the Lessor owns).
- (b) The Lessee is not obliged to pay:
 - (i) any commission or similar charge paid to any person in connection with letting or licensing any part of the Building;
 - (ii) the Lessor's income tax or capital gains tax;
 - (iii) any amount for which a particular lessee or licensee of any part of the Building is responsible; or
 - (iv) the cost of any structural work or cost treated by the Lessor (acting in good faith) in its accounting statements as a capital expense.

4.4 Interest on late payments

- (a) If the Lessee does not pay any money to the Lessor on the due date, the Lessor may charge interest on that money at the Overdue Rate.
- (b) The Lessor may calculate the interest on any unpaid money on a daily basis from and including the day the unpaid money was due up to and including the day it is paid.

4.5 Errors

If either the Lessee or the Lessor identifies an error in any calculation or payment, the Lessor must make any necessary adjustment in the Lessee's next monthly statement (or as soon as practicable if this Lease has ended).

4.6 Cost of lease, default, approvals etc

The Lessee must pay within 14 days after notice the Lessor's reasonable costs (including legal costs) and all charges, duties, expenses and fees of or incidental to:

- (a) any request for the approval or consent of the Lessor (and of any head lessor or mortgagee of the Lessor); and
- (b) any breach or default by the Lessee under this Lease.

4.7 GST

- (a) Any reference in this clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this Lease does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.

- (c) Any amount referred to in this Lease (other than an amount referred to in clause 4.7(h)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this Lease, the consideration to be provided under this Lease for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 4.7(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 4.7(d) or at such other time as the parties agree.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Lease the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 4.7(e) the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If one of the parties to this Lease is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Lease, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 4.7(d).

5. Rent review

5.1 CPI review

- (a) As at a CPI review date in Item 7, the Rent is adjusted using the following formula:

$$\text{New Rent} = \text{Rent immediately before the CPI review date} \times \frac{a}{b}$$

where

 - a is the CPI last published before the CPI review date; and
 - b is the CPI last published before the later of the Commencement Date and the immediately preceding CPI review date in Item 7.
- (b) The Lessee must pay the new Rent from the CPI review date.
- (c) Until the Lessor notifies the Lessee of the new Rent, the Lessee must continue to pay the existing Rent to the Lessor.

- (d) The Lessor must calculate any necessary adjustment between the Rent the Lessee has paid and the Rent the Lessee should have paid from the CPI review date.
- (e) The Lessee must pay any adjustment when the Lessee's next monthly payment is due.

6. Lessee's general obligations

6.1 Use

The Lessee must:

- (a) use the Premises only for the permitted use in Item 8;
- (b) not put any safe or other heavy article in the Premises unless the Lessor first consents;
- (c) not put any advertisement, plate or sign outside the Premises or on the inside face of the windows unless the Lessor first consents;
- (d) not use the Premises in a way that interferes with the efficient operation of the Services to the Premises or the Building; and
- (e) not have or use dangerous substances (including hazardous materials or chemicals, flammable liquids, acetylene gas or alcohol, explosive oils or substances) in the Premises or the Building.

6.2 Maintaining premises and Lessee's property

- (a) The Lessee must keep the Premises clean and tidy and in at least as good a condition as they were in at the Commencement Date (for example, the Lessee must repair damage and replace broken fittings), except for:
 - (i) fair wear and tear;
 - (ii) damage caused by earthquake, fire, flood, storm, tempest, war damage or act of God; and
 - (iii) damage to the extent it was caused or contributed to by the Lessor.
- (b) The Lessee must replace all broken glass with glass of the same or similar quality.
- (c) Subject to clause 6.3, the Lessee does not have to repair the structure of the Building or Premises.
- (d) The Lessee must take reasonable precautions to keep the Premises free of vermin, insects, birds and animals and, as required by the Lessor, employ qualified pest exterminators.

6.3 Damage caused by Lessee

If the Lessee damages the Building or the Premises (including structural damage, but excluding damage resulting from any latent defect in the Building) the Lessee must at the Lessor's option:

- (a) promptly repair the damage to the Lessor's reasonable satisfaction; or

- (b) pay to the Lessor within 14 days after demand the Lessor's cost of repairing the damage.

6.4 Altering Premises

The Lessee must not erect or construct upon the Premises or any part thereof any building, structure or improvement, nor carry out any alteration to any building structure or improvement on the Premises or any part thereof without the prior written consent of the Lessor.

6.5 Lessee must observe law and rules

The Lessee must comply with the law and any notice from any authority that requires the Lessee to do or not do anything concerning the Premises, the Lessee's use of the Premises, the Lessee's Property or this Lease (for example, laws relating to occupational health and safety and environmental matters), excluding anything relating to the structure of the Building which does not arise as a result of the Lessee's particular use of the Premises.

6.6 How Lessee should behave

The Lessee must not make any illegal, immoral, offensive or unlawful use of the Premises or the Common Areas, nor cause any nuisance, damage or disturbance to the Lessor or any occupier of the Building or of any nearby property.

6.7 Using Common Areas

- (a) The Lessee may use the Common Areas in common with others, but only for the purposes for which they were designed.
- (b) The Lessee must comply with the Lessor's reasonable requirements, the Law and the requirements of statutory authorities in relation to the use of the Common Areas.

7. Risk and insurance

7.1 Lessee's insurance

- (a) Except where prohibited by the *Residential Tenancies Act 2010* (NSW), the Lessee must have current insurance policies covering:
 - (i) public liability arising out of the use or occupation of the Premises for the amount in Item 9 (or any reasonable higher amount notified by the Lessor) in respect of any single event; and
 - (ii) cover for all other risks which from time to time a prudent property owner and landlord would effect for a property being used as Community Housing.
- (b) The Lessee must deliver to the Lessor adequate written evidence of the existence and contents of each policy immediately after the Lessee takes it out and of its currency on each anniversary of the Commencement Date and when reasonably required by the Lessor.

7.2 Lessee not to void insurances; extra premiums

- (a) The Lessee must not cause the rate of any insurance premium relating to the Premises or the Building to be increased, or prejudice or render void or voidable that insurance.

- (b) If the Lessor approves (in its absolute discretion) any request of the Lessee which increases an insurable risk, the Lessee must pay to the Lessor any extra premiums payable by the Lessor due to the increased risk.

7.3 Lessee releases and indemnifies Lessor

- (a) The Lessee releases the Lessor (and its agents, contractors, employees and officers) from all Liabilities for any damage, loss, injury, or death occurring in the Premises or the Building, except to the extent that the damage, loss, injury or death was caused by the negligence or wilful act of the person seeking to be released.
- (b) The Lessee indemnifies the Lessor (and its agents, contractors, employees and officers) against all Liabilities arising out of or in relation to any faulty Lessee's Property or any act or omission of any kind of the Lessee.

7.4 Lessee's obligations at Lessee's risk and expense

Unless this Lease expressly provides otherwise, all of the following are at the Lessee's sole risk and expense:

- (a) anything which the Lessee is required or permitted to do under this Lease, whether or not the Lessor gives its approval or consent to that thing;
- (b) the Lessee's Property; and
- (c) the Lessee's use and occupation of the Premises.

7.5 Lessee to give notice of risk

The Lessee must give the Lessor notice of any of the following as soon as it becomes aware of them:

- (a) damage, death, injury or loss occurring in or any defect or lack of repair in the Premises; and
- (b) any circumstances likely to cause damage, risk or hazard to any person or property in or services and amenities of the Premises.

8. Lessor's general rights

8.1 Lessor may enter Premises

- (a) The Lessor will have access to the Premises in the following circumstances:
 - (i) immediately and without notice where in the opinion of the Lessor an emergency threatens life or substantial damage upon the Premises;
 - (ii) with reasonable prior notice to inspect or view the state of the Premises;
 - (iii) with reasonable prior notice to ascertain whether the Lessee is complying with the provisions of this Lease;
 - (iv) in accordance with any notice issued by the Lessor with respect to any breach or default by the Lessee;
 - (v) to do anything the Lessor must or may do under this Lease; or

- (vi) as otherwise agreed between the parties.
- (b) Wherever the Lessor exercises its right of entry to the Premises under this Lease, the Lessor must:
 - (i) use reasonable endeavours to not cause any undue interruption or inconvenience to the use or occupation of the Premises by the Lessor or a Tenant including:
 - A. by giving reasonable notice to the Lessee to allow it to comply with any of its notice obligations under an Existing Tenant Lease; and
 - B. by complying with the Lessee's reasonable directions relating to access to the Premises, having regard to the Lessee's obligations under any Existing Tenant Lease.

8.2 Lessor's consent or approval

Unless expressly stated in a particular clause:

- (a) the Lessor must not unreasonably withhold or delay its consent or approval under this Lease, but may give it on reasonable conditions; and
- (b) any consent or approval of the Lessor must be in writing.

8.3 Sale of building

If the Lessor wants to sell the Premises or the Building, it may put up a 'for sale' sign on the Premises, and enter the Premises for the purposes of showing the Premises to the prospective purchasers, subject to complying with the conditions in clause 8.1(b).

8.4 No waiver

- (a) Failure to exercise, delayed exercise or partial exercise of any available remedy or right does not waive any breach by a party.
- (b) Waiver by a party of a particular breach is not a waiver of any other breach or default.
- (c) Demand or acceptance by the Lessor of money payable under this Lease after the Lessee's breach or default does not prejudice any other right or remedy of the Lessor.

9. Transfers, sublettings, etc

9.1 Dealing with Premises

- (a) The Lessee must not directly or indirectly Deal with the Premises (or any part of it) except as expressly permitted by this Lease unless the prior written consent of the Lessor is obtained (such consent not to be unreasonably withheld or delayed).
- (b) Despite clause 9.1(a):
 - (i) the Lessee may Deal with its interest in the Premises (or any part of it) without the consent of the Lessor where the proposed transferee is:
 - A. the NSW Government; or

- B. any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality which is an agent of the NSW Government.
- (c) Where the Lessee Deals with its interest in the Premises under clause 9.1(b)(i), the Lessee must as soon as reasonably practicable after the Dealing has occurred, provide the Lessor with written notice of such Dealing.

9.2 Costs in relation to dealings

The Lessee must pay the Lessor's reasonable expenses (including administration and legal costs) in relation to any proposed dealing under clause 9.1, even if the Lessee (or other party) does not comply with clause 9.1 or if the proposed dealing does not proceed.

10. Damage, destruction or resumption of building

10.1 Damage or destruction

- (a) If the Premises are damaged or destroyed or affected by hazardous or injurious materials or substances so as to render the Premises substantially unfit for use and occupation then the Lessee may:
 - (i) ask the Lessor to re-build the Premises; or
 - (ii) terminate this Lease by notice in writing to the Lessor.
- (b) Where the Lessee gives notice under clause 10.1(a)(i), if the Lessor does not notify the Lessee within 2 months after the Lessee's request that the Lessor intends to rebuild, or does not rebuild within 6 months after stating its intention to do so, the Lessor or the Lessee may terminate this Lease by notice to the other, in which case the Lease ends on the date of the notice.
- (c) If the Premises are damaged or destroyed or affected by hazardous or injurious materials or substances so as to render the Premises substantially unfit for use and occupation, then the Lessor must reduce the Rent and other money payable by a reasonable amount (depending on the kind and extent of the damage and destruction) from the date of the damage or destruction until the Premises are again fit for use or this Lease is ended.
- (d) Despite any other provision, the Lessee has no right to the reduction to the extent that the Lessee's act or omission caused the damage, destruction or affectation and has no right to terminate this Lease if the Lessee caused or substantially contributed to the damage, destruction or effect.

10.2 Resumption

If a competent authority resumes the Premises or the Building, and this makes the Premises unfit or unavailable for the Lessee's use during the term, then the Lessor or the Lessee may terminate this Lease by notice to the other and the Lessor is not liable to pay the Lessee any compensation.

10.3 Resolving disputes about reduction in rent on damage or destruction

- (a) If the Lessee does not agree with the reduction made by the Lessor under clause 10.1(c) or the Lessor and the Lessee do not agree on whether there

should be a reduction under that clause, either party may give the other notice of the dispute within 14 days after the damage or destruction occurs.

- (b) The parties must negotiate in good faith to agree on a reduced amount within 14 days after delivery of the notice of dispute.
- (c) If the Lessee and the Lessor agree on a reduced amount, the Lessee must pay that amount from the agreed date.
- (d) If the Lessee and the Lessor do not agree then, within 30 days after the period in clause 10.3(b), either party may ask the President of the API to appoint a valuer who is a current full member of the API with at least 5 years' experience in valuing properties similar to the Premises to decide the reduced amount (if any) and the date from which the reduced amount must be paid.
- (e) The Lessee and the Lessor must instruct the valuer to decide the reduced amount within 30 days after being appointed.
- (f) If the Lessee does not keep to a time limit in this clause which applies to it, the right attached is lost and there is no reduction in the Rent and other money payable, except to the extent that the Lessor made a reduction under clause 10.1(c).
- (g) Until the dispute is resolved, the Lessee must pay the current Rent and other money payable, subject to any reduction under clause 10.1(c). The Lessor must calculate and refund any adjustment within 14 days after the agreement or decision by the valuer.
- (h) In deciding the dispute, the valuer acts as an expert and not as an arbitrator and must give written reasons for the decision.
- (i) The valuer's decision is final and binding on the parties (except for manifest error).
- (j) The Lessor and the Lessee must each pay one half of the valuer's costs.

11. End of Lease

11.1 Handing back Premises

When this Lease ends, the Lessee must vacate the Premises and give them back to the Lessor clean and free from rubbish and in the same condition as they were in before the Commencement Date, except for fair wear and tear and damage which the Lessee is not required to repair under clause 6.2.

11.2 Continuing occupation after end of Lease

- (a) If the Lessor agrees, the Lessee may continue to occupy the Premises after the expiry of the Term for a fixed term of 4 months and then for continuing periods of 4 months' each.
- (b) The Rent for the 4 monthly occupation is one third of the annual Rent current on the date.
- (c) The 4 monthly occupation is on the same provisions as in this Lease, so far as applicable, but the Lessor or the Lessee may end the occupation by 1 month's notice to the other expiring on any day.

11.3 Assignment of Residual Occupancy Arrangements and Guarantees

Upon termination or expiration of this Lease, the Lessee assigns to the Lessor with effect from the date of termination or expiration:

- (a) the Lessee's interest in the Residual Occupancy Arrangements; and
- (b) the benefits of the covenants by the Existing Tenants under the Residual Occupancy Arrangements,

and the Lessor accepts the assignment.

11.4 Reassignment of Existing Lease Guarantees

- (a) On the termination of this Lease, the Lessee assigns to the Lessor its interest in assignable Existing Lease Guarantees and New Lease Guarantees.
- (b) The Lessee does not warrant that the Existing Lease Guarantees or New Lease Guarantees are valid, enforceable or assignable to the Lessor.

11.5 Bank guarantees that are not assignable

If on the date of termination of this Lease the Lessee holds an Existing Lease Guarantee or New Lease Guarantee and the Existing Lease Guarantee or New Lease Guarantee (as applicable) is not assignable, then:

- (a) the Lessee's interest in the Existing Lease Guarantee or New Lease Guarantee (as applicable) is not assigned to the Lessor; and
- (b) from the date of termination:
 - (i) the Lessee holds the rights under the Existing Lease Guarantee or New Lease Guarantee (as applicable) for the benefit of the Lessor; and
 - (ii) if directed by the Lessor the Lessee must claim under the Existing Lease Guarantee or New Lease Guarantee (as applicable) and pay the money to the Lessor.

12. Breach of Lease

12.1 Termination for Lessee's default

The Lessor may terminate this Lease if:

- (a) the Lessee does not pay any money payable to the Lessor under this Lease within 60 days after the due date;
- (b) the Lessee does not observe any provision of this Lease and within a reasonable time after service of a notice by the Lessor (such period being not less than 60 days) specifying the non-observance:
 - (i) if the matter is capable of remedy, does not remedy it to the Lessor's reasonable satisfaction; or
 - (ii) if the matter is not capable of remedy, does not pay compensation to the Lessor's reasonable satisfaction; or

- (c) an order is made or a resolution is effectively passed for the winding up, liquidation, compromise, arrangement, amalgamation, arrangement or comprise with creditors of the Lessee which is a company.

This clause does not affect any claim or other remedy of the Lessor against the Lessee for breach of this Lease and has effect despite any other term in this Lease.

13. General

13.1 Notices

- (a) A notice under this Lease must be in legible writing and in English.
- (b) If the Lessor wants to give a notice to the Lessee, the Lessor must:
 - (i) give it to the Lessee personally; or
 - (ii) leave it at, or post or fax it to, the Premises, the Lessee's registered office or the Lessee's last known business address.
- (c) If the Lessee wants to give a notice to the Lessor, the Lessee must leave it at, or send it by security post or fax it to the Lessor's registered office or any other address that the Lessor nominates.
- (d) If any notice is given on a day which is not a Business Day or after 5.00pm (addressee's time), it is taken not to be given until the next Business Day.
- (e) Any notice given by the Lessor is valid and effective if given under the common seal of the Lessor or signed by an attorney, director, company secretary, authorised officer or solicitor of the Lessor.

13.2 Governing Law

This Lease is governed by New South Wales law.

13.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day.

13.4 Variation

A variation of any provision of this Lease must be in writing and signed by the parties.

13.5 Whole Agreement

This Lease comprises the whole agreement between the parties in respect of its subject matter.

13.6 Severability

If a court decides that any part of this Lease is void, voidable, illegal or unenforceable or this Lease would be void, voidable, illegal or unenforceable unless a part is severed from this Lease, then that part is severed from this Lease and does not affect the continued operation of the rest of this Lease.

Reference Schedule

| Items | | |
|-------|------------------------------------|---|
| 1 | Land | [insert] |
| 2 | Premises: | The Land and the Lessor's improvements on the Land. |
| 3 | Term: | [insert] |
| 4 | Commencement Date: | [insert] |
| 5 | Expiry Date: | [insert] |
| 6 | Rent: | [insert] per annum (excluding GST) |
| 7 | CPI Review Date | On each anniversary of the Commencement Date. |
| 8 | Permitted Use: | Community Housing |
| 9 | Public liability insurance amount: | |

Confidential

Schedule 21 – Subcontract Side Deed

Social and Affordable Housing Fund - Subcontract Side Deed

[Insert name of Subcontractor]

[insert ABN/ACN/ARBN]

Compass Housing Services Co Ltd (ServiceCo)

ACN 002 862 213

Department of Family and Community Services (FACS)

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THIS DEED is made on

2016

BETWEEN:

The Secretary of the Department of Family and Community Services as Housing Agency pursuant to section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**).

[Insert] ABN/ACN [insert] whose registered office is at [Insert] (Subcontractor).

Compass Housing Services Co Ltd ACN 002 862 213 whose registered office is at Suite 1/44 Beaumont Street, Hamilton, NSW, 2303(**ServiceCo**).

RECITALS:

- (A) FACS and ServiceCo have entered, or will enter, into the Services Agreement for the provision of the Service Package.
- (B) ServiceCo has subcontracted its obligations to *[insert purpose of Subcontract]* to the Subcontractor pursuant to the Subcontract.
- (C) The Subcontractor has agreed to grant to FACS certain rights in relation to the Subcontract.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and interpretation

1.1 Services Agreement definitions

Definitions in the Services Agreement apply in this Deed unless the context requires otherwise or the relevant term is defined in this Deed.

1.2 Definitions

In this Deed:

Approved Nominee means a person nominated by FACS and approved by the Subcontractor in accordance with clause 4.8 as:

- (a) having legal capacity, power and authority to become a party to and perform the obligations of ServiceCo under the Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of ServiceCo under the Subcontract.

Default Event means:

- (a) any default (howsoever described) by ServiceCo under the Subcontract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Subcontractor's obligations under the Subcontract.

Default Event Notice has the meaning given in clause 3.2(a).

Effective Date means the date specified in the Novation Notice.

FACS Cure Notice has the meaning given in clause 3.2(c).

GST Amount has the meaning given in clause 9(c)(ii).

Material Adverse Effect means a material adverse effect on:

- (a) the ability of each of ServiceCo or the Subcontractor to perform and observe their respective obligations under any Service Package Document to which it is a party; or
- (c) the rights of FACS under any FACS Service Package Document, or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document.

Novation Notice has the meaning given in clause 4.1.

Receiver means agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with FACS Security or pursuant to court order on application by FACS.

Recipient has the meaning given in clause 9(c)(ii).

Services Agreement means the document entitled "Social and Affordable Housing Fund - Services Agreement" dated on or about the date of this Deed between FACS and ServiceCo.

Subcontract means the contract titled [*insert*] dated on or about the date of this Deed between ServiceCo and the Subcontractor.

Supplier has the meaning given in clause 9(c).

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
 - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;

- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Standards)**: a reference to a Standard includes that Standard as amended or updated from time to time;
- (i) **(definitions)**:
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - (ii) unless the context otherwise requires, terms which are defined in a Schedule of this Deed have the same meaning throughout this Deed (including the Schedules and Annexures to it);
- (j) **(‘includes’)**: ‘includes’ and ‘including’ will be read as if followed by the phrase ‘(without limitation)’;
- (k) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **(‘\$’)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (n) **(Business Day)**: if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(day)**: except as otherwise provided in this Deed or where a reference is made to ‘Business Days’, day means a calendar day;
- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) **(function)**: a function includes a power, authority or duty;

- (s) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) **('may')**: unless FACS is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion (without regard to ServiceCo) and FACS has no obligation to do so;
- (u) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) **(Delivery Phase Program)**: a reference to the Delivery Phase Program is a reference to the most recent Delivery Phase Program that has been reviewed and not rejected in accordance with the Review Procedures.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and the Subcontract, this Deed will prevail over the Subcontract.

1.5 Services Agreement and Financiers' Tripartite Deed

The Subcontractor acknowledges that it has received a copy of the Services Agreement and the Financiers' Tripartite Deed.

1.6 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

1.7 FACS' executive rights, duties and functions

- (a) **(Acknowledgements)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*FACS' executive rights, duties and functions*) of the Service Agreement in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.7(c), ServiceCo and the Subcontractor will not be entitled to make any Claim against FACS for any Liability relating to any exercise or failure of FACS to exercise its executive or statutory rights or duties.

- (c) **(Liability for breach):** Clauses 1.7(a) and 1.7(b) do not limit any Liability which FACS would have had to ServiceCo or the Subcontractor under any Service Package Documents as a result of a breach by FACS of a term of any Service Package Document but for these clauses.

2. Subcontractor's warranty and FACS' rights and liability

2.1 Subcontractor's warranty

- (a) The Subcontractor warrants to FACS that it has carried out and, provided the Subcontract has not been terminated, will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the Services, the level of skill and care reasonably to be expected from an appropriately qualified and competent contractor providing those services in relation to a project of a similar size and scope to the Services. In particular and without limiting the generality of the foregoing, the Subcontractor covenants with FACS that it has carried out and will, provided the Subcontract has not been terminated, carry out and complete the Services in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.
- (b) Without prejudice to any of FACS' other rights under this Deed (including, without limitation, under clauses 3 and 4), FACS may only exercise its rights under this clause 2.1 upon:
- (i) the termination of the Services Agreement or ServiceCo's engagement under the Services Agreement; or
 - (ii) ServiceCo no longer being responsible for providing the Service Package substantially on the basis set out in the Services Agreement and/or the Monthly Service Payment regime no longer applying.
- (c) Despite any other provision of this Deed or the Subcontract, the maximum aggregate liability of the Subcontractor under this clause 2.1 and the Subcontract is no greater than the maximum liability of the Subcontractor under the Subcontract.
- (d) FACS agrees that it is not permitted to recover, and the Subcontractor will not be liable to FACS for, any loss under this clause 2.1 that is not permitted to be recovered against the Subcontractor under the Subcontract.
- (e) FACS agrees that it may not exercise its rights under this clause 2.1 to the extent it has already recovered an amount for any loss arising from the same cause of action for breach of warranty under the Services Agreement.

2.2 FACS' rights under Services Agreement

- (a) The Subcontractor acknowledges and agrees to FACS' rights and ServiceCo's obligations under the Services Agreement, including under the following clauses of the Services Agreement:
- (i) clause 9.1 (*Audits for compliance with the FACS Service Package Documents*);
 - (ii) clause 18.2 (*Work health and safety*);
 - (iii) clause 22 (*Expiry obligations*);
 - (iv) clause 31 (*Major Default*);

- (v) clause 32 (*Termination*); and
 - (vi) clause 46 (*Intellectual Property Rights*).
- (b) The Subcontractor must:
- (i) exercise its rights under the Subcontract in a way that facilitates the effective exercise by FACS of the rights referred to in clause 2.2(a); and
 - (ii) permit FACS or a FACS Associate to have access to, and take copies of, the information to which FACS is entitled to have access to in accordance with FACS' rights referred to in clause 2.2(a).
- (c) During the period in which FACS is exercising a right referred to in clause 2.2(a), FACS may, in accordance with the Services Agreement and the Subcontract, require the suspension or the continuation of performance by the Subcontractor of its obligations under the Subcontract, and if it does so, the Subcontractor must (without limiting its rights under clause 3) comply with this requirement and with all reasonable directions of FACS in relation to the performance of the Subcontract by the Subcontractor during such period.
- (d) The requirement of FACS that the Subcontractor suspend or continue to perform its obligations under the Subcontract and the giving of any direction under clause 3.2(c) by FACS does not constitute an assumption by FACS of any obligations of the Subcontractor under the Subcontract.

2.3 Subcontracting and Probity Investigations

- (a) The Subcontractor acknowledges FACS' rights and ServiceCo's obligations under the following clauses of the Services Agreement:
- (i) clause 10 (*Subcontracting and third party arrangements*);
 - (ii) the clauses listed in clause 10.3 (*Requirements for Subcontracting*); and
 - (iii) clause 48 (*Probity Events and Probity Investigations*).
- (b) The Subcontractor must not subcontract any of its obligations under the Subcontract without ensuring that ServiceCo has obtained the prior consent of FACS to that subcontract, where FACS' consent is required in accordance with clause 10 (*Subcontracting and third party arrangements*) of the Services Agreement.
- (c) Without limiting clauses 2.3(a) or 2.3(b), the Subcontractor acknowledges and agrees that:
- (i) in accordance with clauses 10 (*Subcontracting and third party arrangements*) and 48 (*Probity Events and Probity Investigations*) of the Services Agreement, FACS may, from time to time, or may require ServiceCo to, conduct Probity Investigations of the Subcontractor and Relevant Persons in respect of the Subcontractor (excluding the ServiceCo Representative), or other persons to whom the Subcontractor is proposing to subcontract any of its obligations under the Subcontract;
 - (ii) it will procure all relevant consents from any persons in connection with whom a Probity Investigation is to be conducted; and

- (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the management or performance of any Service Package Activities unless FACS has given approval (including following a Probity Investigation and any other investigations that FACS reasonably requires in accordance with the Services Agreement).

2.4 No liability for information

The Subcontractor acknowledges and agrees that:

- (a) any information, data and documents provided by FACS:
 - (i) are provided for information purposes only and all of FACS' and its Associates' Intellectual Property Rights therein remain the property of FACS or its Associates (as the case may be); and
 - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of FACS or its Associates; and
- (b) to the extent permitted by Law, neither FACS nor any of its Associates will have any Liability to the Subcontractor or any of their Associates, nor will the Subcontractor or any of their Associates be entitled to make any Claim against FACS, or seek, pursue or obtain an indemnity against or contribution to Liability from FACS or any of its Associates arising out of or in connection with:
 - (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in 2.4(a) by the Subcontractor or any other person to whom such information is disclosed by the Subcontractor, or any of their respective Associates or any person on any of their behalf;
 - (ii) any reference to FACS in the Subcontract; or
 - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Subcontract by FACS.

2.5 Subcontract not to affect FACS' rights

Each of ServiceCo and the Subcontractor acknowledges and agrees that:

- (a) where the Subcontractor is expressed in the Subcontract to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Services Agreement or an equivalent or similar right of ServiceCo:
 - (i) this does not of itself expand ServiceCo's rights, or FACS' Liability, under the Services Agreement to include the compensation or relief to which the Subcontractor is or may become entitled under the Subcontract; and
 - (ii) ServiceCo's rights, and FACS' Liability, under the Services Agreement will be determined solely in accordance with the terms of the Services Agreement;
- (b) as between FACS (on the one hand) and ServiceCo and the Subcontractor (on the other hand), ServiceCo and the Subcontractor accept and will bear the risk

of any inconsistency, ambiguity or discrepancy between the terms of the Subcontract and this Deed; and

- (c) notwithstanding anything to the contrary in the Subcontract, the Subcontractor has no right to deal directly with FACS or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the Services Agreement or this Deed; or
 - (ii) FACS consents in writing.

3. FACS' right to cure Default Events

3.1 FACS' cure rights

- (a) On becoming aware of any Default Event (and subject to clause 3.1(b)), FACS may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 3.1(a) only applies if the Subcontractor has given a FACS Cure Notice in accordance with clause 3.2(c).
- (c) Upon FACS exercising any of its rights under this clause 3.1, ServiceCo's obligations under the Subcontract are suspended (other than ServiceCo's obligation to pay money) to the extent and for such period as ServiceCo is prevented from performing such obligations by FACS' exercise of its rights pursuant to clause 3.1(a).
- (d) If FACS exercises its rights pursuant to clause 3.1(a), FACS may, after giving reasonable prior notice to ServiceCo, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

3.2 Restriction on right to terminate or suspend

The Subcontractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract unless each of the following conditions has been satisfied:

- (a) the Subcontractor has given to FACS prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract, together with the statements referred to in clause 3.3 (**Default Event Notice**);
- (b) if the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract is subject to any right of a Financier to cure or remedy the Default Event:
 - (i) the cure or remedy period available to the Financiers in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or
 - (ii) the Security Trustee has notified the Subcontractor in writing that it does not intend to cure or remedy the Default Event;
- (c) the Subcontractor has given notice to FACS confirming that, either:

- (i) the requirements of clause 3.2(b) are satisfied; or
- (ii) the Subcontractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of, any or all of its obligations under the Subcontract is not subject to any right of the Financiers to cure or remedy the Default Event,

(FACS Cure Notice), and

(d) any one of the following has occurred:

- (i) the Default Event is capable of cure or remedy within 20 Business Days after the date on which the FACS Cure Notice is given to FACS (or such longer period as is permitted under the Subcontract or agreed to by the Subcontractor), and that Default Event has not been cured or remedied within the relevant period;
- (ii) if the Default Event is not one described in clause 3.2(d)(i) but is nevertheless reasonably capable of cure or remedy, FACS has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the FACS Cure Notice is given and has not continued to diligently pursue that cure or remedy; or
- (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, ServiceCo or FACS (or another person on behalf of either of them) have not paid or otherwise provided that compensation to the Subcontractor:
 - A. to the extent that the relevant amount of compensation has been referred to expert determination under clause 8, within 20 Business Days after that dispute is resolved; or
 - B. otherwise within 20 Business Days after the date on which FACS received the FACS Cure Notice;
 - C. if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, FACS does not commence and continue to perform ServiceCo's obligations under the Subcontract within 20 Business Days after the date on which the FACS Cure Notice is given to FACS; or
 - D. FACS notifies the Subcontractor in writing after receipt of the FACS Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

3.3 Statements concerning Default Event

- (a) As part of any Default Event Notice, the Subcontractor must submit to FACS statements of:
 - (i) where the Default Event is a monetary default:
 - A. the provisions of the Subcontract alleged to have been breached or not fulfilled; and

- B. the amount which must be paid to the Subcontractor to remedy the Default Event;
- (ii) where the Default Event is of a non-monetary nature:
 - A. the provisions of the Subcontract alleged to have been breached or not fulfilled;
 - B. sufficient information to enable FACS to identify the material facts;
 - C. the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled, if reasonably capable of cure or remedy; and
 - D. the time within which the specified steps can reasonably be expected to be taken; and
- (iii) any rights available to the Financiers, pursuant to any Finance Document to which the Subcontractor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the Subcontractor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Subcontract.
- (b) If the Subcontractor gives a FACS Cure Notice to FACS in accordance with clause 3.2(c), as part of that notice the Subcontractor must update the matters referred to in clause 3.3(a).

3.4 Warranty of accuracy

- (a) The Subcontractor warrants to FACS that statements submitted by it under clause 3.3 will be, so far as reasonably practicable and subject to unintended error which the Subcontractor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Subcontractor considers itself entitled.
- (b) The Subcontractor waives and abandons all claims then known or which ought reasonably to have been known to the Subcontractor arising out of or in connection with the Subcontract prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 3.3.

3.5 Disputes as to statements

If FACS disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 8:

- (a) FACS must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with clause 8, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Service Package Documents.

3.6 Verification

FACS may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by ServiceCo and the Subcontractor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of ServiceCo) statements submitted by the Subcontractor, and the Subcontractor must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the Subcontractor) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

3.7 No Liability

ServiceCo and the Subcontractor acknowledge that, without limiting the Liability of ServiceCo (which continues to be responsible for the performance of its obligations under the Subcontract), and without limiting FACS' obligations under clause 4, FACS will not be liable for any obligation or Liability of ServiceCo under the Subcontract by reason only of FACS performing ServiceCo's obligations in accordance with the Subcontract. ServiceCo and the Subcontractor each release FACS from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud or wilful misconduct on the part of FACS.

3.8 ServiceCo to compensate FACS

Any reasonable loss suffered or incurred by FACS arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due from ServiceCo to FACS.

3.9 No limitation on other rights

The exercise (or failure to exercise) by FACS of its rights under this clause 3 will not limit FACS' rights against ServiceCo under FACS Service Package Documents or otherwise according to Law.

4. Novation of Subcontract

4.1 Option

FACS may require a novation of the Subcontract in accordance with this clause 4 upon the termination of the Services Agreement by giving a notice to the Subcontractor (**Novation Notice**).

4.2 Novation of Subcontract

With effect from the Effective Date:

- (a) the parties novate the Subcontract so that FACS (or, if applicable, the Approved Nominee) and the Subcontractor are parties to a new contract on the same terms as the Subcontract as amended by this Deed; and
- (b) any reference in the Subcontract to ServiceCo shall be read as a reference to FACS (or, if applicable, the Approved Nominee).

4.3 Rights and obligations of FACS and the Subcontractor under the Subcontract

If FACS gives a Novation Notice then, subject to clause 4.6, with effect from the Effective Date:

- (a) FACS (or, if applicable, the Approved Nominee):
 - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, ServiceCo would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all Liabilities under the Subcontract which, but for this Deed, ServiceCo would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, ServiceCo would have been bound at and after the Effective Date; and
- (b) the Subcontractor:
 - (i) is entitled to all rights and benefits under the Subcontract to which, but for this Deed, it would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all Liabilities under the Subcontract which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Subcontract by which, but for this Deed, it would have been bound at and after the Effective Date,

as if FACS (or, if applicable, the Approved Nominee) had originally been a party to the Subcontract in place of ServiceCo.

4.4 Release by Subcontractor

With effect from the Effective Date, the Subcontractor releases ServiceCo from all obligations and Liability under or in respect of the Subcontract that arises or accrues at or after the Effective Date.

4.5 Release by ServiceCo

With effect from the Effective Date, ServiceCo releases the Subcontractor from all obligations and Liability under or in respect of the Subcontract that arises or accrues at or after the Effective Date.

4.6 Obligations and liability prior to the Effective Date

Nothing in this Deed releases ServiceCo or the Subcontractor from any obligation or liability under the Subcontract arising or accruing before the Effective Date and FACS (or, if applicable, the Approved Nominee) does not assume any such obligation or Liability under this Deed.

4.7 Amendments to Subcontract

- (a) With effect from the Effective Date, the terms of the Subcontract will be deemed to be amended as required to reflect the fact that the Services Agreement is at an end, and that the Subcontract must operate independently of the Services Agreement, on the basis that:
 - (i) the rights and obligations that FACS (or, if applicable, the Approved Nominee) will assume under the Subcontract from the Effective Date will be equivalent to those that ServiceCo would have had under the Subcontract had the Services Agreement not been terminated;
 - (ii) the rights and obligations that the Subcontractor will assume under the Subcontract from the Effective Date will be equivalent to those that the Subcontractor would have had under the Subcontract had the Services Agreement not been terminated;
 - (iii) any provisions of the Services Agreement incorporated by reference into the Subcontract prior to the Effective Date are incorporated in the Subcontract from the Effective Date; and
 - (iv) without affecting the generality of this clause 4.7(a), clauses [*insert relevant clauses of the Subcontract*] of the Subcontract will be deleted.
- (b) If at or after the Effective Date, there is a dispute between FACS (or, if applicable, the Approved Nominee) and the Subcontractor as to how the terms of the Subcontract are deemed to have been amended pursuant to clause 4.7(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 8.

4.8 Approved Nominee

- (a) FACS' nominee may be named as a party to the Subcontract in substitution for ServiceCo if FACS' nominee is an Approved Nominee.
- (b) The Subcontractor must:
 - (i) notify FACS as to whether FACS' nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Subcontractor to decide whether the nominated person is an Approved Nominee;
 - (ii) not unreasonably withhold or delay its decision on whether FACS' nominee is an Approved Nominee; and
 - (iii) enter into a side deed with FACS and the Approved Nominee on substantially the same terms as this Deed.

4.9 Insurances

- (a) If the Subcontractor is required under the Subcontract to take out or maintain or take out and maintain any insurance required under clause 30 (*Insurance*) of the Services Agreement to be taken out and maintained by ServiceCo (each such insurance, a **Subcontract Insurance**), then the Subcontractor undertakes to FACS to:
 - (i) take out or maintain or take out and maintain the Subcontract Insurances, as applicable; and

- (ii) comply with clause 30 (*Insurance*) and Schedule 10 (*Insurance Schedule*) of the Services Agreement with respect to the Subcontract Insurances, as if that clause and Schedule were set out in full in this Deed (*mutatis mutandis*).
- (b) The Subcontractor acknowledges and agrees that the proceeds of any Subcontract Insurance will be applied in accordance with section 5 (*Application of Insurance proceeds*) of Schedule 10 (*Insurance Schedule*) of the Services Agreement.

4.10 Other documents under the Subcontract

If FACS gives a Novation Notice then, as from the Effective Date, ServiceCo must procure the novation or assignment to FACS (or, if applicable, the Approved Nominee) of:

- (a) [*Insert list of documents to be novated/assigned (e.g collateral warranty deeds)*].

5. Representations and warranties

5.1 Representations and warranties by Subcontractor

- (a) The Subcontractor represents and warrants for the benefit of FACS that:
 - (i) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed and each other Service Package Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
 - (ii) **(legality)**: the execution, delivery and performance of this Deed and each other Service Package Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iii) **(validity)**: this Deed and each other Service Package Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
 - (iv) **(registration)**: it is duly registered, properly constituted and remains in existence;
 - (v) **(no trust relationship)**: except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
 - (vi) **(information true and correct)**: all information provided by it to FACS is as at the date on which it is provided true and correct and the Subcontractor is not aware of any material facts or circumstances that have not been disclosed to FACS and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Subcontract;
 - (vii) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Service Package Document to which it is a party;

- (viii) **(Insolvency Event):** no Insolvency Event has occurred in respect of it;
- (ix) **(accounts):**
 - A. its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - B. there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - C. such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (x) **(no default):**
 - A. it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - B. nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, and which would have a Material Adverse Effect;
- (b) **(no immunity):** neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and
- (c) **(own investigations):** in entering into this Deed, the Subcontract and any other Service Package Document to which it is a party, it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by FACS, ServiceCo or any other person unless in respect of ServiceCo or any other person, other than FACS or an Associate of FACS, it is expressly permitted to do so in accordance with a Service Package Document to which it is a party.

5.2 Repetition of representations and warranties

The representations and warranties in this clause 5 are taken to be repeated immediately before Financial Close, on the basis of the facts and circumstances as at that date.

5.3 Reliance on representations and warranties

The Subcontractor acknowledges that FACS executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 5.

6. Undertakings by Subcontractor

The Subcontractor undertakes to FACS as follows:

- (a) **(notification of Default Event):** in the case of the Subcontractor, it will notify FACS of any Default Event promptly after it gives notice of that Default Event in accordance with clause [insert] (*Notice of ServiceCo Event of Default*) of the Subcontract;
- (b) **(documents in relation to Default Event):** in the case of the Subcontractor, it will promptly give FACS a copy of all documents issued by the Subcontractor to ServiceCo in relation to a Default Event;
- (c) **(no amendment without consent):** it will not, without first obtaining the consent of FACS:
 - (i) make or permit any amendment or replacement of or addition to;
 - (ii) subject to clause 3.2, terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.3 (*Replacement of Key Subcontractor*) of the Financiers' Tripartite Deed; or
 - (iv) allow any express waiver of its material rights and obligations under,

a Subcontract, provided that FACS will not withhold its consent to an amendment which is an amendment to which it has consented in accordance with the Services Agreement;
- (d) **(disposals):** it will not, after Commercial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in the Subcontract without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of FACS (in a form and substance approved by FACS) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Subcontractor;
- (e) **(attend meetings and inspections):** it will (when reasonably requested by FACS):
 - (i) attend, where reasonable and appropriate, meetings with FACS or any of FACS' Associates;
 - (ii) provide FACS or any of FACS' Associates and authorised personnel with:
 - A. in the case of the Subcontractor, full access to:
 - 1) the Site; and
 - 2) any other place where any Services are being provided,

to the extent provided in the Services Agreement; and
 - B. any other information, records or documents that FACS or any of its Associates (acting reasonably) requires in relation to the provision of the Services or compliance with the Subcontract or any information required by FACS to

comply with requests from the New South Wales Auditor-General; and

- (iii) permit FACS or any of FACS' Associates to attend all tests and inspections to be carried out in connection with the Service Package in accordance with the terms of the Subcontract, to the extent provided in the Services Agreement; and
- (f) **(access to records)**: in the case of the Subcontractor, at the request of FACS, the Subcontractor will:
 - (i) permit FACS or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Subcontractor in relation to the Service Package; and
 - (ii) supply FACS or any of its Associates with a copy of any such report or document which they may require from time to time.

7. Acknowledgement by ServiceCo

ServiceCo consents to the terms of this Deed and will co-operate in the implementation of this Deed.

8. Dispute resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 8 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Services Agreement are resolved. Accordingly, the provisions of clauses 34 (*Dispute Resolution procedure*) to 38 (*Arbitration*) of the Services Agreement are incorporated into this Deed but as if:

- (a) the only persons party to the Services Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

9. GST

- (a) **(Interpretation)**:
 - (i) Except where the context suggests otherwise, terms used in this clause 9 have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9.

- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 9(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
 - (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 9) for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 9(c)(i).
- (d) **(Variation of GST):**
 - (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 9(c) and clause 9(e)), varies from the additional amount paid by the Recipient under clause 9(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 9(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
 - (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 9(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 9(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9(c) (or the time at which such GST Amount would have been payable in accordance with clause 9(c) but for the operation of clause 9(e)(i)).

- (f) **(No merger)**: This clause 9 will not merge on completion or termination of this Deed.
- (g) **(Application of Services Agreement)**: If clause 21 (*Payments, adjustments & Taxes*) of the Services Agreement would apply in connection with a Taxable Supply to which this clause 9 also applies, then clause 21 (*Payments, adjustments & Taxes*) of the Services Agreement will apply in connection with that supply and the provisions of this clause 9 (but for this paragraph) will not apply.

10. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

FACS

Attention: Eleri Morgan-Thomas
Address: 2 Cavill Avenue, Ashfield, NSW
Telephone: (02) 9716 2917
Email: eleri.morgan-thomas@facs.nsw.gov.au

ServiceCo

Name: Compass Housing Services Co Ltd
Address: Suite 1/44 Beaumont Street, Hamilton, NSW 2303
Email: [REDACTED]

For the attention of: [REDACTED]

Subcontractor

Name: [insert]
Address: [insert]
Email: [insert]
For the attention of: [insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address, of the addressee set out in clause 10(b);
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 10(b):
- (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

- (ii) subject to clause 10(f), in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
- (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and
- (f) **(notices sent by post):** if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

11. Confidential Information and disclosure

11.1 Confidential Information and disclosure by FACS

- (a) Subject to clause 11(b), FACS and any Authority may disclose any information in connection with the Service Package, including Service Package Information.
- (b) FACS may only disclose the Commercially Sensitive Information:
 - (i) in accordance with Laws or for the enforcement of any criminal law;
 - (ii) where disclosure is in the course of the official duties of the responsible Minister, the Treasurer, the Premier or the Attorney General;
 - (iii) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (iv) to satisfy the requirements of Parliamentary accountability;
 - (v) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (vi) in annual reports of FACS;
 - (vii) in accordance with policies of FACS or the NSW Government or any Authority;

- (viii) for any tender process required to be conducted under the Termination Payments Schedule; or
- (ix) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Services Agreement.

11.2 Confidential Information and disclosure by Subcontractor

- (a) **(Confidentiality obligation):** Subject to clauses 11.2(b) and clause 11.4(b), the Subcontractor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS, make public or disclose to any person any Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting the Subcontractor's obligations under clause 11.2(a) and subject to clause 11.2(c), the Subcontractor may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Service Package; and
 - (ii) in accordance with clause 11.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Subcontractor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 11.
- (d) **(Permitted disclosure):** The Subcontractor may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 11.2(a) or 11.3(a) or to enter into a confidentiality deed under clause 11.2(c) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - A. notifies FACS of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which the Subcontractor is a party; or
 - (iv) required by a relevant recognised stock exchange, subject to:
 - A. the disclosure, announcement or statement not referring to FACS' or any of its Associates' involvement in the Service Package; and

- B. the Subcontractor having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

11.3 Public announcements by Subcontractor

Subject to clause 11.2(d), the Subcontractor must:

- (a) not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 11.3 or for which FACS' consent or approval was not required in accordance with clause 11.4.

11.4 Information public or known

Notwithstanding anything in this clause 11, any party may disclose information in connection with the Service Package (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 11; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

11.5 Disclosure by FACS under GIPA Act

- (a) Notwithstanding the other provisions of this clause 11, the parties acknowledge that:
 - (i) the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) FACS will notify the Subcontractor of any proposed disclosure of Commercially Sensitive Information by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (ii) following notification by FACS in accordance with clause 11.5(b)(i), FACS will take reasonable steps to consult with the Subcontractor before disclosing Commercially Sensitive Information under the GIPA Act;

- (iii) if, following:
 - A. notification by FACS in accordance with clause 11.5(b)(i); or
 - B. consultation between FACS and the Subcontractor in accordance with clause 11.5(b)(ii),

the Subcontractor objects to disclosure of some or all of the Commercially Sensitive Information, the Subcontractor must provide details of any such objection within five Business Days after the date the Subcontractor received notification from FACS or the date on which the consultation process concluded (as relevant);
- (iv) FACS may take into account any objection received from the Subcontractor pursuant to clause 11.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Subcontractor should be disclosed; and
- (v) nothing in this clause 11.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

11.6 Personal Information

The Subcontractor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Standards;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Standards; and
- (c) keep, and make available to FACS on request, records detailing the recipient of any Personal Information that the Subcontractor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

11.7 Privacy

- (a) **(Compliance):** Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Subcontractor agrees to, and will ensure that the Subcontract and any other subcontract entered into by the Subcontractor in relation to the Service Package contains terms which require the Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract or other relevant subcontract (as the case may be), in the same way as FACS would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by FACS.
- (b) **(Release and Indemnity):** The Subcontractor must release, indemnify and must keep indemnified on demand FACS and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which FACS or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Subcontractor or any of their respective Associates in connection with the Service Package, which would, had that act or practice been done or engaged in by FACS, have contravened any of the Privacy Legislation.

12. Termination of this Deed

- (a) **(Satisfaction of obligations under the Subcontract or novation of Subcontract):** This Deed will terminate automatically without any requirement for any notice from any party:
 - (i) upon the performance and satisfaction of all of the obligations under the Subcontract; or
 - (ii) upon the novation of the Subcontract to FACS.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.
- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (i) FACS' rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to FACS;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) any limitation or exclusion of liability; and
 - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

13. Governing law and jurisdiction

13.1 Governing law

This Deed is governed by and must be construed according to the Laws of New South Wales, Australia.

13.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts,

with respect to any proceedings which may be brought in connection with this Deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 13.2(a).

14. Miscellaneous

14.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding)**: embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersedes any prior written or other agreement of the parties.

14.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

14.3 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to, a delay in, or the partial exercise or enforcement of a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

14.4 Consents and approvals

A consent or approval required under this Deed from FACS may be given or withheld, or may be given subject to any conditions, as FACS (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

14.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

14.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

14.7 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

14.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

14.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

14.10 Moratorium legislation

A provision of any Law which comes into effect after the date of this Deed and operates to:

- (a) increase or improve any of ServiceCo's or the Subcontractor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by FACS of any right, power or remedy under this Deed or otherwise,

(each matter referred to in (a) and (b), a **Specified Effect**) is, to the extent only that the Law has the Specified Effect, expressly waived by ServiceCo to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original position under this Deed.

Executed as a deed.

[Insert execution blocks]

Schedule 22 – Site Selection Strategy

1. Demand for Accommodation Services

All sites will meet the criteria of very high demand as per Housing Pathways waitlist data and local experience, be located within built up, growing residential or mixed residential / commercial locations with excellent access to required amenities, and capable of being efficiently and economically managed by existing local Compass offices at Tuggerah for Central Coast, Newcastle, and East Maitland for Hunter Valley and Lake Macquarie West.

1.1 Approach to supporting infrastructure and amenities

All sites will be located with excellent access to required infrastructure and amenities in the immediate local community or with convenient access to a major centre.

1.2 Physical Integration of sites within the existing community

All sites will comply with Council planning schemes. All Dwellings will not be distinguishable as social housing dwellings when compared with nearby privately developed residential units.

1.3 Social integration of tenants within community

Individual tenants will be aided with "integration" as necessary through the process of household needs assessment and tailored support co-ordination. Compass initiatives such as "in the house" will be implemented within each SAHF development to provide opportunities for tenants to get to know each other to the extent they individually prefer.

1.4 Dispersal and integration of Social, Affordable and Private dwellings within sites to deliver a sustainable and cohesive living environment

ServiceCo will work with developers and owners to determine the most practical approach to distributing units. This will be guided by practical considerations such as ease of access for tenants as well as Compass Housing Managers, and maintenance personnel. Where private housing is included, developers may wish to provide additional internal facilities (such as ensuites) in those units, which may have design consequences where those units are grouped.

1.5 Location and configuration of Sites and Dwellings that will not exacerbate the existing level of social disadvantage

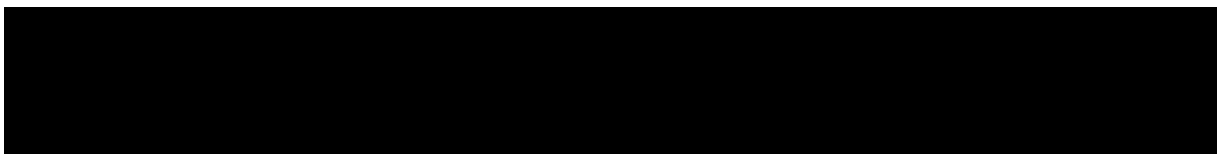
No sites will be selected within existing large concentrations of social housing.

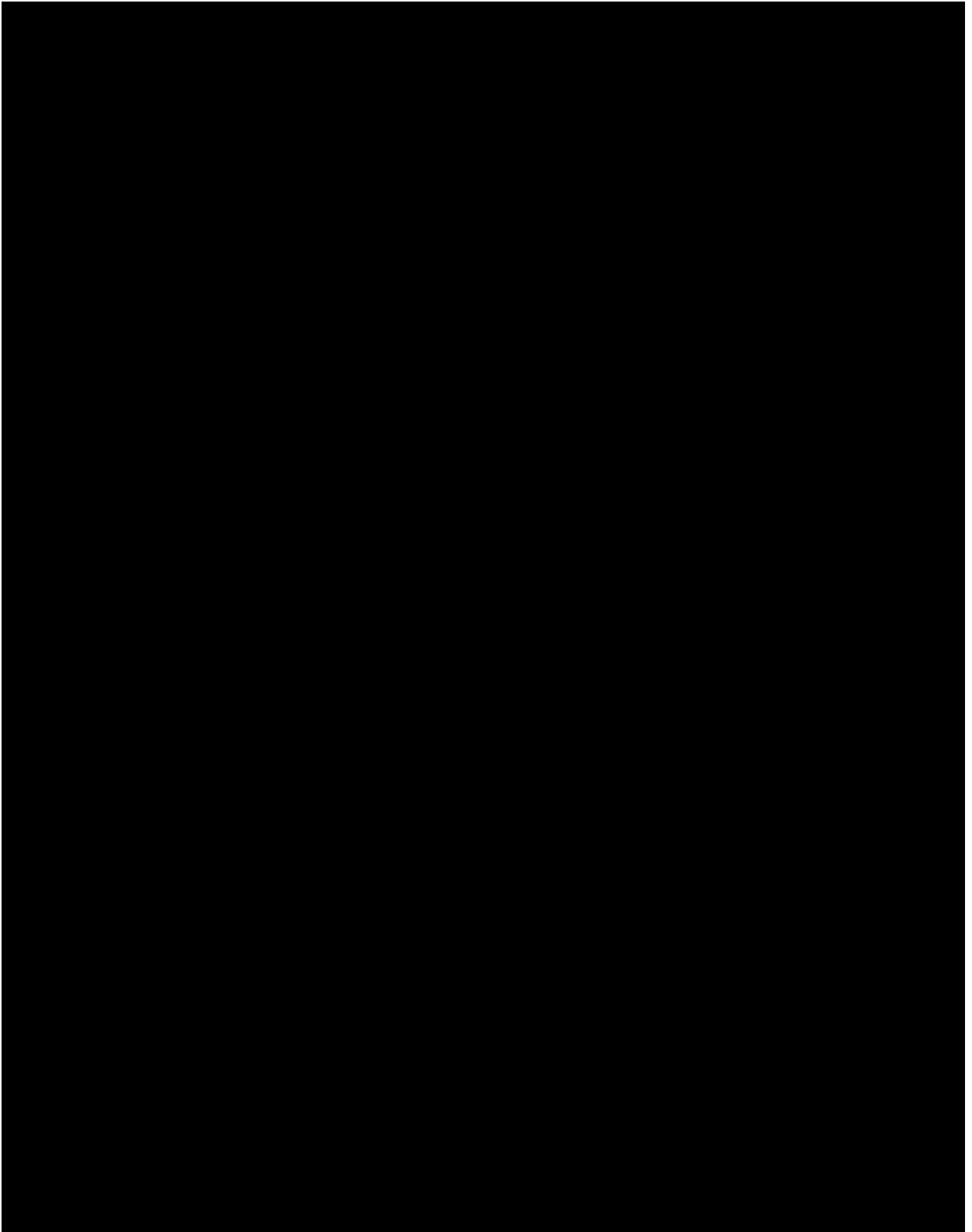
2. Key Parameters (Measureable)

All Sites will meet the following measureable parameters:

2.1 Measures of demand

Locations and dwelling bedroom configurations will in most cases show Housing Pathways waiting times of 5 years or over, or 2 to 5 years at a minimum, unless agreed otherwise.





Confidential

Schedule 23 – Dispute Avoidance Board Agreement

Social and Affordable Housing Fund - Dispute Avoidance Board Agreement

Department of Family and Community Services (FACS)

and

Compass Housing Services Co Ltd (ServiceCo)

ACN 002 862 213

(Members of the Dispute Avoidance Board)

Dispute Avoidance Board Agreement made on

Parties The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**)

Compass Housing Services Co Ltd of Suite 1/44 Beaumont Street, Hamilton, NSW, 2303 (**ServiceCo**)

Members of the Dispute Avoidance Board, namely:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(collectively, **Members**)

Recitals

- A. The background to the Service Package is set out in the Services Agreement.
- B. Clause 36 (*Dispute Avoidance Board*) of the Services Agreement provides for the operation of a Dispute Avoidance Board to assist in resolving Disputes under the Services Agreement.
- C. This Agreement sets out the rights, obligations and duties of the Members, FACS and ServiceCo in relation to the Dispute Avoidance Board and any Disputes.

Operative provisions

1. Definitions

1.1 Services Agreement definitions

Unless otherwise expressly defined, expressions used in this Agreement have the meanings given to them in the Services Agreement.

1.2 Definitions

Agreement means this agreement and includes all schedules, exhibits, attachments and annexures to it.

Members means the 3 individuals appointed to the Dispute Avoidance Board in accordance with this Agreement.

Services Agreement means the document entitled "Social and Affordable Housing Fund – Services Agreement" between FACS and ServiceCo dated on or around the date of this Agreement.

Schedule of Fees and Disbursements the fees and disbursements of each Member as set out in Schedule 3.

1.3 Interpretation

In this Agreement:

- (a) (**headings**): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) (**count and gender**): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) (**Agreement and Schedule references**): a reference to:
 - (i) a party, clause, Schedule, Exhibit, or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) (**document as amended**): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) (**party**): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) (**person**): a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) (**legislation**): a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) (**Standards**): a reference to a Standard includes that Standard as amended or updated from time to time;
- (i) (**definitions**): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) (**"includes"**): "includes" and "including" will be read as if followed by the phrase "(without limitation)";
- (k) (**"or"**): the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) (**"\$"**): a reference to "\$", AUD or dollar is to Australian currency;

- (n) (**Business Day**): if the day on or by which anything is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (o) (**day**): except as otherwise provided in this Agreement or where a reference is made to 'Business Days', day means a calendar day;
- (p) (**time**): a reference to time is a reference to time in Sydney, Australia;
- (q) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) (**obligations and Liabilities**): a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (s) (**'may'**): except to the extent that FACS is expressly required to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion and FACS has no obligation to do so;
- (t) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (i) is reconstituted, renamed or replaced, or if its powers or functions are transferred to, or assumed by, another Entity, this Agreement is deemed to refer to that other Entity; or
 - (ii) ceases to exist, this Agreement is deemed to refer to that new Entity which serves substantially the same purpose or object as the former Entity;
- (u) (**asset**): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
- (v) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2. Agreement to prevail

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and the Services Agreement the terms of this Agreement will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date all parties sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 36.4 (*Termination of Dispute Avoidance Board*) of the Services Agreement.

3. Formation of the Dispute Avoidance Board

The parties acknowledge that the Dispute Avoidance Board:

- (a) has been formed;
- (b) is constituted by the Members; and

- (c) must perform its obligations and functions under the Services Agreement and this Agreement.

4. Establishment of procedures

- (a) During the first meeting, the Dispute Avoidance Board will establish procedures for the conduct of any site visits and other matters (excluding the rules governing the Dispute Avoidance Board giving its opinion on a Dispute referred to it pursuant to clause 35(d)(iii) (*Involve Dispute Avoidance Board*) of the Services Agreement) in accordance with the procedures included in Schedule 1 (unless otherwise agreed by the parties).
- (b) The parties agree to comply with the rules for the Dispute Avoidance Board process set out in Schedule 2 in respect of any Dispute referred to the Dispute Avoidance Board pursuant to clause 35(d)(iii) (*Involve Dispute Avoidance Board*) of the Services Agreement.

5. Members' obligations

- (a) (**Impartiality**): Each Member agrees to consider fairly and impartially the Disputes and other matters referred to the Dispute Avoidance Board.
- (b) (**Independence**): Each Member agrees to act honestly and independently in the performance of its obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 4(b).
- (c) (**Keep informed**): For the purposes of enabling it to fulfil its functions, each Member will keep itself informed as to the performance of the Services and any issues affecting the Service Package Activities.
- (d) (**General duties**): Each Member agrees to carry out his or her obligations as a Member:
 - (i) with due care and diligence;
 - (ii) in compliance with the Services Agreement and this Agreement; and
 - (iii) in compliance with all applicable Laws.

6. Costs and fees

- (a) FACS and ServiceCo are jointly and severally liable for the payment of the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3.
- (b) FACS and ServiceCo agree as between themselves that:
 - (i) they will each pay one half of:
 - A. the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and
 - B. any third party costs incurred in holding the conference referred to in section 2 of Schedule 2, including any booking fee, room hire and transcript costs; and

- (ii) they will each bear their own costs of, and incidental to, the preparation of this Agreement and their participation in any advisory process of the Dispute Avoidance Board.

7. FACS' commitment and responsibilities

FACS acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in the Services Agreement and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing with the resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with the Services Agreement or this Agreement.

8. ServiceCo's commitment and responsibilities

ServiceCo acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board;
- (c) at FACS' request, procure the attendance of representatives of any Key Subcontractor or the Financiers at meetings with the Dispute Avoidance Board as observers;
- (d) obtain FACS' prior consent if it wishes to have a representative of any Key Subcontractor or the Financiers at meetings with the Dispute Avoidance Board as an observer; and
- (e) except for its participation in the Dispute Avoidance Board's activities as provided in the Services Agreement and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing with the resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with the Services Agreement or this Agreement.

9. Confidentiality

In relation to all confidential information disclosed to the Dispute Avoidance Board at any time, each Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by law to do so;
- (c) not to use that information for a purpose other than the resolution of the Dispute; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

10. Conflict of interest

- (a) If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform FACS, ServiceCo and the other Members.
- (b) The other Members will within 5 Business Days of notification under clause 10(a) confer and inform the parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the other Members believe that the Member should be replaced, the Member will immediately resign from the Dispute Avoidance Board and a reappointment will occur pursuant to clause 14.3.

11. Liability

11.1 Liability

Each Member is not liable to either FACS or ServiceCo for any act or omission done in good faith and with due care and diligence.

11.2 Due care and diligence

For the purpose of clause 11.1, the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

12. Indemnity

12.1 Indemnity

FACS and ServiceCo each indemnify each Member against all claims from a person not a party to this Agreement for any act or omission done in good faith and with due care and diligence.

12.2 Due care and diligence

For the purpose of clause 12.1, the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

13. Termination of Agreement

- (a) This Agreement will terminate in accordance with clause 36.4 (*Termination of Dispute Avoidance Board*) of the Services Agreement.
- (b) If clause 14.3 applies, this Agreement will remain in force until a replacement to this Agreement has been fully executed.

14. Members' termination

14.1 Resignation

A Member may resign from the Dispute Avoidance Board by providing 30 Business Days' written notice to the other Members, FACS and ServiceCo.

14.2 Termination

A Member's appointment may be terminated at any time if FACS and ServiceCo agree to do so.

14.3 Re-appointment

The parties acknowledge and agree that if:

- (a) a Member resigns under clauses 10(b) or 14.1; or
- (b) the appointment of a Member is terminated by FACS and ServiceCo under the Services Agreement;

then:

- (c) a replacement Member may be appointed in accordance with clause 36.3 (*Replacement of Dispute Avoidance Board member*) of the Services Agreement; and
- (d) ServiceCo, FACS, the remaining Members and any new Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment under the terms of the Service Agreement.

15. Governing law

- (a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

16. Relationship of the parties

Nothing in this Agreement will be construed or interpreted as constituting the relationship between FACS, ServiceCo and the Members as that of partners, joint venturers or any other fiduciary relationship.

17. Notices

- (a) Any notices contemplated by this Agreement must be in writing and:
 - (i) delivered to the relevant address;
 - (ii) sent to the facsimile number; or
 - (iii) sent in electronic form (such as email) to an address,as set out below (or to any new address, facsimile number or address that a party notifies to the others):

to FACS: Eleri Morgan-Thomas
2 Cavill Avenue, Ashfield, NSW, 2131
eler.morgan-thomas@facs.nsw.gov.au

to ServiceCo:

Suite 1/44 Beaumont Street, Hamilton, NSW, 2303

to the Members:

- (b) A notice sent by post will be taken to have been received:
 - (i) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
 - (ii) (in the case of international post) 7 Business Days after the date of posting; and
 - (iii) (in the case of delivery by hand) on delivery.
- (c) A notice sent by facsimile will be taken to have been received on the next Business Day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with clause 17(a).
- (d) A notice sent by way of electronic transmission will be taken to have been received when the sender receives confirmation on its server that the message has been transmitted:
 - (i) if it is transmitted by 5.00 pm (Sydney time) on a Business Day – on that Business Day; or
 - (ii) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.

18. Giving effect to this Agreement

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.

19. Survival of terms

The parties agree that clauses 6, 9, 11 and this clause 19 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

20. Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

21. Operation of this Agreement

- (a) Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a party may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

22. Amendment

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

23. Counterparts

- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

24. Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Schedule 1 - Dispute Avoidance Board General Operating Procedures

1. General

- (a) The role of the Dispute Avoidance Board is to assist the parties to the Services Agreement in:
 - (i) attempting to prevent; and
 - (ii) if unable to prevent, in resolving Disputes, in a timely manner.
- (b) Except when participating in the Dispute Avoidance Board's activities as contemplated by the Services Agreement and this Agreement, the parties to the Services Agreement shall not communicate with the Dispute Avoidance Board or its Members on matters dealing with the conduct of the work or resolution of problems.
- (c) ServiceCo will furnish to each of the Members those documents necessary for the Dispute Avoidance Board to perform its functions, such as copies of all Services Agreement documents plus periodic reports provided under the Services Agreement and any other documents that would be helpful in informing the Members of Disputes and other related matters.
- (d) The individual Members are not the representative of the party that appointed that representative. The entire Dispute Avoidance Board must function as an objective, impartial and independent body at all times.
- (e) There must be no communication between Members and employees of the parties to the Services Agreement during the life of the Dispute Avoidance Board without the Members informing the parties to the Services Agreement. The parties to the Services Agreement must direct any matters needing attention between meetings of the Dispute Avoidance Board to the chairperson of the Dispute Avoidance Board.
- (f) The Members shall make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.
- (g) Communications between the parties and the Dispute Avoidance Board for the purpose of attempting to prevent Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under the Services Agreement.

2. Frequency of meetings and site visits

- (a) The scheduling of meetings and, if required, site visits necessary to keep the Dispute Avoidance Board properly informed of the Service Package Activities will generally be agreed between the Dispute Avoidance Board and the parties to the Services Agreement.
- (b) The frequency of meetings of the Dispute Avoidance Board should generally be once every 3 months but this may be influenced by work progress, unusual events and the number and complexity of potential Disputes. FACS and

ServiceCo may, by agreement, request to meet with the Dispute Avoidance Board more or less frequently than contemplated by this section 2(b).

- (c) Subject to sections 1(b) and 1(e) of this Schedule 1, FACS or ServiceCo may request a meeting of the Dispute Avoidance Board other than a scheduled meeting, which request shall be accommodated by the Dispute Avoidance Board as early as practicable.
- (d) The first Dispute Avoidance Board meeting should be held within 1 month of the date of this Agreement.

3. Agenda for and location of meetings

- (a) The chairperson will develop an agenda for each meeting.
- (b) Dispute Avoidance Board meetings held for the purposes of briefing and updating the Members on performance and progress of the work under the Services Agreement and issues or potential issues between the parties shall be held on an in-confidence and without prejudice basis to encourage full and frank disclosure and discussions.
- (c) Meetings will be held at a location or locations agreed by FACS, ServiceCo and the Members from time to time and Members are required to attend in person. Where a Member or a representative referred to in section 6 below is unable to attend a meeting in person at the location agreed and on the date and at the time scheduled for that meeting, that person may participate by telephone or video link.
- (d) For meetings held relating to the Delivery Phase Activities, at the conclusion of the meeting, the Dispute Avoidance Board may inspect the relevant Site(s) in the company of representatives of both parties to the Services Agreement.

4. Minutes of meetings

- (a) FACS will prepare minutes of the regular meetings of the Dispute Avoidance Board and these draft minutes will be circulated to the Members for comments, additions and corrections.
- (b) In accordance with section 3(b) of this Schedule 1 above, the minutes of Dispute Avoidance Board meetings held shall be marked "in-confidence, without prejudice".
- (c) Minutes as amended will be adopted by the Members at the next meeting.

5. Communications

All communications by the parties to the Dispute Avoidance Board outside the Dispute Avoidance Board meetings should be directed in writing to the chairperson and copied to the other Members and to the other party. All communications by the Members to the parties should be addressed to the persons named in clause 17(a).

6. Representation

The parties shall each ensure they are represented at Dispute Avoidance Board meetings by at least two senior personnel involved in the Service Package. The parties shall inform the chairperson of the names and roles of each of their respective representatives and, if applicable, the names and roles of any alternatives.

Schedule 2 – Rules for DAB opinion

1. Written submissions

- (a) Within 7 Business Days after the referral of a Dispute to the Dispute Avoidance Board under clause 35(d)(iii) (*Involve Dispute Avoidance Board*) of the Services Agreement, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, the parties must, in addition to any particulars provided by the Executive Representatives in the relevant Notice of Referral, give each party and the Dispute Avoidance Board a written statement of the Dispute referred to the Dispute Avoidance Board, any agreed statement of facts and a written submission (which may include relevant contract communications) on the Dispute.
- (b) If the Dispute Avoidance Board considers it appropriate, each party may reply in writing to the written statement in section 1(a) of this Schedule 2 within the time allowed by the Dispute Avoidance Board.
- (c) If the Dispute Avoidance Board decides further information or documentation is required for it to provide an opinion on the Dispute, the Dispute Avoidance Board may direct one or more parties to provide such further submissions, information or documents as the Dispute Avoidance Board may require.
- (d) The Dispute Avoidance Board must disclose to both parties all submissions, further submissions, information and documents received.
- (e) Any failure by a party to make a written submission will not terminate or discontinue the process.

2. Conference

- (a) Either party may:
 - (i) in writing; and
 - (ii) at any time prior to a notice of dispute being issued in accordance with clause 35(a) (*Notification*) of the Services Agreement, request the Dispute Avoidance Board to call a conference of the parties. Any such request shall include a summary of the matters the party considers should be included in the conference.
- (b) Section 2(a) will not apply in relation to a Dispute the subject of a notice of dispute under clause 35(a) (*Notification*) of the Services Agreement.
- (c) If neither party requests the Dispute Avoidance Board to call a conference, the chairperson of the Dispute Avoidance Board may nevertheless call a conference if they think it appropriate.
- (d) The parties will agree the location of any conference.
- (e) At least 5 Business Days before the conference, the Dispute Avoidance Board must inform the parties in writing of the date, venue and agenda for the conference.

- (f) The parties must appear at the conference and may make submissions on the subject matter of the conference. If a party fails to appear at a conference of which that party had been notified under section 2(e), the Dispute Avoidance Board and the other party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the advisory process.
- (g) The parties may be accompanied at a conference by:
 - (i) legal or other advisers; or
 - (ii) any parties permitted to attend under the Services Agreement.
- (h) The conference must be held in private.
- (i) If agreed between the parties, transcripts of the conference proceedings may be taken and made available to the Dispute Avoidance Board and the parties.

3. The opinion

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 Business Days after referral of a Dispute to the Dispute Avoidance Board under clause 35(d)(iii) (*Involve Dispute Avoidance Board*) of the Services Agreement (or such other period as the parties may agree in writing), the Dispute Avoidance Board must provide its opinion on the Dispute between the parties, to the parties.
- (b) The opinion of the Dispute Avoidance Board must:
 - (i) be in writing stating the Dispute Avoidance Board's opinion on the Dispute and giving reasons; and
 - (ii) be given on the basis of the submissions (if any) of the parties, the conference (if any), and the Dispute Avoidance Board's own expertise.
- (c) If the Dispute Avoidance Board's opinion contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Dispute Avoidance Board must correct the opinion.

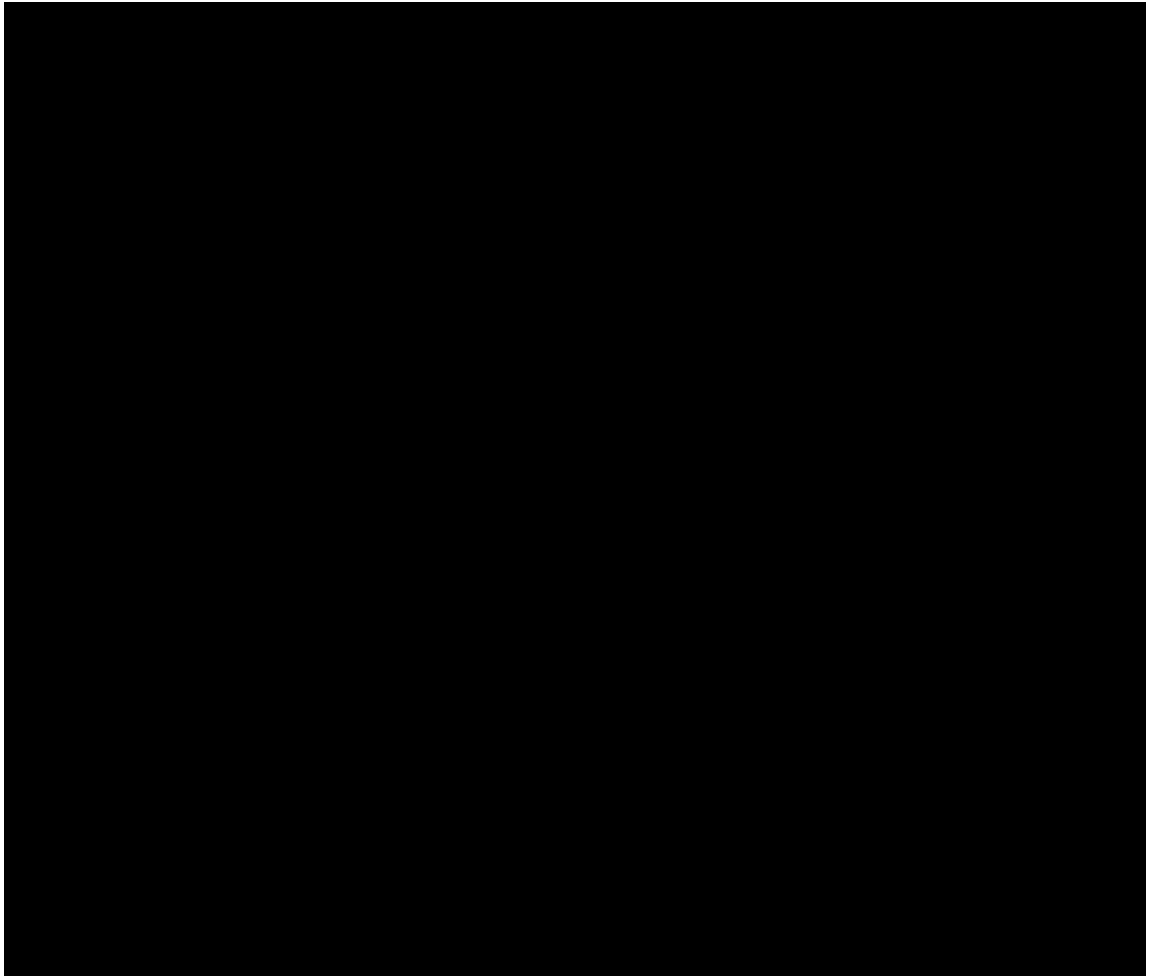
4. Modification

These rules may be modified only by agreement of FACS and ServiceCo.

Schedule 3 - Schedule of Fees and Disbursements

Dispute Avoidance Board Member

Fees and disbursements



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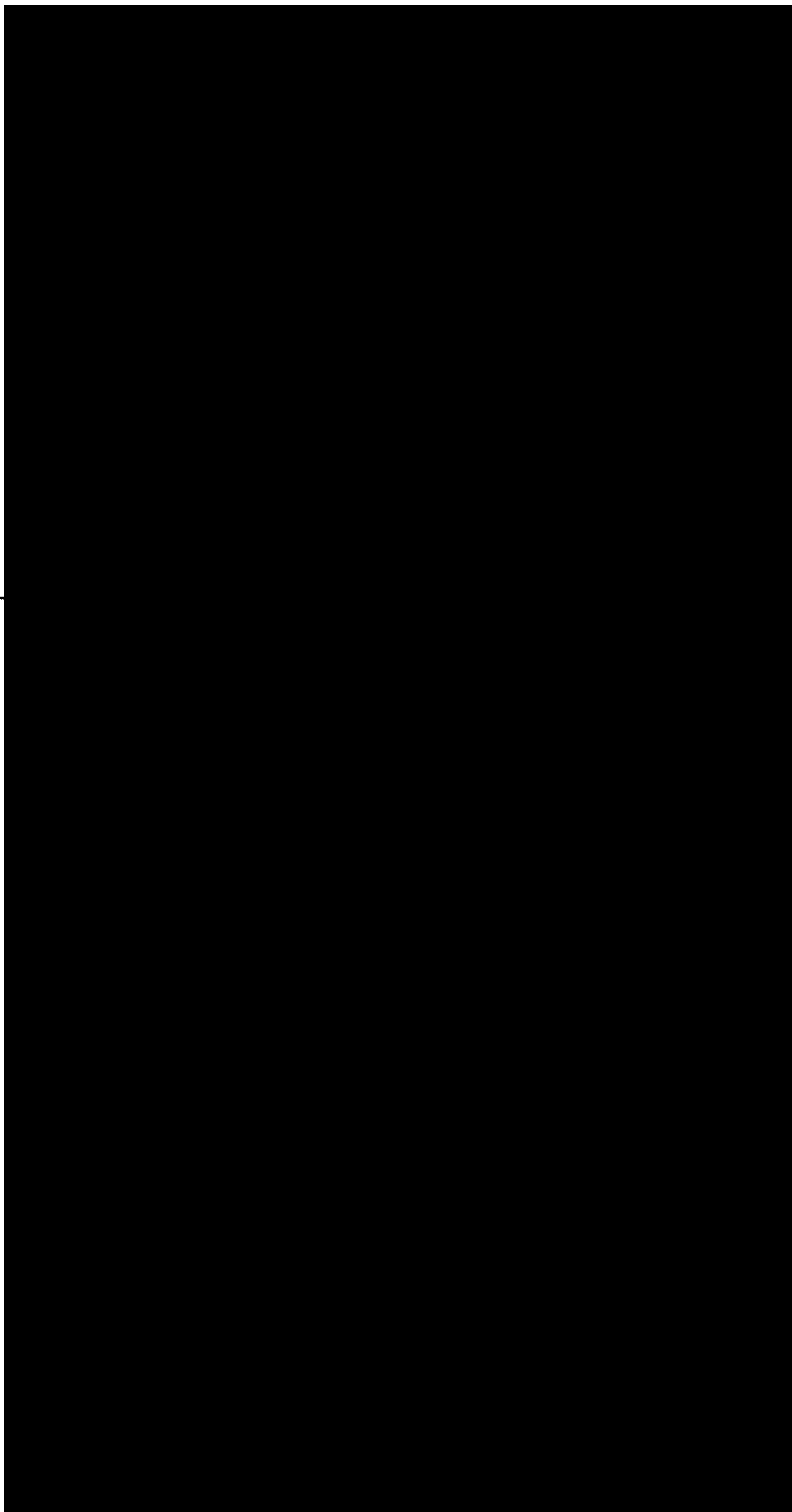
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Schedule 24 – Delivery Phase Milestones

Part 1 – Delivery Phase Milestones

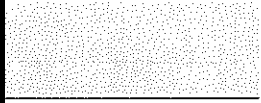
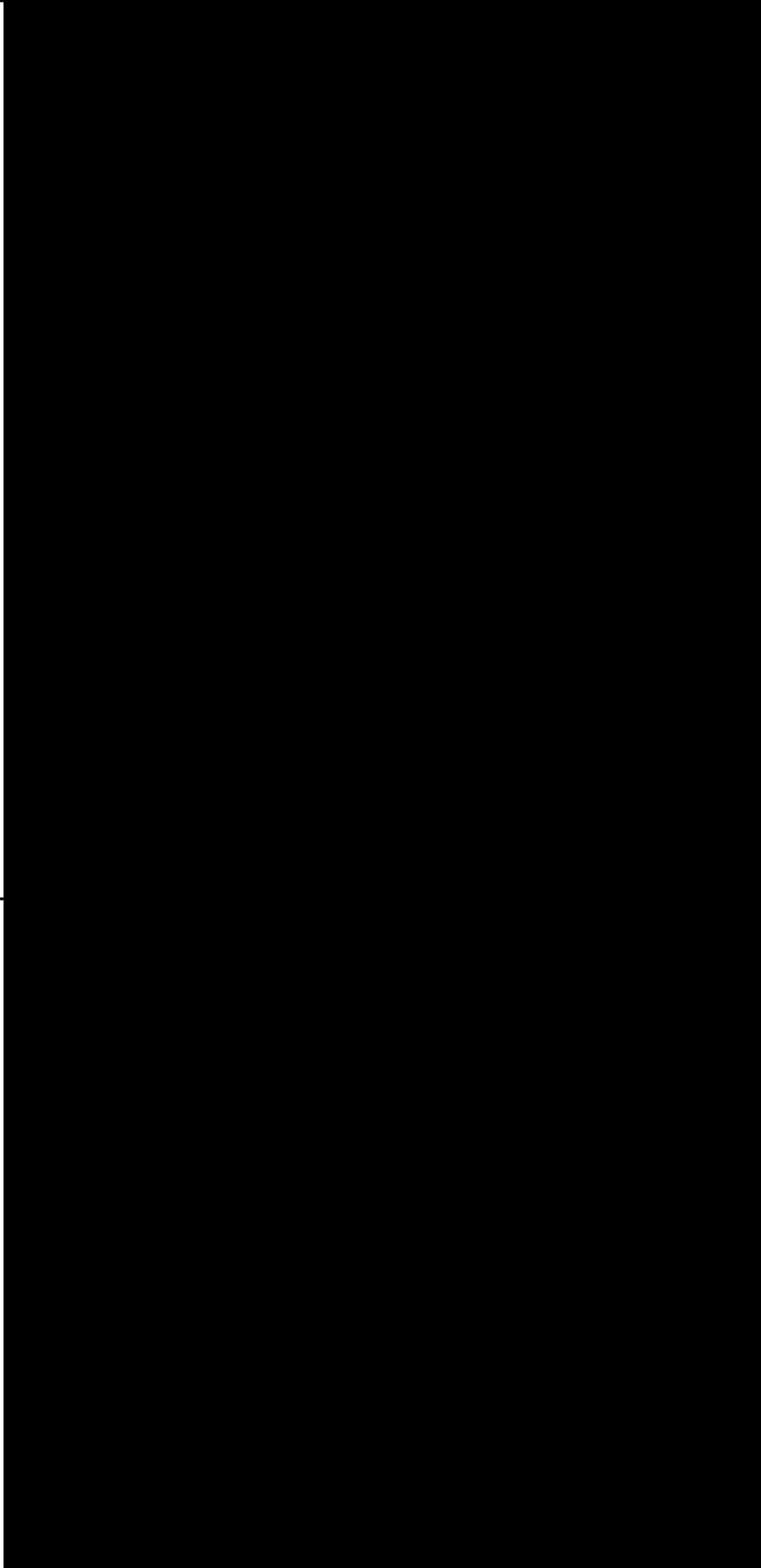
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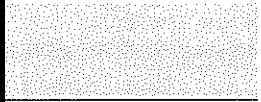


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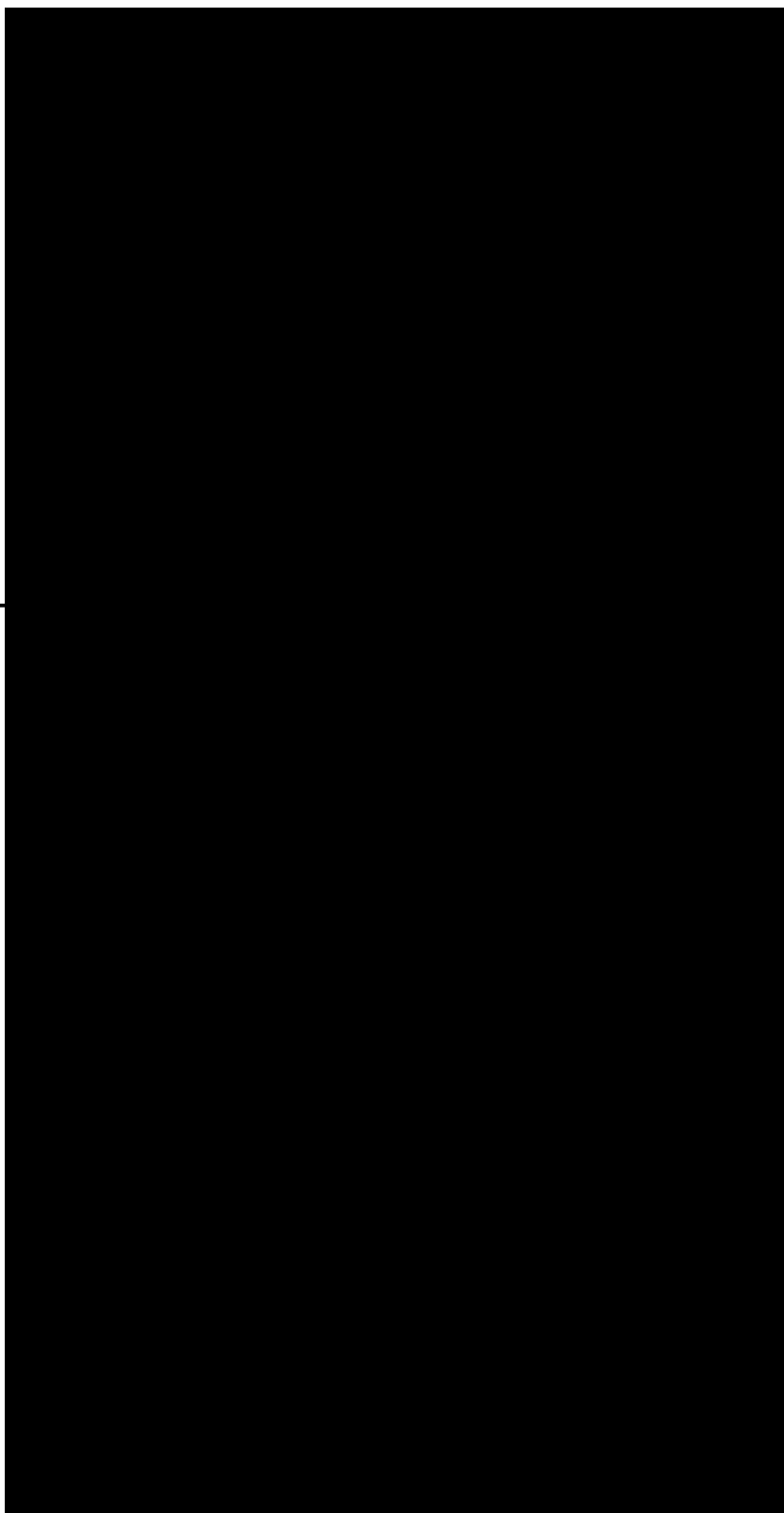
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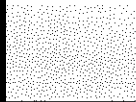
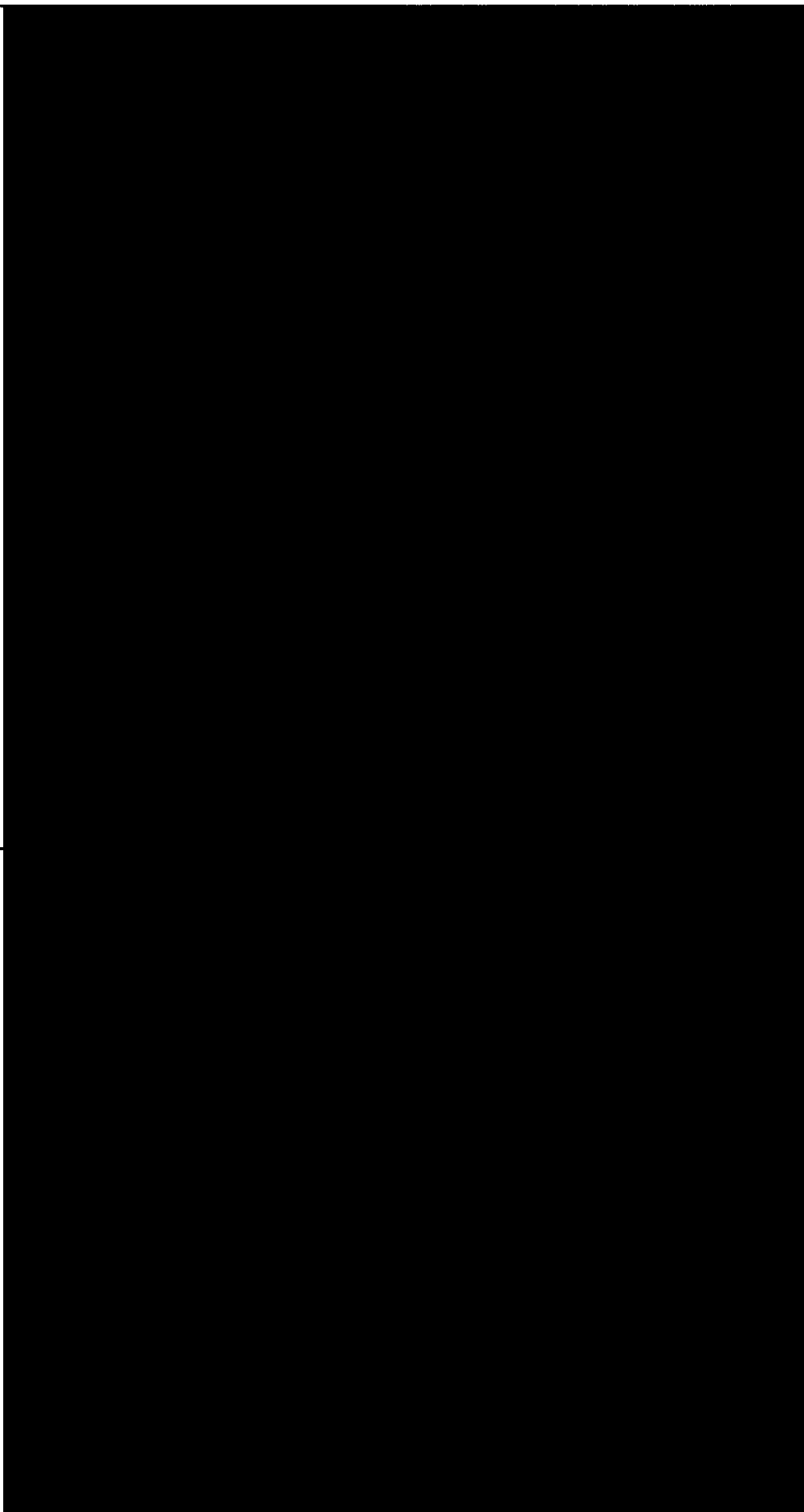
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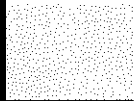
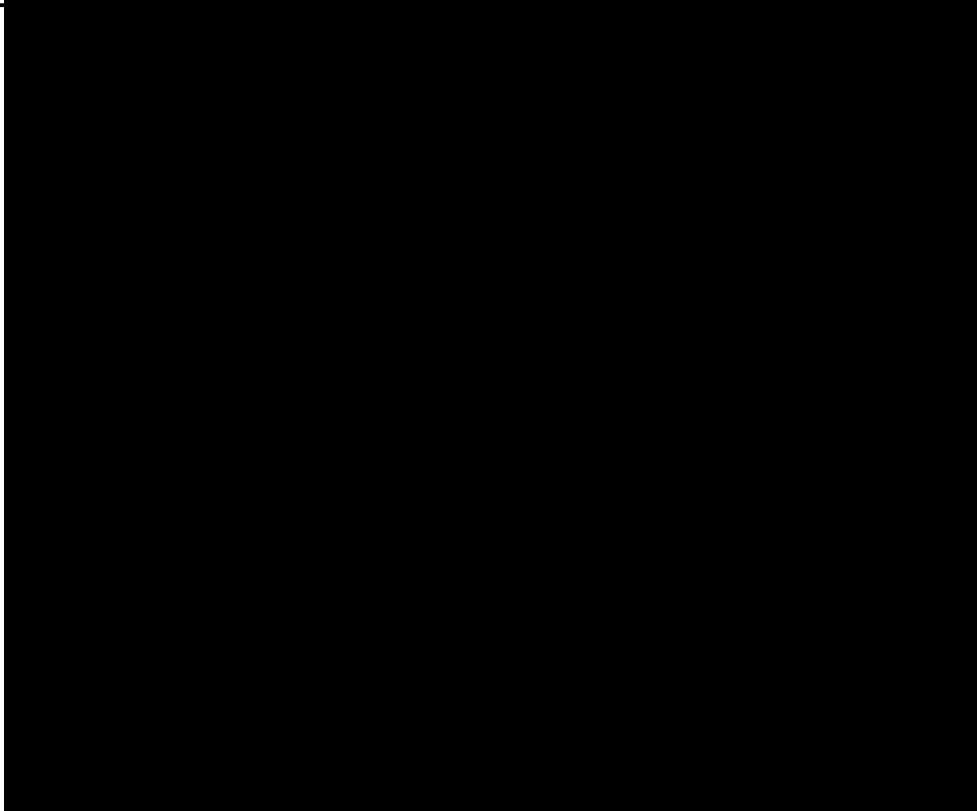


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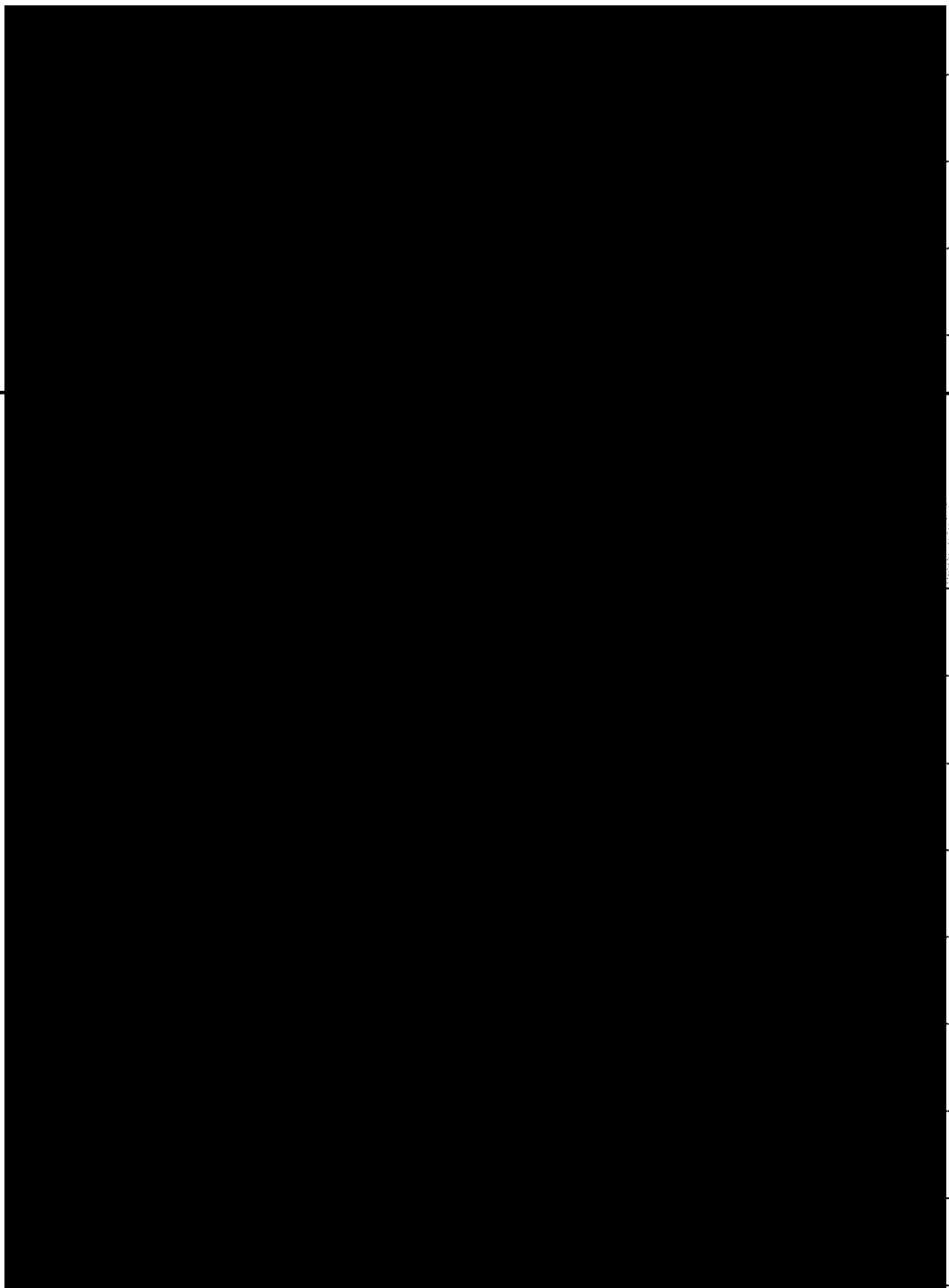
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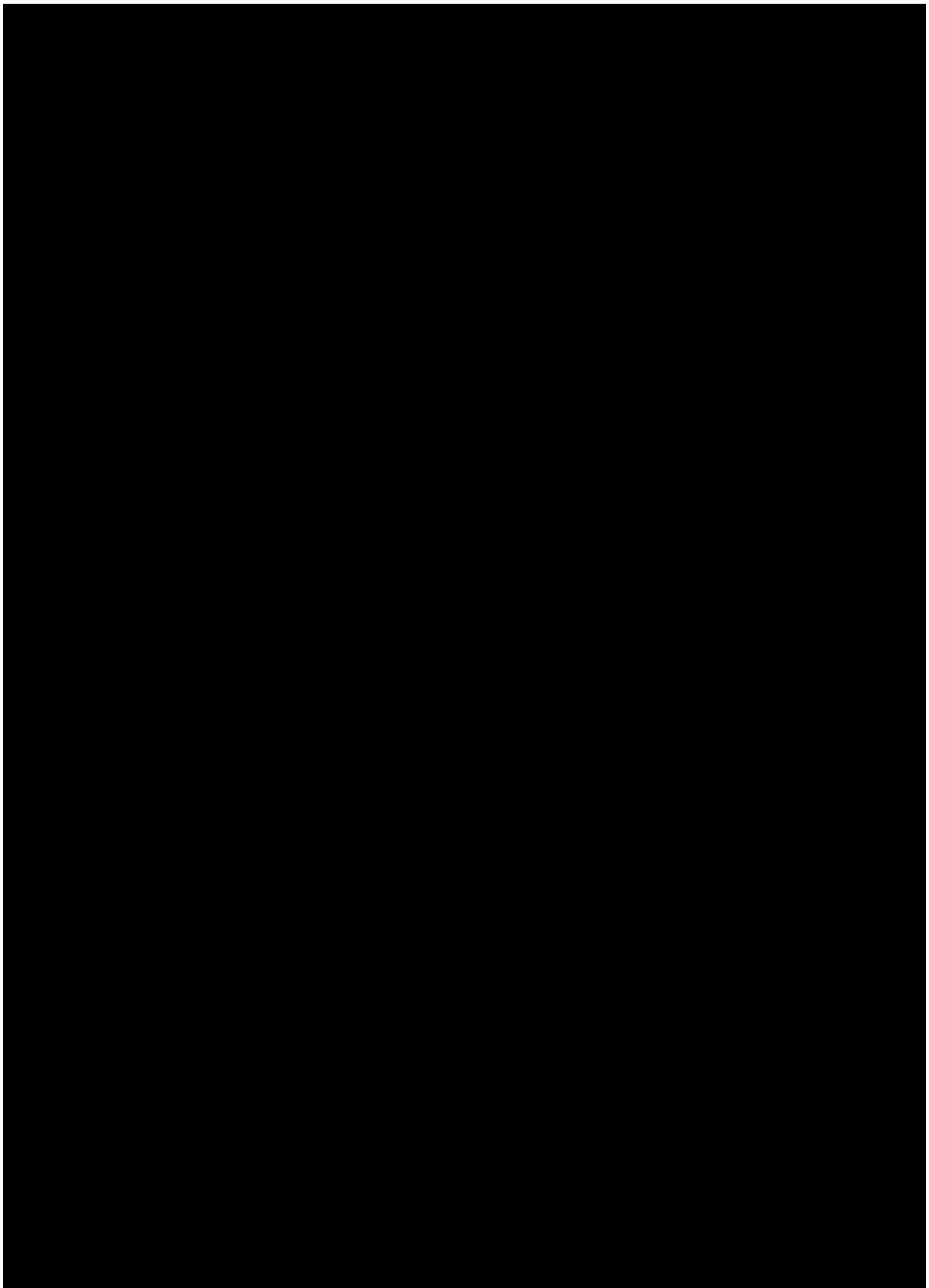


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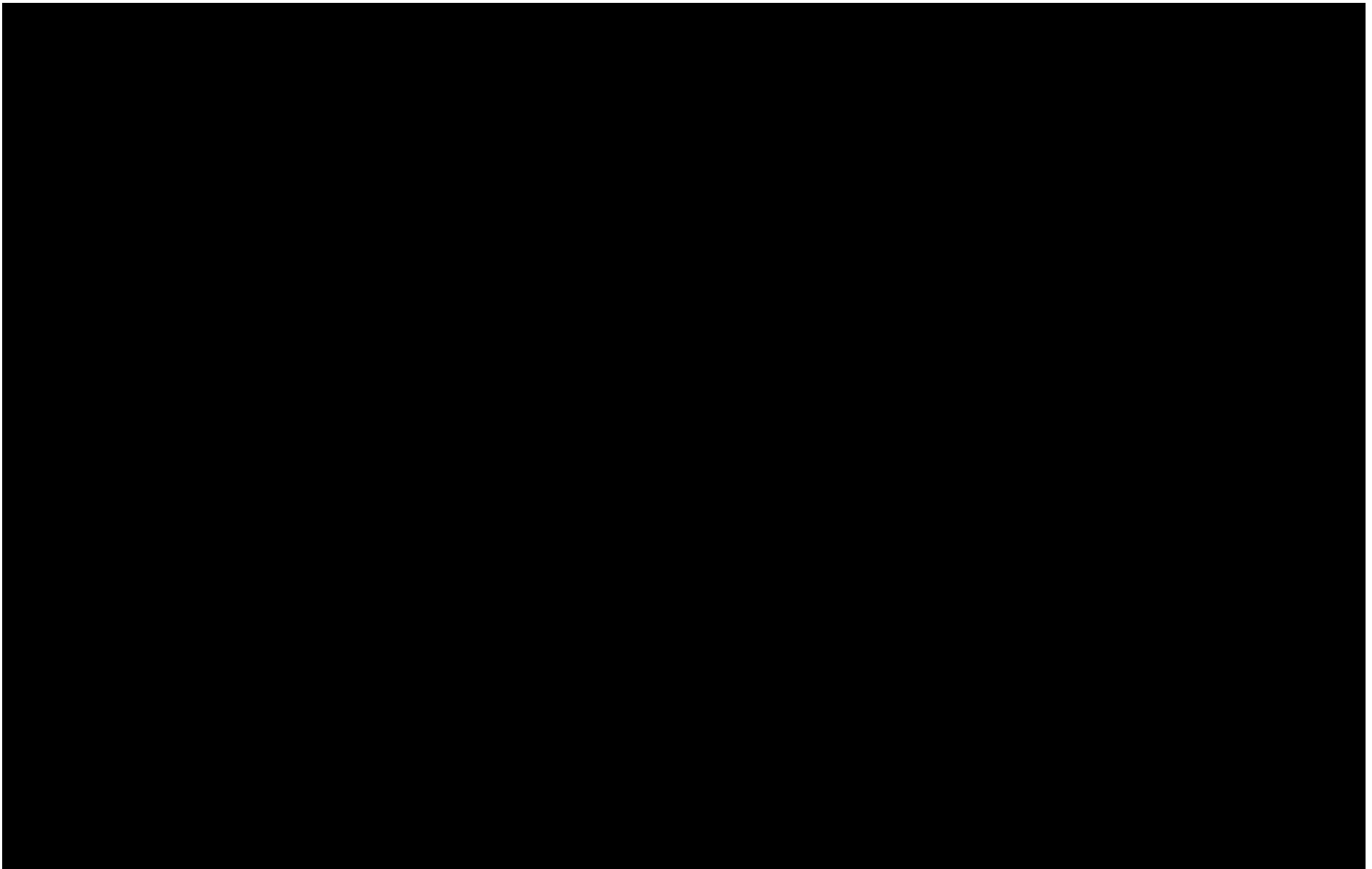
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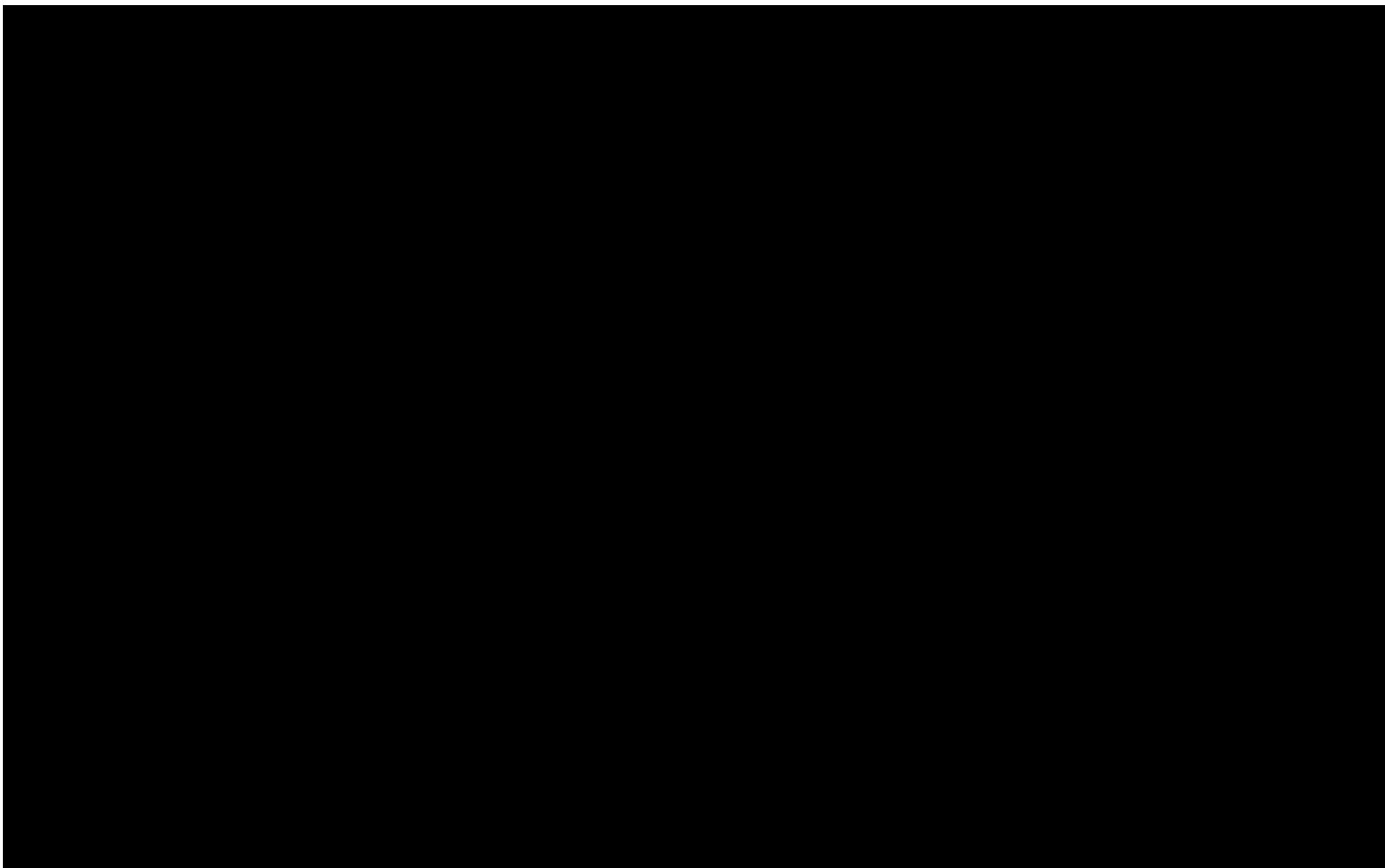


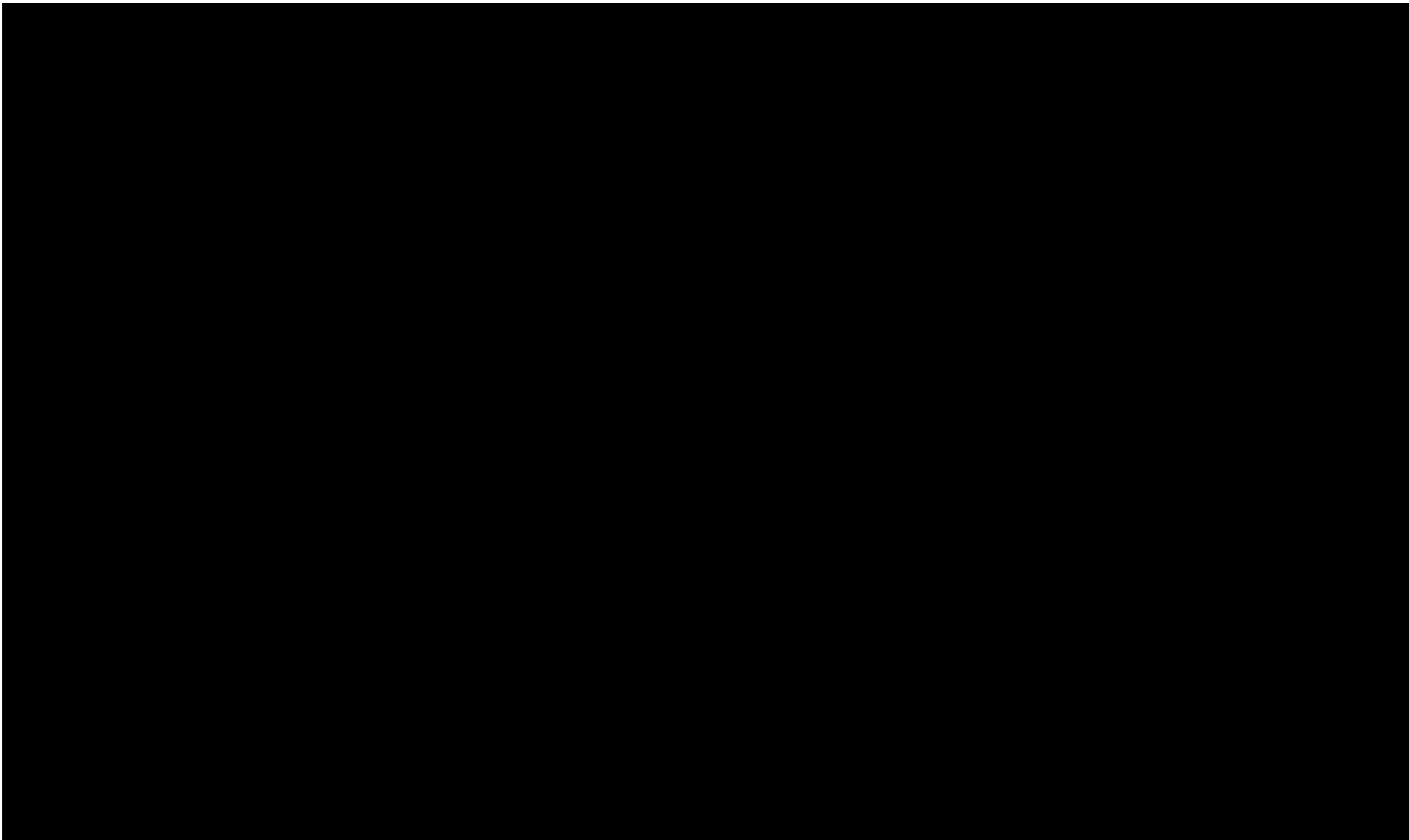


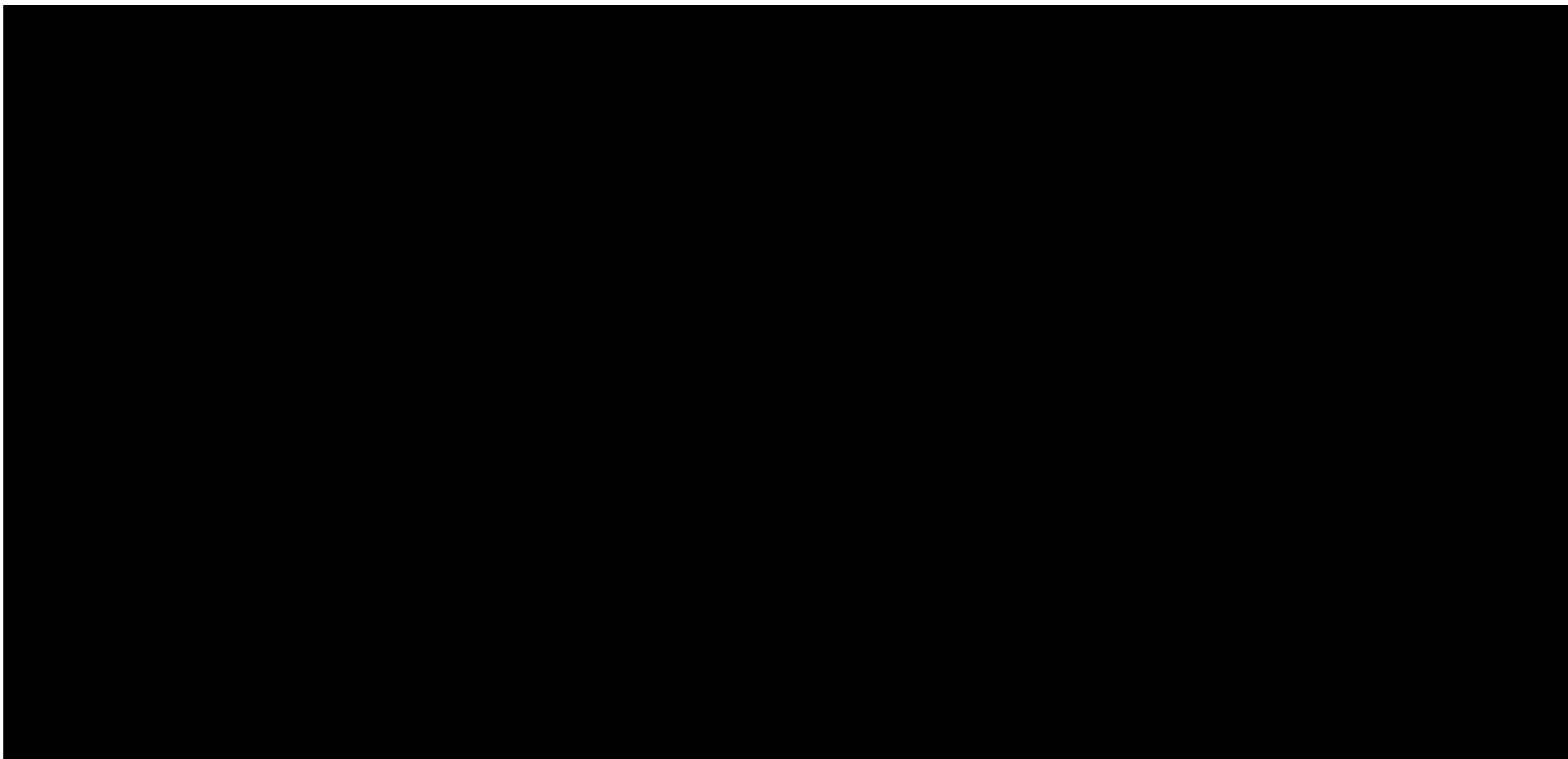
Confidential

Schedule 25 – Dwellings Schedule









Confidential

Schedule 26 – Head Lease Side Deed

The form of Head Lease Side Deed is intended for use with a Lessor where ServiceCo does not view the relevant Lease as an asset. See the note to Schedule 27 (Asset Lease Side Deed) for further information on what the Asset Lease Side Deed entails. C

Under the Head Lease Side Deed, FACS will have a right to require the novation of the original Lease, with no change to the terms of that Lease (including the rate of rent).

Social and Affordable Housing Fund - Head Lease Side Deed

[Insert name of Lessor]

[insert ABN/ACN/ARBN]

Compass Housing Services Co Ltd (ServiceCo)

ACN 002 862 213

Department of Family and Community Services (FACS)

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THIS DEED is made on

BETWEEN:

The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**).

[Insert] ABN/ACN *[insert]* whose registered office is at *[Insert]* (**Lessor**).

Compass Housing Services Co Ltd ACN 002 862 213 whose registered office is at Suite 1/44 Beaumont Street, Hamilton, NSW, 2303 (**ServiceCo**).

RECITALS:

- (A) FACS and ServiceCo have entered, or will enter, into the Services Agreement for the provision of the Service Package.
- (B) The Lessor is the registered proprietor of the Premises.
- (C) ServiceCo has obtained its right to occupy the Premises from the Lessor pursuant to the Lease.
- (D) The Lessor has agreed to grant to FACS certain rights in relation to the Lease.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and interpretation

1.1 Services Agreement definitions

Definitions in the Services Agreement apply in this Deed unless the context requires otherwise or the relevant term is defined in this Deed.

1.2 Definitions

In this Deed:

Approved Nominee means a person nominated by FACS and approved by the Lessor in accordance with clause 4.9 as:

- (a) having legal capacity, power and authority to become a party to and perform the obligations of ServiceCo under the Lease; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of ServiceCo under the Lease.

Assignment Notice has the meaning given in clause 4.1.

Default Event means:

- (a) any default (howsoever described) by ServiceCo under the Lease; or

(c) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Lessor to terminate, rescind, accept the repudiation of, or suspend any or all of the Lessor's obligations under the Lease.

Default Event Notice has the meaning given in clause 3.2(a).

Effective Date means the date specified in the Assignment Notice.

FACS Cure Notice has the meaning given in clause 3.2(c).

GST Amount has the meaning given in clause 9(a)(ii).

Lease means the lease over the Premises dated on or about the date of this Deed between ServiceCo and the Lessor.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of each of ServiceCo or the Lessor to perform and observe their respective obligations under any Service Package Document to which it is a party; or
- (d) the rights of FACS under any FACS Service Package Document, or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document.

Premises means *[insert]*.

Receiver means agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with FACS Security or pursuant to court order on application by FACS.

Recipient has the meaning given in clause 9(c)(ii).

Services Agreement means the document entitled "Social and Affordable Housing Fund - Services Agreement" dated on or about the date of this Deed between FACS and ServiceCo.

Supplier has the meaning given in clause 9(c).

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
 - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and

- (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Standards)**: a reference to a Standard includes that Standard as amended or updated from time to time;
- (i) **(definitions)**:
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - (ii) unless the context otherwise requires, terms which are defined in a Schedule of this Deed have the same meaning throughout this Deed (including the Schedules and Annexures to it);
- (j) **(‘includes’)**: ‘includes’ and ‘including’ will be read as if followed by the phrase ‘without limitation’;
- (k) **(‘or’)**: the meaning of ‘or’ will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **(‘\$’)**: a reference to ‘\$’, AUD or dollar is to Australian currency;
- (n) **(Business Day)**: if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(day)**: except as otherwise provided in this Deed or where a reference is made to ‘Business Days’, day means a calendar day;
- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;

- (r) **(function)**: a function includes a power, authority or duty;
- (s) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) **(‘may’)**: unless FACS is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term ‘may’, when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion (without regard to ServiceCo) and FACS has no obligation to do so;
- (u) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
- (w) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and the Lease, this Deed will prevail over the applicable Lease.

1.5 Services Agreement and Financiers’ Tripartite Deed

The Lessor acknowledges that it has received a copy of the Services Agreement and the Financiers’ Tripartite Deed.

1.6 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

1.7 FACS’ executive rights, duties and functions

- (a) **(Acknowledgements)**: The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*FACS’ executive rights, duties and functions*) of the Service Agreement in relation to this Deed.
- (b) **(No Claim)**: Subject to clause 1.7(c), ServiceCo and the Lessor will not be entitled to make any Claim against FACS for any Liability relating to any exercise or failure of FACS to exercise its executive or statutory rights or duties.

- (c) **(Liability for breach):** Clauses 1.7(a) and 1.7(b) do not limit any Liability which FACS would have had to ServiceCo or the Lessor under any FACS Service Package Document as a result of a breach by FACS of a term of any Service Package Document but for these clauses.

2. Lessor's warranty and FACS' rights and liability

2.1 Lessor's warranty

- (a) The Lessor warrants to FACS that it has carried out and, provided the Lease has not been terminated, will continue to carry out its duties under the Lease in accordance with the Lease. In particular and without limiting the generality of the foregoing, the Lessor covenants with FACS that it will, provided the Lease has not been terminated, duly observe and perform all its duties and obligations under the Lease.
- (b) Without prejudice to any of FACS' other rights under this Deed (including, without limitation, under clauses 3 and 4), FACS may only exercise its rights under this clause 2 upon:
- (i) the termination of the Services Agreement or ServiceCo's engagement under the Services Agreement; or
 - (ii) ServiceCo no longer being responsible for providing the Service Package substantially on the basis set out in the Services Agreement and/or the Monthly Service Payment regime no longer applying.
- (c) FACS agrees that it may not exercise its rights under this clause 2.1 to the extent it has already recovered an amount for any loss arising from the same cause of action for breach of warranty under the Services Agreement.

2.2 FACS' rights under Services Agreement

- (a) The Lessor acknowledges and agrees to FACS' rights and ServiceCo's obligations under the Services Agreement, including under the following clauses of the Services Agreement:
- (i) clause 9.1 (*Audits for compliance with the FACS Service Package Documents*);
 - (ii) clause 18.2 (*Work health and safety*);
 - (iii) clause 22 (*Expiry obligations*);
 - (iv) clause 31 (*Major Default*);
 - (v) clause 32 (*Termination*); and
 - (vi) clause 46 (*Intellectual Property Rights*).
- (b) The Lessor must:
- (i) exercise its rights under the Lease in a way that facilitates the effective exercise by FACS of the rights referred to in clause 2.2(a); and

- (ii) permit FACS or a FACS Associate to have access to, and take copies of, the information to which FACS is entitled to have access to in accordance with FACS' rights referred to in clause 2.2(a).

2.3 Subcontracting and Probity Investigations

- (a) The Lessor acknowledges FACS' rights and ServiceCo's obligations under the following clauses of the Services Agreement:
 - (i) clause 10 (*Subcontracting and third party arrangements*);
 - (ii) the clauses listed in clause 10.3 (*Requirements for Subcontracting*); and
 - (iii) clause 48 (*Probity Events and Probity Investigations*).
- (b) Without limiting clause 2.3(a), the Lessor acknowledges and agrees that:
 - (i) in accordance with clauses 10 (*Subcontracting and third party arrangements*) and 48 (*Probity Events and Probity Investigations*) of the Services Agreement, FACS may, from time to time, or may require ServiceCo to, conduct Probity Investigations of the Lessor and Relevant Persons in respect of the Lessor (excluding the ServiceCo Representative);
 - (ii) it will procure all relevant consents from any persons in connection with whom a Probity Investigation is to be conducted; and
 - (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the management or performance of any Service Package Activities unless FACS has given approval (including following a Probity Investigation and any other investigations that FACS reasonably requires in accordance with the Services Agreement).

2.4 No liability for information

The Lessor acknowledges and agrees that:

- (a) any information, data and documents provided by FACS:
 - (i) are provided for information purposes only and all of FACS' and its Associates' Intellectual Property Rights therein remain the property of FACS or its Associates (as the case may be); and
 - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of FACS or its Associates; and
- (b) to the extent permitted by Law, neither FACS nor any of its Associates will have any Liability to the Lessor or any of their Associates, nor will the Lessor or any of their Associates be entitled to make any Claim against FACS, or seek, pursue or obtain an indemnity against or contribution to Liability from FACS or any of its Associates arising out of or in connection with:
 - (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 2.4(a) by the Lessor or any other person to whom such information is disclosed by

the Lessor, or any of their respective Associates or any person on any of their behalf;

- (ii) any reference to FACS in the Lease; or
- (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Lease by FACS.

2.5 Lease not to affect FACS' rights

Each of ServiceCo and the Lessor acknowledges and agrees that:

- (a) where the Lessor is expressed in the Lease to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Services Agreement or an equivalent or similar right of ServiceCo:
 - (i) this does not of itself expand ServiceCo's rights, or FACS' Liability, under the Services Agreement to include the compensation or relief to which the Lessor is or may become entitled under the Lease; and
 - (ii) ServiceCo's rights, and FACS' Liability, under the Services Agreement will be determined solely in accordance with the terms of the Services Agreement;
- (b) as between FACS (on the one hand) and ServiceCo and the Lessor (on the other hand), ServiceCo and the Lessor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Lease and this Deed; and
- (c) notwithstanding anything to the contrary in the Lease, the Lessor has no right to deal directly with FACS or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the Services Agreement or this Deed; or
 - (ii) FACS consents in writing.

3. FACS' right to cure Default Events

3.1 FACS' cure rights

- (a) On becoming aware of any Default Event (and subject to clause 3.1(b)), FACS may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 3.1(a) only applies if the Lessor has given a FACS Cure Notice in accordance with clause 3.2(c).
- (c) Upon FACS exercising any of its rights under this clause 3.1, ServiceCo's obligations under the Lease are suspended (other than ServiceCo's obligation to pay money) to the extent and for such period as ServiceCo is prevented from performing such obligations by FACS' exercise of its rights pursuant to clause 3.1(a).
- (d) If FACS exercises its rights pursuant to clause 3.1(a), FACS may, after giving reasonable prior notice to ServiceCo, cease to exercise those rights, and in any

event, will cease to exercise those rights once the relevant Default Event has been remedied.

3.2 Restriction on right to terminate or suspend

The Lessor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Lease unless each of the following conditions has been satisfied:

- (a) the Lessor has given to FACS prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Lease, together with the statements referred to in clause 3.3 (**Default Event Notice**);
- (b) if the Lessor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Lease is subject to any right of a Financier to cure or remedy the Default Event:
 - (i) the cure or remedy period available to the Financiers in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or
 - (ii) the Security Trustee has notified the Lessor in writing that it does not intend to cure or remedy the Default Event;
- (c) the Lessor has given notice to FACS confirming that, either:
 - (i) the requirements of clause 3.2(b) are satisfied; or
 - (ii) the Lessor's right to terminate, rescind, accept the repudiation of, or suspend the performance of, any or all of its obligations under the Lease is not subject to any right of the Financiers to cure or remedy the Default Event,

(**FACS Cure Notice**), and
- (d) any one of the following has occurred:
 - (i) the Default Event is capable of cure or remedy within 20 Business Days after the date on which the FACS Cure Notice is given to FACS (or such longer period as is permitted under the Lease or agreed to by the Lessor), that Default Event has not been cured or remedied within the relevant period;
 - (ii) if the Default Event is not one described in clause 3.2(d)(i) but is nevertheless reasonably capable of cure or remedy, FACS has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the FACS Cure Notice is given and has not continued to diligently pursue that cure or remedy; or
 - (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, ServiceCo or FACS (or another person on behalf of either of them) has not paid or otherwise provided that compensation to the Lessor:

- A. to the extent that the relevant amount of compensation has been referred to expert determination under clause 8, within 20 Business Days after that dispute is resolved; or
- B. otherwise within 20 Business Days after the date on which FACS received the FACS Cure Notice;
- C. if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, FACS does not commence and continue to perform ServiceCo's obligations under the Lease within 20 Business Days after the date on which the FACS Cure Notice is given to FACS; or
- D. FACS notifies the Lessor in writing after receipt of the FACS Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

3.3 Statements concerning Default Event

- (a) As part of any Default Event Notice, the Lessor must submit to FACS statements of:
 - (i) where the Default Event is a monetary default:
 - A. the provisions of the Lease alleged to have been breached or not fulfilled; and
 - B. the amount which must be paid to the Lessor to remedy the Default Event;
 - (ii) where the Default Event is of a non-monetary nature:
 - A. the provisions of the Lease alleged to have been breached or not fulfilled;
 - B. sufficient information to enable FACS to identify the material facts;
 - C. the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
 - D. the time within which the specified steps can reasonably be expected to be taken; and
 - (iii) any rights available to the Financiers, pursuant to any Finance Document to which the Lessor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the Lessor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Lease.
- (b) If the Lessor gives a FACS Cure Notice to FACS in accordance with clause 3.2(c), as part of that notice the Lessor must update the matters referred to in clause 3.3(a).

3.4 Warranty of accuracy

- (a) The Lessor warrants to FACS that statements submitted by it under clause 3.3 will be, so far as reasonably practicable and subject to unintended error which the Lessor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Lessor considers itself entitled.
- (b) The Lessor waives and abandons all claims then known or which ought reasonably to have been known to the Lessor arising out of or in connection with the Lease prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 3.3.

3.5 Disputes as to statements

If FACS disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 8:

- (a) FACS must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with clause 8, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Service Package Documents.

3.6 Verification

FACS may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by ServiceCo and the Lessor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of ServiceCo) statements submitted by the Lessor, and the Lessor must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the Lessor) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

3.7 No Liability

ServiceCo and the Lessor acknowledge that, without limiting the Liability of ServiceCo (which continues to be responsible for the performance of its obligations under the Lease), and without limiting FACS' obligations under clause 4, FACS will not be liable for any obligation or Liability of ServiceCo under the Lease by reason only of FACS performing ServiceCo's obligations in accordance with the Lease. ServiceCo and the Lessor each release FACS from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud or wilful misconduct on the part of FACS.

3.8 ServiceCo to compensate FACS

Any reasonable loss suffered or incurred by FACS arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due from ServiceCo to FACS.

3.9 No limitation on other rights

The exercise (or failure to exercise) by FACS of its rights under this clause 3 will not limit FACS' rights against ServiceCo under the FACS Service Package Documents or otherwise according to Law.

4. Assignment of Lease

4.1 Option

FACS may require an assignment of the Lease in accordance with this clause 4 upon the termination of the Services Agreement by giving a notice to the Lessor (**Assignment Notice**).

4.2 Assignment of Lease

With effect from the Effective Date:

- (a) ServiceCo as beneficial owner assigns its interest in the Lease and the Premises to FACS (or, if applicable, the Approved Nominee);
- (b) ServiceCo assigns its interest in all the Lessor's covenants under the Lease, whether or not they concern or run with the Premises, to FACS (or, if applicable, the Approved Nominee); and
- (c) FACS (or, if applicable, the Approved Nominee) accepts ServiceCo's interest in the Lease.

4.3 Procedural obligations

If the Lease is a registered Lease:

- (a) as soon as possible after the Effective Date, and in any event within 21 days of the Effective Date:
 - (i) FACS (or, if applicable, the Approved Nominee) must prepare; and
 - (ii) ServiceCo and FACS (or, if applicable, the Approved Nominee) must execute,

an instrument of transfer in registrable form to effect the transfer of ServiceCo's registered leasehold interest to FACS (or, if applicable, the Approved Nominee);
- (b) as soon as possible after the Effective Date, FACS (or, if applicable, the Approved Nominee) must procure the stamping of the instrument of transfer referred to in clause 4.3(a); and
- (c) as soon as possible after FACS (or, if applicable, the Approved Nominee) has provided the Lessor with a copy of the duly stamped instrument of transfer referred to in clause 4.3(a), the Lessor must procure registration with the 'Land and Property Information' of same.

4.4 Rights and obligations of FACS and the Lessor under the Lease

If FACS gives an Assignment Notice then, subject to clause 4.7, with effect from the Effective Date:

- (a) FACS (or, if applicable, the Approved Nominee):

- (i) is entitled to all rights and benefits under the Lease to which, but for this Deed, ServiceCo would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Lease which, but for this Deed, ServiceCo would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Lease by which, but for this Deed, ServiceCo would have been bound at and after the Effective Date; and
 - (b) the Lessor:
 - (i) is entitled to all rights and benefits under the Lease to which, but for this Deed, it would have been entitled at and after the Effective Date;
 - (ii) must perform all obligations and discharge all liabilities under the Lease which, but for this Deed, it would have been required to perform or discharge at and after the Effective Date; and
 - (iii) is bound by and must comply with all other provisions of the Lease by which, but for this Deed, it would have been bound at and after the Effective Date,
- as if FACS (or, if applicable, the Approved Nominee) had originally been a party to the Lease in place of ServiceCo.

4.5 Release by Lessor

With effect from the Effective Date, the Lessor releases ServiceCo from all obligations and liability under or in respect of the Lease that arises or accrues at or after the Effective Date.

4.6 Release by ServiceCo

With effect from the Effective Date, ServiceCo releases the Lessor from all obligations and liability under or in respect of the Lease that arises or accrues at or after the Effective Date.

4.7 Obligations and liability prior to the Effective Date

Nothing in this Deed releases ServiceCo or the Lessor from any obligation or liability under the Lease arising or accruing before the Effective Date and FACS (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this Deed.

4.8 Amendments to Lease

- (a) With effect from the Effective Date, the terms of the Lease will be deemed to be amended as required to reflect the fact that the Services Agreement is at an end, and that the Lease must operate independently of the Services Agreement, on the basis that:
 - (i) the rights and obligations that FACS (or, if applicable, the Approved Nominee) will assume under the Lease from the Effective Date will be equivalent to those that ServiceCo would have had under the Lease had the Services Agreement not been terminated;
 - (ii) the rights and obligations that the Lessor will assume under the Lease from the Effective Date will be equivalent to those that the

Lessor would have had under the Lease had the Services Agreement not been terminated;

- (iii) any provisions of the Services Agreement incorporated by reference into the Lease prior to the Effective Date are incorporated in the Lease from the Effective Date; and
 - (iv) without affecting the generality of this clause 4.8(a), clauses [*insert relevant clauses of the Lease*] of the Lease will be deleted.
- (b) If at or after the Effective Date, there is a dispute between FACS (or, if applicable, the Approved Nominee) and the Lessor as to how the terms of the Lease are deemed to have been amended pursuant to clause 4.8(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined in accordance with clause 8.

4.9 Approved Nominee

- (a) FACS' nominee may be named as a party to the Lease in substitution for ServiceCo if FACS' nominee is an Approved Nominee.
- (b) The Lessor must:
 - (i) notify FACS as to whether FACS' nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Lessor to decide whether the nominated person is an Approved Nominee;
 - (ii) not unreasonably withhold or delay its decision on whether FACS' nominee is an Approved Nominee; and
 - (iii) enter into a side deed with FACS and the Approved Nominee on substantially the same terms as this Deed.

4.10 Insurances

- (a) If the Lessor is required under the Lease to take out or maintain or take out and maintain any insurance required under clause 30 (*Insurance*) of the Services Agreement to be taken out and maintained by ServiceCo (each such insurance, a **Lease Insurance**), then the Lessor undertakes to FACS to:
 - (i) take out or maintain or take out and maintain the Lease Insurances, as applicable; and
 - (ii) comply with clause 30 (*Insurance*) and Schedule 10 (*Insurance Schedule*) of the Services Agreement with respect to the Lease Insurances, as if that clause and Schedule were set out in full in this Deed (*mutatis mutandis*).

4.11 Other documents under the Lease

If FACS gives an Assignment Notice then, as from the Effective Date, ServiceCo must procure the assignment to FACS (or, if applicable, the Approved Nominee) of:

- (a) [*Insert list of documents to be assigned*].

5. Representations and warranties

5.1 Representations and warranties by Lessor

- (a) The Lessor represents and warrants for the benefit of FACS that:
- (i) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed and each other Service Package Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
 - (ii) **(legality)**: the execution, delivery and performance of this Deed and each other Service Package Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iii) **(validity)**: this Deed and each other Service Package Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
 - (iv) **(registration)**: it is duly registered, properly constituted and remains in existence;
 - (v) **(no trust relationship)**: except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
 - (vi) **(information true and correct)**: all information provided by it to FACS is as at the date on which it is provided true and correct and the Lessor is not aware of any material facts or circumstances that have not been disclosed to FACS and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Lease;
 - (vii) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Service Package Document to which it is a party;
 - (viii) **(Insolvency Event)**: no Insolvency Event has occurred in respect of it;
 - (ix) **(accounts)**:
 - A. its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - B. there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - C. such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently

applied, except to the extent of departures from such principles and practices disclosed in such accounts;

(x) **(no default):**

- A. it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
- B. nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, and which would have a Material Adverse Effect;

(b) **(no immunity):** neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and

(c) **(own investigations):** in entering into this Deed, the Lease and any other Service Package Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by FACS, ServiceCo or any other person unless in respect of ServiceCo or any other person, other than FACS or an Associate of FACS, it is expressly permitted to do so in accordance with a Service Package Document to which it is a party.

5.2 Repetition of representations and warranties

The representations and warranties in this clause 5 are taken to be repeated immediately before Financial Close, on the basis of the facts and circumstances as at that date.

5.3 Reliance on representations and warranties

The Lessor acknowledges that FACS executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 5.

6. Undertakings by Lessor

The Lessor undertakes to FACS as follows:

- (a) **(notification of Default Event):** in the case of the Lessor, it will notify FACS of any Default Event promptly after it gives notice of that Default Event in accordance with clause *[insert]* (*[Notice of ServiceCo Event of Default]*) of the Lease;
- (b) **(documents in relation to Default Event):** in the case of the Lessor, it will promptly give FACS a copy of all documents issued by the Lessor to ServiceCo in relation to a Default Event;
- (c) **(no amendment without consent):** it will not, without first obtaining the consent of FACS:
 - (i) make or permit any amendment or replacement of or addition to;
 - (ii) subject to clause 3.2, terminate, surrender, rescind or accept repudiation of;

- (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.3 (*Replacement of Key Subcontractor*) of the Financiers' Tripartite Deed; or
 - (iv) allow any express waiver of its material rights and obligations under, a Lease, provided that FACS will not withhold its consent to an amendment which is an amendment to which it has consented in accordance with the Services Agreement;
- (d) **(disposals)**: it will not, after Commercial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in the Lease without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of FACS (in a form and substance approved by FACS) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Lessor;
- (e) **(attend meetings and inspections)**: it will (when reasonably requested by FACS):
 - (i) attend, where reasonable and appropriate, meetings with FACS or any of FACS' Associates;
 - (ii) provide FACS or any of FACS' Associates and authorised personnel with:
 - A. in the case of the Lessor, full access to:
 - 1) the Site; and
 - 2) any other place where any Services are being provided,
 to the extent provided in the Services Agreement; and
 - B. any other information, records or documents that FACS or any of its Associates (acting reasonably) requires in relation to the provision of the Services or compliance with the Lease or any information required by FACS to comply with requests from the New South Wales Auditor-General; and
 - (iii) permit FACS or any of FACS' Associates to attend all tests and inspections to be carried out in connection with the Service Package in accordance with the terms of the Lease, to the extent provided in the Services Agreement; and
- (f) **(access to records)**: in the case of the Lessor, at the request of FACS, the Lessor will:
 - (i) permit FACS or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Lessor in relation to the Service Package; and
 - (ii) supply FACS or any of its Associates with a copy of any such report or document which they may require from time to time.

7. Acknowledgement by ServiceCo

ServiceCo consents to the terms of this Deed and will co-operate in the implementation of this Deed.

8. Dispute resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 8 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Services Agreement are resolved. Accordingly, the provisions of clauses 34 (*Dispute Resolution procedure*) to 38 (*Arbitration*) of the Services Agreement are incorporated into this Deed but as if:

- (a) the only persons party to the Services Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

9. GST

- (a) **(Interpretation):**
 - (i) Except where the context suggests otherwise, terms used in this clause 9 have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 9(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
 - (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 9) for that supply is exclusive of GST;

- (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 9(c)(i).
- (d) **(Variation of GST):**
 - (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 9(c) and clause 9(e)) varies from the additional amount paid by the Recipient under clause 9(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 9(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
 - (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 9(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 9(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9(c) (or the time at which such GST Amount would have been payable in accordance with clause 9(c) but for the operation of clause 9(e)(i)).
- (f) **(No merger):** This clause 9 will not merge on completion or termination of this Deed.
- (g) **(Application of Services Agreement):** If clause 21 (*Payments, adjustments & Taxes*) of the Services Agreement would apply in connection with a Taxable Supply to which this clause 9 also applies, then clause 21 (*Payments, adjustments & Taxes*) of the Services Agreement will apply in connection with that supply and the provisions of this clause 9 (but for this paragraph) will not apply.

10. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing):** must be in writing;

- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

FACS

Attention: Eleri Morgan-Thomas
Address: 2 Cavill Avenue, Ashfield, NSW
Telephone: (02) 9716 2917
Email: eleri.morgan-thomas@facs.nsw.gov.au

ServiceCo

Name: Compass Housing Services Co Ltd
Address: Suite 1/44 Beaumont Street, Hamilton, NSW, 2303
Email: [REDACTED]

For the attention of: [REDACTED]

Lessor

Name: [insert]
Address: [insert]
Email: [insert]
For the attention of: [insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address, of the addressee in accordance with clause 10(b);
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in clause 10(b):
- (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 10(f), in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (f) **(notices sent by post):** if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

11. Confidential Information and disclosure

11.1 Confidential Information and disclosure by FACS

- (a) Subject to clause 11.1(b), FACS and any Authority may disclose any information in connection with the Service Package, including Service Package Information.
- (b) FACS may only disclose the Commercially Sensitive Information:
- (i) in accordance with Law or for the enforcement of any criminal law;
 - (ii) where disclosure is in the course of the official duties of the responsible Minister, the Treasurer, the Premier or the Attorney General;
 - (iii) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (iv) to satisfy the requirements of Parliamentary accountability;
 - (v) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (vi) in annual reports of FACS;
 - (vii) in accordance with policies of FACS or the NSW Government or any Authority;
 - (viii) for any tender process required to be conducted under the Termination Payments Schedule; or
 - (ix) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Services Agreement.

11.2 Confidential Information and disclosure by Lessor

- (a) **(Confidentiality obligation):** Subject to clauses 11.2(b) and clause 11.4(b), the Lessor must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS, make public or disclose to any person any Confidential Information.

- (b) **(Disclosure of Confidential Information):** Without limiting the Lessor's obligations under clause 11.2(a) and subject to clause 11.2(c), the Lessor may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Service Package; and
 - (ii) in accordance with clause 11.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Lessor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 11.
- (d) **(Permitted disclosure):** The Lessor may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 11.2(a) or 11.3(a) or to enter into a confidentiality deed under clause 11.2(c) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - A. notifies FACS of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which the Lessor is a party; or
 - (iv) required by a relevant recognised stock exchange, subject to:
 - A. the disclosure, announcement or statement not referring to FACS' or any of its Associates' involvement in the Service Package; and
 - B. the Lessor having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

11.3 Public announcements by Lessor

Subject to clause 11.2(d), the Lessor must:

- (a) not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in

the Service Package before the relevant disclosure, announcement or statement is made; and

- (c) as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 11.3 or for which FACS' consent or approval was not required in accordance with clause 11.4.

11.4 Information public or known

Notwithstanding anything in this clause 11, any party may disclose information in connection with the Service Package (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 11; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

11.5 Disclosure by FACS under GIPA Act

- (a) Notwithstanding the other provisions of this clause 11, the parties acknowledge that:
 - (i) the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) FACS will notify the Lessor of any proposed disclosure of Commercially Sensitive Information by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (ii) following notification by FACS in accordance with clause 11.5(b)(i), FACS will take reasonable steps to consult with the Lessor before disclosing Commercially Sensitive Information under the GIPA Act;
 - (iii) if, following:
 - A. notification by FACS in accordance with clause 11.5(b)(i); or
 - B. consultation between FACS and the Lessor in accordance with clause 11.5(b)(ii),the Lessor objects to disclosure of some or all of the Commercially Sensitive Information, the Lessor must provide details of any such objection within five Business Days after the date the Lessor received notification from FACS or the date on which the consultation process concluded (as relevant);
 - (iv) FACS may take into account any objection received from the Lessor pursuant to clause 11.5(b)(iii) in determining whether the

Commercially Sensitive Information identified by the Lessor should be disclosed; and

- (v) nothing in this clause 11.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

11.6 Personal Information

The Lessor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Standards;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Law, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Standards; and
- (c) keep, and make available to FACS on request, records detailing the recipient of any Personal Information that the Lessor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

11.7 Privacy

- (a) **(Compliance):** Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Lessor agrees to, and will ensure that the Lease and any other Lease entered into by the Lessor in relation to the Service Package contains terms which require the Lessor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Lease or other relevant Lease (as the case may be), in the same way as FACS would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by FACS.
- (b) **(Release and Indemnity):** The Lessor must release, indemnify and must keep indemnified on demand FACS and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which FACS or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Lessor or any of their respective Associates in connection with the Service Package, which would, had that act or practice been done or engaged in by FACS, have contravened any of the Privacy Legislation.

12. Termination of this Deed

- (a) **(Satisfaction of obligations under the Lease or assignment of Lease):** This Deed will terminate automatically without any requirement for any notice from any party:
 - (i) upon the performance and satisfaction of all of the obligations under the Lease; or
 - (ii) upon the assignment of the Lease to FACS.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.
- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or

expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:

- (i) FACS' rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to FACS;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) any limitation or exclusion of liability; and
 - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

13. Governing law and jurisdiction

13.1 Governing law

This Deed is governed by and must be construed according to the laws of New South Wales, Australia.

13.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought at any time in connection with this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 13.2(a).

14. Miscellaneous

14.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) **(entire understanding):** embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

- (b) **(prior agreements)**: supersedes any prior written or other agreement of the parties.

14.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

14.3 Waiver

- (a) **(Writing)**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure, a delay in, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement of, that or any other right, power or remedy provided by Law or under this Deed.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

14.4 Consents and approvals

A consent or approval required under this Deed from FACS may be given or withheld, or may be given subject to any conditions, as FACS (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

14.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed signed by or on behalf of each party.

14.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

14.7 Severance

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

14.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

14.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

14.10 Moratorium legislation

A provision of any Law which comes into effect after the date of this Deed and operates to:

- (a) increase or improve any of ServiceCo's or the Lessor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by FACS of any right, power or remedy under this Deed or otherwise,

(each matter referred to in (a) and (b), a **Specified Effect**) is, to the extent only that the Law has the Specified Effect, expressly waived by ServiceCo to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original position under this Deed.

Executed as a deed.

[Insert execution blocks]

Schedule 27 – Asset Lease Side Deed

An Asset Lease Side Deed is intended for use with a Lessor where ServiceCo views the relevant Lease as an asset. For example, the Financial Model may rely on ServiceCo retaining the value contained in these Leases on a termination.

Accordingly, the document seeks to replicate (in respect of these Leases) the same position on termination as applies in respect of Sites to which ServiceCo has freehold title. This means that FACS will:

- be granted an 'Option to Sublease' the Site following a termination of the Services Agreement; and*
- pay ServiceCo the market rate of rent to compensate ServiceCo for the capital investment it has made in the Site.*

Social and Affordable Housing Fund - Asset Lease Side Deed

[Insert name of Lessor]

[insert ABN/ACN/ARBN]

Compass Housing Services Co Ltd (ServiceCo)

ACN 002 862 213

Department of Family and Community Services (FACS)

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THIS DEED is made on

BETWEEN:

The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**).

[Insert] ABN/ACN *[insert]* whose registered office is at *[Insert]* (**Lessor**).

Compass Housing Services Co Ltd ACN 002 862 213 whose registered office is at Suite 1/44 Beaumont Street, Hamilton, NSW, 2303 (**ServiceCo**).

RECITALS:

- (A) FACS and ServiceCo have entered, or will enter, into the Services Agreement for the provision of the Service Package.
- (B) The Lessor is the registered proprietor of the Premises.
- (C) ServiceCo has obtained its right to occupy the Premises from the Lessor pursuant to the Lease.
- (D) The Lessor has agreed to grant to FACS certain rights in relation to the Lease.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and interpretation

1.1 Services Agreement definitions

Definitions in the Services Agreement apply in this Deed unless the context requires otherwise or the relevant term is defined in this Deed.

1.2 Definitions

In this Deed:

Default Event means:

- (a) any default (howsoever described) by ServiceCo under the Lease; or
- (a) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Lessor to terminate, rescind, accept the repudiation of, or suspend any or all of the Lessor's obligations under the Lease.

Default Event Notice has the meaning given in clause 3.2(a).

FACS Cure Notice has the meaning given in clause 3.2(c).

GST Amount has the meaning given in clause 9(c)(i).

Lease means the lease over the Premises dated on or about the date of this Deed between ServiceCo and the Lessor.

Option Condition means FACS has given notice of termination to ServiceCo under clause 32.4 (*Default Termination Event*) of the Services Agreement.

Option Fee means [REDACTED]

Option Sublease means a sublease comprised of:

- (a) Sublease – form 07SL (as updated from time to time or, if that registrable form is no longer used, the standard registrable lease form that has replaced it) completed in accordance with section 4.5(c); and
- (b) conditions substantially in the form contained in Annexure A to this Schedule as completed in accordance with section 4.5(c).

Option to Sublease means the option to sublease granted by ServiceCo in favour of FACS under clause 4.1.

Option Notice Service Date means the date on which the notice is given by FACS in accordance with section 4.3(a).

Option Period means the period beginning on the date of satisfaction of the Option Condition and ending at 5.00pm on the date that is 10 days after the market rent is determined in accordance with clause 4.2 or any other date the parties may agree.

Material Adverse Effect means a material adverse effect on:

- (c) the ability of each of ServiceCo or the Lessor to perform and observe their respective obligations under any Service Package Document to which it is a party; or
- (b) the rights of FACS under any FACS Service Package Document, or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document.

Premises means [insert].

Premises Infrastructure means the Relevant Infrastructure (as that term is defined in the Services Agreement) on the Premises.

Receiver means agent, attorney, trustee, manager, receiver, receiver and manager, administrator, liquidator or provisional liquidator or analogous person appointed under or in connection with FACS Security or pursuant to court order on application by FACS.

Recipient has the meaning given in clause 9(c)(i).

Services Agreement means the document entitled "Social and Affordable Housing Fund - Services Agreement" dated on or about the date of this Deed between FACS and ServiceCo.

Supplier has the meaning given in clause 9(c).

Valuer means a valuer who has the following qualifications:

- (a) current membership of the API or the Royal Institution of Charter Surveyors; and

- (b) at least 5 years' experience in valuing real property similar to the Premises Infrastructure.

1.3 Interpretation

In this Deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Deed and Schedule references)**: a reference to:
 - (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Standards)**: a reference to a Standard includes that Standard as amended or updated from time to time;
- (i) **(definitions)**:
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - (ii) unless the context otherwise requires, terms which are defined in a Schedule of this Deed have the same meaning throughout this Deed (including the Schedules and Annexures to it);
- (j) **(includes)**: 'includes' and 'including' will be read as if followed by the phrase 'without limitation';

- (k) ('or'): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) (**information**): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) ('\$'): a reference to '\$', AUD or dollar is to Australian currency;
- (n) (**Business Day**): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;
- (o) (**day**): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;
- (p) (**time**): a reference to time is a reference to time in Sydney, Australia;
- (q) (**rights**): a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) (**function**): a function includes a power, authority or duty;
- (s) (**obligations and liabilities**): a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) (**'may'**): unless FACS is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion (without regard to ServiceCo) and FACS has no obligation to do so;
- (u) (**construction**): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (v) (**asset**): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
- (w) (**contra proferentem rule not to apply**): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.4 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and the Lease, this Deed will prevail over the Lease.

1.5 Services Agreement and Financiers' Tripartite Deed

The Lessor acknowledges that it has received a copy of the Services Agreement and the Financiers' Tripartite Deed.

1.6 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed, howsoever those rights, obligations or liabilities are sought to be enforced.

1.7 FACS' executive rights, duties and functions

- (a) **(Acknowledgements):** The parties acknowledge the substance, operation and potential effect and consequences of clause 2.10 (*FACS' executive rights, duties and functions*) of the Services Agreement in relation to this Deed.
- (b) **(No Claim):** Subject to clause 1.7(c), ServiceCo and Lessor will not be entitled to make any Claim against FACS for any Liability relating to any exercise or failure of FACS to exercise its executive or statutory rights or duties.
- (c) **(Liability for breach):** Clauses 1.7(a) and 1.7(b) do not limit any Liability which FACS would have had to ServiceCo or the Lessor under any FACS Service Package Document as a result of a breach by FACS of a term of any Service Package Document but for these clauses.

2. Lessor's warranty and FACS' rights and liability

2.1 Lessor's warranty

- (a) The Lessor warrants to FACS that it has carried out and, provided the Lease has not been terminated, will continue to carry out its duties under the Lease in accordance with the Lease. In particular and without limiting the generality of the foregoing, the Lessor covenants with FACS that it has carried out and will, provided the Lease has not been terminated, duly observe and perform all its duties and obligations under the Lease.
- (b) Without prejudice to any of FACS' other rights under this Deed (including, without limitation, under clauses 3 and 4), FACS may only exercise its rights under this clause 2 upon:
 - (i) the termination of the Services Agreement or ServiceCo's engagement under the Services Agreement; or
 - (ii) ServiceCo no longer being responsible for providing the Service Package substantially on the basis set out in the Services Agreement and/or the Monthly Service Payment regime no longer applying.
- (c) FACS agrees that it may not exercise its rights under this clause 2.1 to the extent it has already recovered an amount for any loss arising from the same cause of action for breach of warranty under the Services Agreement.

2.2 FACS' rights under Services Agreement

- (a) The Lessor acknowledges and agrees to FACS' rights and ServiceCo's obligations under the Services Agreement, including under the following clauses of the Services Agreement:

- (i) clause 9.1 (*Audits for compliance with the FACS Service Package Documents*);
 - (ii) clause 18.2 (*Work health and safety*);
 - (iii) clause 22 (*Expiry obligations*);
 - (iv) clause 31 (*Major Default*);
 - (v) clause 32 (*Termination*); and
 - (vi) clause 46 (*Intellectual Property Rights*).
- (b) The Lessor must:
- (i) exercise its rights under the Lease in a way that facilitates the effective exercise by FACS of the rights referred to in clause 2.2(a); and
 - (ii) permit FACS or a FACS Associate to have access to, and take copies of, the information to which FACS is entitled to have access to in accordance with FACS' rights referred to in clause 2.2(a).

2.3 Subcontracting and Probity Investigations

- (a) The Lessor acknowledges FACS' rights and ServiceCo's obligations under the following clauses of the Services Agreement:
- (i) clause 10 (*Subcontracting and third party arrangements*);
 - (ii) the clauses listed in clause 10.3 (*Requirements for Subcontracting*); and
 - (iii) clause 48 (*Probity Events and Probity Investigations*).
- (b) Without limiting clause 2.3(a), the Lessor acknowledges and agrees that:
- (i) in accordance with clauses 10 (*Subcontracting and third party arrangements*) and 48 (*Probity Events and Probity Investigations*) of the Services Agreement, FACS may, from time to time, or may require ServiceCo to, conduct Probity Investigations of the Lessor and Relevant Persons in respect of the Lessor (excluding the ServiceCo Representative);
 - (ii) it will procure all relevant consents from any persons in connection with whom a Probity Investigation is to be conducted; and
 - (iii) it will not appoint, or retain the appointment of, and will ensure that no other person appoints, or retains the appointment of, a person to the position of a Relevant Person in relation to the management or performance of any Service Package Activities unless FACS has given approval (including following a Probity Investigation and any other investigations that FACS reasonably requires in accordance with the Services Agreement).

2.4 No liability for information

The Lessor acknowledges and agrees that:

- (a) any information, data and documents provided by FACS:
 - (i) are provided for information purposes only and all of FACS' and its Associates' Intellectual Property Rights therein remain the property of FACS or its Associates (as the case may be); and
 - (ii) do not form part of this Deed or constitute an invitation, offer or recommendation by or on behalf of FACS or its Associates; and
- (b) to the extent permitted by Law, neither FACS nor any of its Associates will have any Liability to the Lessor or any of their Associates, nor will the Lessor or any of their Associates be entitled to make any Claim against FACS, or seek, pursue or obtain an indemnity against or contribution to Liability from FACS or any of its Associates arising out of or in connection with:
 - (i) the provision of, or purported reliance upon, or use of any information, data and documents referred to in clause 2.3(a) by the Lessor or any other person to whom such information is disclosed by the Lessor, or any of their respective Associates or any person on any of their behalf;
 - (ii) any reference to FACS in the Lease; or
 - (iii) any review of, comments upon, acceptance, approval or certification of the form or substance of the Lease by FACS.

2.5 Lease not to affect FACS' rights

Each of ServiceCo and the Lessor acknowledges and agrees that:

- (a) where the Lessor is expressed in the Lease to have a right (or possible right) to compensation or relief which is dependent on or determined by reference to the Services Agreement or an equivalent or similar right of ServiceCo:
 - (i) this does not of itself expand ServiceCo's rights, or FACS' Liability, under the Services Agreement to include the compensation or relief to which the Lessor is or may become entitled under the Lease; and
 - (ii) ServiceCo's rights, and FACS' Liability, under the Services Agreement will be determined solely in accordance with the terms of the Services Agreement;
- (b) as between FACS (on the one hand) and ServiceCo and the Lessor (on the other hand), ServiceCo and the Lessor accept and will bear the risk of any inconsistency, ambiguity or discrepancy between the terms of the Lease and this Deed; and
- (c) notwithstanding anything to the contrary in the Lease, the Lessor has no right to deal directly with FACS or participate in any meeting, consultation or process (including negotiation or dispute resolution) unless:
 - (i) expressly provided to the contrary in the Services Agreement or this Deed; or
 - (ii) FACS consents in writing.

3. FACS' right to cure Default Events

3.1 FACS' cure rights

- (a) On becoming aware of any Default Event (and subject to clause 3.1(b)), FACS may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 3.1(a) only applies if the Lessor has given a FACS Cure Notice in accordance with clause 3.2(c).
- (c) Upon FACS exercising any of its rights under this clause 3.1, ServiceCo's obligations under the Lease are suspended (other than ServiceCo's obligation to pay money) to the extent and for such period as ServiceCo is prevented from performing such obligations by FACS' exercise of its rights pursuant to clause 3.1(a).
- (d) If FACS exercises its rights pursuant to clause 3.1(a), FACS may, after giving reasonable prior notice to ServiceCo, cease to exercise those rights, and in any event, will cease to exercise those rights once the relevant Default Event has been remedied.

3.2 Restriction on right to terminate or suspend

The Lessor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Lease unless each of the following conditions has been satisfied:

- (a) the Lessor has given to FACS prior notice setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Lease, together with the statements referred to in clause 3.3 (**Default Event Notice**);
- (b) if the Lessor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Lease is subject to any right of a Financier to cure or remedy the Default Event:
 - (i) the cure or remedy period available to the Financiers in respect of the Default Event under any Finance Document has expired without a cure or remedy being achieved; or
 - (ii) the Security Trustee has notified the Lessor in writing that it does not intend to cure or remedy the Default Event;
- (c) the Lessor has given notice to FACS confirming that, either:
 - (i) the requirements of clause 3.2(b) are satisfied; or
 - (ii) the Lessor's right to terminate, rescind, accept the repudiation of, or suspend the performance of, any or all of its obligations under the Lease is not subject to any right of the Financiers to cure or remedy the Default Event,

(**FACS Cure Notice**), and
- (d) any one of the following has occurred:

- (i) if the Default Event is capable of cure or remedy within 20 Business Days after the date on which the FACS Cure Notice is given to FACS (or such longer period as is permitted under the Lease or agreed to by the Lessor), that Default Event has not been cured or remedied within the relevant period;
- (ii) if the Default Event is not one described in clause 3.2(d)(i) but is nevertheless reasonably capable of cure or remedy, FACS has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the FACS Cure Notice is given and has not continued to diligently pursue that cure or remedy; or
- (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, ServiceCo or FACS (or another person on behalf of either of them) has not paid or otherwise provided that compensation to the Lessor:
 - A. to the extent that the relevant amount of compensation has been referred to expert determination under clause 8, within 20 Business Days after that dispute is resolved; or
 - B. otherwise within 20 Business Days after the date on which FACS received the FACS Cure Notice;
 - C. if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, FACS does not commence and continue to perform ServiceCo's obligations under the Lease within 20 Business Days after the date on which the FACS Cure Notice is given to FACS; or
 - D. FACS notifies the Lessor in writing after receipt of the FACS Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

3.3 Statements concerning Default Event

- (a) As part of any Default Event Notice, the Lessor must submit to FACS statements of:
 - (i) where the Default Event is a monetary default:
 - A. the provisions of the Lease alleged to have been breached or not fulfilled; and
 - B. the amount which must be paid to the Lessor to remedy the Default Event;
 - (ii) where the Default Event is of a non-monetary nature:
 - A. the provisions of the Lease alleged to have been breached or not fulfilled;
 - B. sufficient information to enable FACS to identify the material facts;

- C. the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
 - D. the time within which the specified steps can reasonably be expected to be taken; and
- (iii) any rights available to the Financiers, pursuant to any Finance Document to which the Lessor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Finance Documents permit the Lessor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Lease.
- (b) If the Lessor gives a FACS Cure Notice to FACS in accordance with clause 3.2(c), as part of that notice the Lessor must update the matters referred to in clause 3.3(a).

3.4 Warranty of accuracy

- (a) The Lessor warrants to FACS that statements submitted by it under clause 3.3 will be, so far as reasonably practicable and subject to unintended error which the Lessor agrees to promptly rectify, true, complete and accurate statements of the amounts to which the Lessor considers itself entitled.
- (b) The Lessor waives and abandons all claims then known or which ought reasonably to have been known to the Lessor arising out of or in connection with the Lease prior to the date of the Default Event Notice other than the claims disclosed in the statements submitted by it under clause 3.3.

3.5 Disputes as to statements

If FACS disputes the amount of any claim or the existence of any default referred to in a Default Event Notice pursuant to clause 8:

- (a) FACS must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with clause 8, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this Deed and the Service Package Documents.

3.6 Verification

FACS may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by ServiceCo and the Lessor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of ServiceCo) statements submitted by the Lessor, and the Lessor must (subject to such firm(s) executing an appropriate confidentiality agreement in a form reasonably requested by the Lessor) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

3.7 No Liability

ServiceCo and the Lessor acknowledge that, without limiting the Liability of ServiceCo (which continues to be responsible for the performance of its obligations under the Lease),

and without limiting FACS' obligations under clause 4, FACS will not be liable for any obligation or Liability of ServiceCo under the Lease by reason only of FACS performing ServiceCo's obligations in accordance with the Lease. ServiceCo and the Lessor each release FACS from any such Liability, except to the extent that such Liability occurs or arises as a direct result of any criminal conduct, fraud, or wilful misconduct on the part of FACS.

3.8 ServiceCo to compensate FACS

Any reasonable loss suffered or incurred by FACS arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due from ServiceCo to FACS.

3.9 No limitation on other rights

The exercise (or failure to exercise) by FACS of its rights under this clause 3 will not limit FACS' rights against ServiceCo under the FACS Service Package Documents or otherwise according to Law.

4. Option to Sublease

4.1 Option

- (a) In consideration of the payment of the Option Fee by FACS to ServiceCo, ServiceCo grants an option to FACS to sublease the Premises and Premises Infrastructure subject to:
 - (i) satisfaction of the Option Condition in respect of the Premises and Premises Infrastructure; and
 - (ii) the terms and conditions of this Deed.
- (b) ServiceCo acknowledges receipt of the Option Fee.

4.2 Determination of market rent

- (a) Within 5 days of the satisfaction of the Option Condition, ServiceCo and FACS must meet in good faith to discuss and agree on the identity of an independent Valuer to be jointly engaged to determine the market rent for the following 12 Month period for the Premises the subject of the Option Condition.
- (b) If the parties fail to jointly appoint a Valuer within 30 days satisfaction of the Option Condition, either party may after written notice to the other refer the matter to the President of the API to appoint a Valuer on behalf of the parties.
- (c) The parties agree that in determining the market rent for the following 12 Month period of the Premises and the Premises Infrastructure the subject of the Option Condition, the Valuer shall be instructed to take into account in determining the valuation comparable properties in proximity to the subject Premises and Premises Infrastructure, however without regard to any particular use of the Premises for Social Housing and Affordable Housing.
- (d) The Valuer must give written reasons for the determination and the parties agree that the rent under any Lease is determined by the valuation of the Valuer. The valuation of the Valuer is final and binds the parties, unless in the event of manifest error, in which case clause 37 (*Expert determination*) of the Services Agreement applies.

4.3 Exercise of Option to Sublease

- (a) FACS may exercise the Option to Sublease during the Option Period by giving written notice to ServiceCo and identifying in its absolute discretion the:
 - (i) 'Commencement Date' of the Option Sublease which may be up to 120 days from the date of the notice; and
 - (ii) term of the Option Sublease as nominated by FACS which may be up to, but not exceeding, five years, unless:
 - A. the end date of the Option Period is 5 years or less from the Final Expiry Date, in which case the maximum term of the lease can be no longer than the period left before the Final Expiry Date; or
 - B. ServiceCo consents to a longer term, in which case the term will be that longer term.

4.4 Appointment of nominee

- (a) At any time during the Option Period, but prior to the exercise of the Option to Sublease, FACS may appoint a nominee to sublease the Premises by giving written notice of such nominee to ServiceCo which:
 - (i) has been executed by both FACS and the nominee; and
 - (ii) states that the nominee confirms it has taken a nomination of the Option to Sublease and agrees that it is bound by the terms of this clause 4 as if it were FACS,

(Nomination Notice).
- (b) On and from the date that FACS gives the Nomination Notice to ServiceCo, the nominee will be bound by all of the obligations of FACS under this clause 4.

4.5 Exercise of Option to Sublease

If the Option to Sublease is validly exercised in respect of the Premises:

- (a) FACS (or FACS' nominee where one has been nominated under clause 4.4) and ServiceCo are regarded as having entered into the Option Sublease as sublessee and sublessor respectively;
- (b) the date of the Option Sublease is the Option Notice Service Date; and
- (c) ServiceCo must deliver to FACS an unexecuted copy of the Option Sublease with all necessary particulars completed to FACS or FACS' solicitors within 5 Business Days' after the Option Notice Service Date, such particulars to be completed as follows:
 - (i) the "Head Lease" to be the Lease;
 - (ii) the "Sublessor" to be ServiceCo;
 - (iii) the "Head Lessor" to be the Lessor;
 - (iv) the "Sublessee" to be FACS or FACS' nominee appointed under clause 4.4;

- (v) the "Rent" is the rent determined under clause 4.2;
- (vi) the "Land" is to be the title references for the Premises and the Premises Infrastructure;
- (vii) the "Term" is to be such period as is nominated by FACS in the notice given under clause 4.3(a);
- (viii) the "Commencement Date" is such period as is nominated by FACS in the notice given under clause 4.3(a); and
- (ix) the "Expiry Date" is the last date of the "Term" as determined in accordance with clause 4.5(c)(vii).

4.6 No exercise of Option to Sublease

If the Option to Sublease is not exercised:

- (a) ServiceCo retains the Option Fee; and
- (b) this clause 4 will cease to apply on and from the last day of the Option Period.

4.7 Caveat

- (a) FACS may lodge a caveat on the title to the Premises if the caveat only refers to FACS' interest under the Option to Sublease.
- (b) If FACS lodges a caveat, FACS must immediately at its cost consent to any dealing by the Lessor or ServiceCo with the Premises provided that it does not materially prejudice FACS' rights under this deed.

4.8 Lessor consent

- (a) The Lessor consents to the grant of the Option to Sublease and any Option Sublease granted pursuant to the Option to Sublease
- (b) The Lessor must upon request from either FACS (or FACS' nominee where one has been nominated under clause 4.4) or ServiceCo execute any Option Sublease granted for the purpose of the covenants contained in clause 13.8 of the Option Sublease.
- (c) The Lessor must provide all assistance reasonably necessary to enable any Option Sublease granted under this clause 4 to be registered in the relevant land register as soon as practicable after its commencement.

4.9 Restriction on Lessor's rights under Lease during term of Option Sublease

- (a) Despite clause 3 of this Deed, from the date of satisfaction of the Option Condition until:
 - (i) where FACS does not exercise its Option to Sublease in accordance with this clause 4, the last day of the Option Period; or
 - (ii) where FACS does exercise its Option to Sublease, the expiry of the term of the Option Sublease,

the Lessor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Lease under any circumstance, including where an Insolvency Event occurs in relation to ServiceCo which causes a Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of the Lessor's obligations under the Lease, provided that the Lessor continues to receive rent in accordance with the terms of the Lease. If the Lessor does not receive rent in accordance with the terms of the Lease, then clause 3 will apply.

4.10 Other documents under the Lease

If FACS gives an Option Notice then, as from the commencement date of the Option Sublease as is nominated by FACS in the notice given under clause 4.3(a), ServiceCo must procure the novation or assignment to FACS (or, if applicable, or FACS' nominee appointed under clause 4.4) of:

- (a) *[Insert list of documents to be novated/assigned].*

5. Representations and warranties

5.1 Representations and warranties by Lessor

- (a) The Lessor represents and warrants for the benefit of FACS that:
- (i) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under this Deed and each other Service Package Document to which it is a party and all necessary action has been taken to authorise that execution, delivery and performance;
 - (ii) **(legality)**: the execution, delivery and performance of this Deed and each other Service Package Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iii) **(validity)**: this Deed and each other Service Package Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
 - (iv) **(registration)**: it is duly registered, properly constituted and remains in existence;
 - (v) **(no trust relationship)**: except as stated in this Deed, it is not the trustee, manager or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
 - (vi) **(information true and correct)**: all information provided by it to FACS is as at the date on which it is provided true and correct and the Lessor is not aware of any material facts or circumstances that have not been disclosed to FACS and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed or consent to the entry into the Lease;
 - (vii) **(litigation)**: no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a Material Adverse Effect upon it or its ability to perform its financial and other obligations under this Deed or any other Service Package Document to which it is a party;

- (viii) **(Insolvency Event):** no Insolvency Event has occurred in respect of it;
- (ix) **(accounts):**
 - A. its most recent consolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate and the results of its and its subsidiaries' operations for the accounting period ended on such date;
 - B. there has been no material adverse change in its or its subsidiaries' state of affairs since such date; and
 - C. such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (x) **(no default):**
 - A. it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness; and
 - B. nothing has occurred which would, with the giving of notice and/or lapse of time, constitute an event of default, cancellation, prepayment event (pursuant to a bona fide right to exercise prepayment) or similar event (whatever called) under any such document or agreement, and which would have a Material Adverse Effect;
- (b) **(no immunity):** neither it nor any of its assets enjoys any immunity from set off, suit or execution in any jurisdiction; and
- (c) **(own investigations):** in entering into this Deed, the Lease and any other Service Package Document to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by FACS, ServiceCo or any other person unless in respect of ServiceCo or any other person, other than FACS or an Associate of FACS, it is expressly permitted to do so in accordance with a Service Package Document to which it is a party.

5.2 Repetition of representations and warranties

The representations and warranties in this clause 5 are taken to be repeated immediately before Financial Close, on the basis of the facts and circumstances as at that date.

5.3 Reliance on representations and warranties

The Lessor acknowledges that FACS executed this Deed and agreed to take part in the transactions that this Deed contemplates in reliance on the representations and warranties that are made or repeated in this clause 5.

6. Undertakings by Lessor

The Lessor undertakes to FACS as follows:

- (a) **(notification of Default Event)**: in the case of the Lessor, it will notify FACS of any Default Event promptly after it gives notice of that Default Event in accordance with clause *[insert]* (*[Notice of ServiceCo Event of Default]*) of the Lease;
- (b) **(documents in relation to Default Event)**: in the case of the Lessor, it will promptly give FACS a copy of all documents issued by the Lessor to ServiceCo in relation to a Default Event;
- (c) **(no amendment without consent)**: it will not, without first obtaining the consent of FACS:
 - (i) make or permit any amendment or replacement of or addition to;
 - (ii) subject to clause 3.2, terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in, except when in accordance with this Deed or clause 8.3 (*Replacement of Key Subcontractor*) of the Financiers' Tripartite Deed; or
 - (iv) allow any express waiver of its material rights and obligations under, the Lease, provided that FACS will not withhold its consent to an amendment which is an amendment to which it has consented in accordance with the Services Agreement;
- (d) **(disposals)**: it will not, after Commercial Close, transfer, assign, mortgage, charge, encumber or otherwise deal with its rights, obligations or interests in the Lease without first procuring that the proposed transferee, assignee, mortgagee or chargee executes a deed in favour of FACS (in a form and substance approved by FACS) pursuant to which the transferee, assignee, mortgagee or chargee agrees to accept and be bound by this Deed as if it were the Lessor;
- (e) **(attend meetings and inspections)**: it will (when reasonably requested by FACS):
 - (i) attend, where reasonable and appropriate, meetings with FACS or any of FACS' Associates;
 - (ii) provide FACS or any of FACS' Associates and authorised personnel with:
 - A. in the case of the Lessor, full access to:
 - 1) the Site; and
 - 2) any other place where Services are provided,
 to the extent provided in the Services Agreement; and
 - B. any other information, records or documents that FACS or any of its Associates (acting reasonably) requires in relation to the provision of the Services or compliance with the Lease or any information required by FACS to comply with requests from the New South Wales Auditor-General; and

- (iii) permit FACS or any of FACS' Associates to attend all tests and inspections to be carried out in connection with the Service Package in accordance with the terms of the Lease, to the extent provided in the Services Agreement; and
- (f) **(access to records):** in the case of the Lessor, at the request of FACS, the Lessor will:
 - (i) permit FACS or any of its Associates to inspect all records, reports, plans, programs, specifications and design documents prepared or kept by the Lessor in relation to the Service Package; and
 - (ii) supply FACS or any of its Associates with a copy of any such report or document which they may require from time to time.

7. Acknowledgement by ServiceCo

ServiceCo consents to the terms of this Deed and will co-operate in the implementation of this Deed.

8. Dispute resolution

If any dispute or difference of opinion arises between the parties under this Deed, each party may refer any such matter for resolution in accordance with this clause 8 and the dispute or difference of opinion must be resolved in the same manner that disputes or differences of opinion under the Services Agreement are resolved. Accordingly, the provisions of clauses 34 (*Dispute Resolution procedure*) to 38 (*Arbitration*) of the Services Agreement are incorporated into this Deed but as if:

- (a) the only persons party to the Services Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
- (b) the only matters for expert determination under those provisions are the matters referred for expert determination under this Deed.

9. GST

- (a) **(Interpretation):**
 - (i) Except where the context suggests otherwise, terms used in this clause 9 have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed (other than under this clause 9) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
 - (i) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (ii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 9(c)(i).
- (d) **(Variation of GST):**
 - (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 9(c) and clause 9(e)), varies from the additional amount paid by the Recipient under clause 9(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 9(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
 - (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 9(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 9(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9(c) (or the time at which such GST Amount would have been payable in accordance with clause 9(c) but for the operation of clause 9(e)(i)).
- (f) **(No merger):** This clause 9 will not merge on completion or termination of this Deed.
- (g) **(Application of Services Agreement):** If clause 21 (*Payments, adjustments & Taxes*) of the Services Agreement would apply in connection with a Taxable Supply to which this clause 9 also applies then clause 21 (*Payments, adjustments & Taxes*) of the Services Agreement will apply in connection with that supply and the provisions of this clause 9 (but for this paragraph) will not apply.

10. Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) **(in writing)**: must be in writing;
- (b) **(addressed)**: must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

FACS

Attention: Eleri Morgan-Thomas
Address: 2 Caville Avenue, Ashfield, NSW
Telephone: (02) 9716 2917
Email: eleri.morgan-thomas@facs.nsw.gov.au

ServiceCo

Name: Compass Housing Services Co Ltd
Address: Suite 1/44 Beaumont Street, Hamilton, NSW, 2303
Email: [REDACTED]

For the attention of: [REDACTED]

Lessor

Name: [insert]
Address: [insert]
Email: [insert]
For the attention of: [insert]

- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address, or emailed (in the form agreed by both parties) to the email address, of the addressee in accordance with clause 10(b);
- (e) **(taken by received)**: are taken to be received by the addressee at the address set out in clause 10(b):
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 10(f) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

- B. the time that the communication enters an information system which is under the control of the addressee; or
- C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

- (f) **(notices sent by post):** if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

11. Confidential Information and disclosure

11.1 Confidential Information and disclosure by FACS

- (a) Subject to clause (b), FACS and any Authority may disclose any information in connection with the Service Package, including Service Package Information.
- (b) FACS may only disclose the Commercially Sensitive Information:
 - (i) in accordance with Laws or for the enforcement of any criminal law;
 - (ii) where disclosure is in the course of the official duties of the responsible Minister, the Treasurer, the Premier or the Attorney General;
 - (iii) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (iv) to satisfy the requirements of Parliamentary accountability;
 - (v) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (vi) in annual reports of FACS;
 - (vii) in accordance with policies of FACS or the NSW Government or any Authority;
 - (viii) for any tender process required to be conducted under the Termination Payments Schedule; or
 - (ix) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Services Agreement.

11.2 Confidential Information and disclosure by Lessor

- (a) **(Confidentiality obligation):** Subject to clauses 11.2(b) and clause 11.4(b), the Lessor must treat as secret and confidential all Confidential Information and

must not, and must procure that its Associates do not, without the prior written consent of FACS, make public or disclose to any person any Confidential Information.

- (b) **(Disclosure of Confidential Information):** Without limiting the Lessor's obligations under clause 11.2(a) and subject to clause 11.2(c), the Lessor may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Service Package; and
 - (ii) in accordance with clause 11.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, the Lessor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with it to keep the Confidential Information confidential in accordance with this clause 11.
- (d) **(Permitted disclosure):** The Lessor may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 11.2(a) or 11.3(a) or to enter into a confidentiality deed under clause 11.2(c) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - A. notifies FACS of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which the Lessor is a party; or
 - (iv) required by a relevant recognised stock exchange, subject to:
 - A. the disclosure, announcement or statement not referring to FACS' or any of its Associates' involvement in the Service Package; and
 - B. the Lessor having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

11.3 Public announcements by Lessor

Subject to clause 11.2(d), the Lessor must:

- (a) not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;

- (b) comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 11.3 or for which FACS' consent or approval was not required in accordance with clause 11.4.

11.4 Information public or known

Notwithstanding anything in this clause 11, any party may disclose information in connection with the Service Package (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 11; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

11.5 Disclosure by FACS under GIPA Act

- (a) Notwithstanding the other provisions of this clause 11, the parties acknowledge that:
 - (i) the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) FACS will notify the Lessor of any proposed disclosure of Commercially Sensitive Information by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (ii) following notification by FACS in accordance with clause 11.5(b)(i), FACS will take reasonable steps to consult with the Lessor before disclosing Commercially Sensitive Information under the GIPA Act;
 - (iii) if, following:
 - A. notification by FACS in accordance with clause 11.5(b)(i); or
 - B. consultation between FACS and the Lessor in accordance with clause 11.5(b)(ii),
 the Lessor objects to disclosure of some or all of the Commercially Sensitive Information, the Lessor must provide details of any such objection within five Business Days after the date the Lessor received notification from FACS or the date on which the consultation process concluded (as relevant);

- (iv) FACS may take into account any objection received from the Lessor pursuant to clause 11.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Lessor should be disclosed; and
- (v) nothing in this clause 11.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

11.6 Personal Information

The Lessor must:

- (a) not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Standards;
- (b) not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Law, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Standards; and
- (c) keep, and make available to FACS on request, records detailing the recipient of any Personal Information that the Lessor has disclosed, the date of disclosure and the Personal Information that has been disclosed.

11.7 Privacy

- (a) **(Compliance):** Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements, the Lessor agrees to, and will ensure that the Lease and any other Lease entered into by the Lessor in relation to the Service Package contains terms which require the Lessor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Lease or other relevant Lease (as the case may be), in the same way as FACS would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by FACS.
- (b) **(Release and Indemnity):** The Lessor must release, indemnify and must keep indemnified on demand FACS and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which FACS or any of its Associates suffer or incur resulting from any act done or practice engaged in by the Lessor or any of their respective Associates in connection with the Service Package, which would, had that act or practice been done or engaged in by FACS, have contravened any of the Privacy Legislation.

12. Termination of this Deed

- (a) **(Satisfaction of obligations under the Lease or commencement of Option Sublease):** This Deed will terminate automatically without any requirement for any notice from any party:
 - (i) upon the performance and satisfaction of all of the obligations under the Lease; or
 - (ii) upon the commencement of the Option Sublease.
- (b) **(Does not affect rights of parties):** The termination of this Deed does not affect the rights of any party which have accrued to that party before the date of termination.

- (c) **(Surviving clauses):** All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
- (i) FACS' rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any records available to FACS;
 - (v) any indemnity or financial security given in accordance with this Deed;
 - (vi) any limitation or exclusion of liability; and
 - (vii) any right or obligation arising on termination or expiry of this Deed.
- (d) **(Interpretation):** No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (e) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

13. Governing law and jurisdiction

13.1 Governing law

This Deed is governed by and must be construed according to the laws of New South Wales, Australia.

13.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 13.2(a).

14. Miscellaneous

14.1 Entire agreement

To the extent permitted by Law and in relation to its subject matter, this Deed:

- (a) (**entire understanding**): embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) (**prior agreements**): supersedes any prior written or other agreement of the parties.

14.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.

14.3 Waiver

- (a) (**Writing**): A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) (**No waiver**): A failure to, a delay in, or a partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement of, that or any other right provided by Law or under this Deed.
- (c) (**No waiver of another breach**): No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

14.4 Consents and approvals

A consent or approval required under this Deed from FACS may be given or withheld, or may be given subject to any conditions, as FACS (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

14.5 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

14.6 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

14.7 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Deed; or
- (b) that provision under the Law of any other jurisdiction.

14.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

14.9 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

14.10 Moratorium legislation

A provision of any Law which comes into effect after the date of this Deed and operates to:

- (a) increase or improve any of ServiceCo's or the Lessor's rights, powers or remedies under this Deed or otherwise; or
- (b) prejudicially affect the exercise by FACS of any right, power or remedy under this Deed or otherwise,

(each matter referred to in (a) and (b), a **Specified Effect**) is, to the extent only that the Law has the Specified Effect, expressly waived by ServiceCo to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original position under this Deed.

Executed as a deed.

[Insert execution blocks]

Confidential

Annexure A – Form of Lease

Annexure 'A' to a Sublease dated *[insert date]*

Sublessor: *[insert name of Sublessor and ACN]*

Sublessee: *[insert name of Sublessee and ACN]*

Head Lessor: *[insert name of Head Lessor and ACN]*

Premises: *[insert]*

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1. Definitions and interpretation

1.1 Definitions

In this Sublease:

API means the Australian Property Institute (New South Wales Division).

Bank Bill Rate for a period, means:

- (a) the rate, expressed as a yield per cent per annum (rounded up (if necessary) to four decimal places) that is quoted as the average bid rate on the Reuters monitor system page 'BBSY' (or any page that replaces that page) at about 10.10am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period; or
- (b) if there is a manifest error in the calculation of that average bid rate, or if no average bid rate is published for Bank Bills of that tenor by about 10.30am, then the Bank Bill Rate will be the rate reasonably determined by the Sublessor, having regard to the rates otherwise bid for Bank Bills having a tenor as described above, at or around that time, to be the appropriate equivalent rate.

Building means the building located on the land in Item 1, the Premises and the Common Areas.

Business Day means Monday to Friday, excluding New South Wales public holidays.

Commencement Date means the date in Item 4.

Common Areas means the common property of the Owners Corporation (if applicable) and areas of the Building which are provided for common use (for example, car parking areas, footpaths, access ways, entrances, stairs, escalators, lifts, toilets, and loading docks).

Community Housing means subsidised accommodation for people on very low, low or moderate income or people with additional needs that is managed by not for profit organisations within the State of New South Wales. For the purpose of this Sublease, Community Housing does not include crisis housing or transitional housing.

CPI means All Groups Consumer Price Index for the City of Sydney published by the Australian Bureau of Statistics. If the CPI no longer exists, it means an index that the President of the API decides reflects changes in the cost of living in Sydney.

Deal means assign, transfer, sell, sublet, licence, part with possession of, transfer, mortgage, charge, surrender, dispose of, grant a trust over or otherwise deal with or permit any dealing with any property or legal or equitable interest and **Dealing** has a corresponding meaning.

Existing Sublease Guarantee means a security given to the Sublessor with respect to an Existing Subtenant's obligations under an Existing Subtenant Sublease.

Existing Subtenants means a person or entity which holds an estate, interest or occupancy right in the Premises or any part of it pursuant to an Existing Subtenant Sublease.

Existing Subtenant Subleases means all subleases (registered or unregistered), licences, permits to occupy or other occupancy rights (written or oral) which exist in relation to the Premises or any part of it as at the Commencement Date but excluding any such arrangements which exist between the Sublessor and the Sublessee.

Financial Year means 1 July to 30 June.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Head Lease [insert].

Head Lessor means the party listed in Item 10.

Item means an item in the Reference Schedule.

Liabilities means any action, claim, damages, demand, expense, liability and loss of any kind.

New Sublease Guarantee means a security given or transferred to the Sublessee with respect to an Existing Subtenant's obligation under an Existing Subtenant Sublease or with respect to a New Sub-subtenant's obligation under a Sub-sublease.

New Sub-subtenant means a person other than the Sublessee who Sub-subleases any part of the Premises from the Sublessee or another Tenant.

Overdue Rate means ■ per annum above the Bank Bill Rate.

Owners Corporation means any owners corporation created under the *Strata Schemes Management Act 1996* (NSW) which applies to the Land and includes, where the context allows, the manager, secretary, agents and employees of and any person authorised by the Owners Corporation.

Premises means (and where the context permits, includes part of) the premises described in Item 2 and includes the Sublessor's fixtures, fittings, furnishings, plant and equipment within the premises.

Relevant Sublease Covenants has the meaning given in clause 3.3.

Relevant ROA Covenants has the meaning given in clause 3.2.

Rent means the amount in Item 6, as varied under this Sublease.

Services means any services and facilities (including air conditioning thermostats, ducts and outlets, fire sprinkler heads and piping, security and fire alarm equipment, lighting, central electrical switching arrangement, emergency lighting and exit signs) provided or installed by Authorities, the Sublessor or any person authorised by the Sublessor in the Premises or for the benefit of the Premises in any floor of the Premises or in any ceiling cavity or walls adjoining the Premises.

Sublessee means the person named as sublessee on the cover page and includes its successors, executors and administrators, its assigns approved by the Sublessor and, where the context permits, includes any agent, contractor, employee, invitee, licensee, sub-contractor, sub-lessee or other person claiming through the Sublessee.

Sublessee's Predecessor means any previous sublessee under this Sublease and, where this Sublease is one in a series of consecutive subleases granted pursuant to the exercise of options, any sublessee under an earlier sublease in the series.

Sublessee's Property means the fixtures, fittings, furnishings, plant and equipment and other items installed in or brought onto any part of the Building at any time (whether before or after the Commencement Date) by or on behalf of the Sublessee or the Sublessee's Predecessors and, where the context permits, includes any part of them.

Sublessor means the person named on the cover page and includes its successors, executors, administrators and assigns and, where the context permits, includes its agents, contractors and employees.

Sub-sublease means:

- (a) a sub-sublease or other parting with possession of all or part of the Premises by the Sublessee;
- (b) a concurrent sub-sublease of all or part of the Premises; or
- (c) the granting of any licence in relation to the Premises, including but not limited to, rights of occupation granted to the Sublessee.

Tenant means the Existing Subtenants and New Sub-subtenants.

1.2 Interpretation

In this Sublease, unless the contrary intention appears:

- (a) other parts of speech and grammatical forms of a word or phrase defined in this Sublease have a corresponding meaning;
- (b) examples are descriptive only, not exhaustive;
- (c) headings and material included in boxes do not form part of this Sublease and are not legally binding;
- (d) a reference to a clause, party, or schedule is a reference to a clause of, and a party and schedule to, this Sublease and a reference to this Sublease includes any schedule;
- (e) no provision of this Sublease will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Sublease or that provision;
- (f) a covenant or agreement by two or more persons binds them jointly and severally;
- (g) a reference to a body, other than a party to this Sublease, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) a reference to liquidation includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

1.3 Statutory provisions

- (a) The covenants, powers and provisions implied in leases by virtue of the *Conveyancing Act 1919 (NSW)* (as amended) are expressly negated except in so far as they or some part or parts thereof are included in the provisions expressed in this Sublease.

- (b) The exemption under clause 156 of the *Residential Tenancies Act 2010* (NSW) applies to this Sublease and this Sublease is exempted from the operation of the *Residential Tenancies Act 2010* (NSW).
- (c) The parties acknowledge that to the extent of inconsistency between the provisions of this Sublease and the *Residential Tenancies Act 2010* (NSW), the provisions of the *Residential Tenancies Act 2010* (NSW) will be deemed to apply.

2. Services provided by Sublessor

2.1 Grant of Sublease

The Sublessor grants to the Sublessee a sublease of the Premises on the terms of this Sublease for the Term.

2.2 Quiet enjoyment by Sublessee

The Sublessee may occupy and use the Premises without being disturbed by the Sublessor (or any person claiming through it), except as permitted by this Sublease.

2.3 Services supplied by Sublessor

- (a) If the Sublessor supplies any Services to the Premises or the Building, it must use its reasonable endeavours to ensure that they work efficiently.
- (b) Despite clause 2.3(a) or any other provision in this Sublease, the Sublessor is not liable for any failure to provide or maintain services where the failure is caused or contributed to by the Sublessee.

2.4 Services provided by authorities

The Sublessor must use its reasonable endeavours to ensure that water and electricity supplies and drainage, sewerage and telephone services to the Premises are maintained by the relevant authority where the Sublessor has been providing those utilities at the Commencement Date.

2.5 Sublessee's access

- (a) The Sublessee may enter and use the Premises at any time, subject to this Sublease, the law, any encumbrances registered on the title to the Land and the requirements of statutory authorities.
- (b) By the Commencement Date, the Sublessor must provide to the Sublessee the access keys to enable the Sublessee to use the Premises. At the end of this Sublease, the Sublessee must return to the Sublessor all access keys issued to it.

3. Concurrent Sublease and Existing Tenancies

3.1 Concurrent Sublease

- (a) This Sublease is concurrent with the Existing Subtenant Subleases and the Sublessee acknowledges that the Sublessee's right of occupation of the Premises is subject to that of the Existing Subtenants under the Existing Subtenant Subleases while the Existing Subtenant Subleases remain in force.

- (b) The Sublessee must perform the obligations of the Sublessor which arise during the Term in connection with the Existing Subtenant Subleases in favour of the Existing Subtenants and their respective successors and assigns (and the Sublessee assumes all Liabilities of the Sublessor which arise during the Term in connection with the Existing Subtenant Subleases).
- (c) The Sublessee indemnifies the Sublessor and must keep indemnified and hold harmless the Sublessor in relation to any Liability arising in connection with a breach of clause 3.1(b) by the Sublessee, other than Liability resulting from the wilful default of the Sublessor under an Existing Subtenant Sublease.
- (d) Subject to this Sublease, the Sublessee may enforce all rights, powers and remedies of the Sublessor under the Existing Subtenant Subleases to the exclusion of the Sublessor.
- (e) The Sublessee is entitled to all rent and other money paid or payable to the Sublessor under the Existing Subtenant Subleases during the Term.
- (f) The Sublessee must notify the Sublessor promptly in writing upon becoming aware of any actual or prospective Liability relating to the Existing Subtenant Subleases. If the Sublessee gives such notification, the Sublessee may at its cost prosecute, defend or otherwise deal with any such Liability on behalf of the Sublessor and the Sublessor must provide such cooperation as is reasonable at the cost of the Sublessee.

3.2 Residual Occupancy Arrangements

To the extent the Existing Subtenant Subleases comprise licences, permits to occupy or other occupancy rights which exist in relation to the Premises (**Residual Occupancy Arrangements**) and this Sublease does not have the legal effect of putting the Sublessee, during the Term, in the same position as the Sublessor in terms of enforcing all covenants, rights, powers and remedies of the Sublessor under the Residual Occupancy Arrangements, then:

- (a) subject to clause 3.2(b), the Sublessor assigns to the Sublessee with effect from the Commencement Date:
 - (i) the Sublessor's interest in the Residual Occupancy Arrangements; and
 - (ii) the benefit of the covenants by the Existing Subtenants under the Residual Occupancy Arrangements,

(Relevant ROA Covenants),

and the Sublessee accepts the assignment and assumes all Liabilities of the Sublessor and must indemnify and keep the Sublessor indemnified and held harmless from any Liability which arises during the Term in respect of the Residual Occupancy Arrangements; and
- (b) if the benefit of any Relevant ROA Covenant is not assignable, then it is not assigned to the Sublessee under this clause, and during the Term:
 - (i) the Sublessor holds the benefit of the Relevant ROA Covenant for the benefit of the Sublessee; and
 - (ii) if directed by the Sublessee, the Sublessor must use reasonable endeavours to enforce the Relevant ROA Covenant for and at the cost of the Sublessee.

3.3 Relevant Sublease Covenants

To the extent this Sublease does not have the legal effect of putting the Sublessee, during the Term, in the same position as the Sublessor in terms of enforcing all covenants, rights, powers and remedies of the Sublessor under the Existing Subtenant Subleases, then:

- (a) subject to clause 3.3(b), the Sublessor assigns to the Sublessee with effect from the Commencement Date:
 - (i) the Sublessor's interest in the Existing Subtenant Subleases; and
 - (ii) the benefit of the covenants by the Existing Subtenants under the Existing Subtenant Subleases,

(Relevant Sublease Covenants),

and the Sublessee accepts the assignment and assumes all Liabilities of the Sublessor and must indemnify and keep the Sublessor indemnified and held harmless from any Liability which arises during the Term in respect of the Existing Subtenant Subleases; and

- (b) if the benefit of any Relevant Sublease Covenant is not assignable, then it is not assigned to the Sublessee under this clause, and during the Term:
 - (i) the Sublessor holds the benefit of the Relevant Sublease Covenant for the benefit of the Sublessee; and
 - (ii) if directed by the Sublessee, the Sublessor must use reasonable endeavours to enforce the Relevant Sublease Covenant for and at the cost of the Sublessee.

3.4 Insurance required by Existing Subtenant Subleases

The Sublessor will use reasonable endeavours at the cost of the Sublessee to procure that the Existing Subtenants which are obliged under their Existing Subtenant Subleases to take out insurance policies which name or note the interests of the Sublessor, or which must include the Sublessor as a co-insured, amend such policies to include the Sublessee as named, noted or co-insured parties (as the case may be) in addition to the Sublessor.

3.5 Sublessee dealing with Existing Subtenant Subleases

- (a) Subject to clause 3.5(b), the Sublessee may:
 - (i) amend or vary any Existing Subtenant Subleases;
 - (ii) accept a surrender of all or any part of an Existing Subtenant Sublease;
 - (iii) agree to an Existing Subtenant holding over under an Existing Subtenant Sublease; or
 - (iv) terminate an Existing Subtenant Sublease in accordance with its terms,without the Sublessor's consent.
- (b) The Sublessee must not, without the prior written consent of the Sublessor, amend any Existing Subtenant Sublease in a manner that:

- (i) requires the Sublessor to pay or incur any cost or Liability;
 - (ii) imposes any additional or more onerous obligation or liability on the Sublessor;
 - (iii) extends the term or grants an option to extend the term of the Existing Subtenant Sublease beyond the expiry of the Term; or
 - (iv) releases the Existing Subtenant from any obligation to carry out capital works, or make good the subleased premises at the end of the subleased term under the Existing Subtenant Sublease.
- (c) If, pursuant to an agreement made with the Sublessee, an Existing Subtenant executes an instrument which amends, varies, surrenders or terminates an Existing Subtenant Sublease and the instrument is not inconsistent with clause 3.5(b), the Sublessor must on request from the Sublessee promptly execute that instrument as sublessor.
- (d) The Sublessor irrevocably appoints the Sublessee as the attorney of the Sublessor to sign any instrument referred to in clause 3.5(c). The attorneys may only sign an instrument on behalf of the Sublessor if the Sublessor fails to sign and return the instrument within 10 Business Days after receiving the instrument from the Sublessee in executable form.
- (e) The Sublessee must pay any duty in respect of such instrument.
- (f) Nothing in this clause 3.5 prevents the Sublessee, in its own right, from providing or agreeing to provide any right or benefit to an Existing Subtenant (for example, in a separate agreement between the Sublessee and the Existing Subtenant that is not an amendment or variation of an Existing Subtenant Sublease).

3.6 Sublessor not to deal with Existing Subtenant Subleases

The Sublessor must not:

- (a) amend or vary any Existing Subtenant Subleases;
- (b) accept a surrender of all or any part of an Existing Subtenant Sublease;
- (c) terminate an Existing Subtenant Sublease; or
- (d) purport to enforce or exercise any rights, powers or remedies of the Sublessor under an Existing Subtenant Sublease,

except:

- (e) as permitted by this Sublease; or
- (f) with the Sublessee's prior written consent, which may be withheld in the Sublessee's absolute discretion.

3.7 Assignment of Existing Sublease Guarantees

- (a) On the Commencement Date, the Sublessor assigns to the Sublessee its interest in assignable Existing Sublease Guarantees.
- (b) The Sublessor does not warrant that the Existing Sublease Guarantees are valid, enforceable or assignable to the Sublessee.

3.8 Existing Sublease Guarantees that are not assignable

If the Sublessor holds an Existing Sublease Guarantee for an Existing Subtenant Sublease and the Existing Sublease Guarantee is not assignable, then:

- (a) from the Commencement Date:
 - (i) the Sublessor holds its interest under the Existing Sublease Guarantee for the benefit of the Sublessee; and
 - (ii) if directed by the Sublessee, the Sublessor must:
 - A. return the Existing Sublease Guarantee to the issuer of the Existing Sublease Guarantee;
 - B. return the Existing Sublease Guarantee to the Existing Subtenant on whose behalf the Existing Sublease Guarantee is issued; or
 - C. use its reasonable endeavours to claim under the Existing Sublease Guarantees and pay the money received to the Sublessee.

3.9 Registration

The Sublessor must attend to registration of this Sublease at the Sublessee's cost in the relevant land register as soon as practicable after the Commencement Date, and the Sublessee must provide such assistance as may be reasonably required by the Sublessor to register the Sublease.

4. Payments by Sublessee

4.1 Method of payment

- (a) The Sublessee must pay all money owed to the Sublessor under this Sublease:
 - (i) by payment to the Sublessor by any method of which the Sublessor notifies the Sublessee;
 - (ii) within 14 days after demand, unless otherwise specified in this Sublease; and
 - (iii) without deduction or set off.
- (b) The Sublessee must pay to the Sublessor the Rent:
 - (i) whether or not the Sublessor demands payment;
 - (ii) in equal monthly instalments (except for the first and last instalments, which will be apportioned in respect of time if necessary); and
 - (iii) in advance on the Commencement Date and on the 1st of each month.

4.2 Payment of rent under Head Lease

Despite clause 4.1, where the Sublessee is obliged to pay any amount to the Sublessor under the terms of this Sublease (including Rent), the Sublessor irrevocably directs the Sublessee to pay such amounts as follows:

- (a) firstly, directly to the Head Lessor in satisfaction of all money owed (including rent) by the Sublessor to the Head Lessor under the terms of the Head Lease; and
- (b) secondly, as to the balance, to the Sublessor.

4.3 Services

In addition to the amounts paid or payable under clauses 4.1 and 4.4, the Sublessee must pay on time for all services supplied to the Premises, including water, excess water, electricity, gas, telephone, trade waste or other costs incurred as a result of the Sublessee's use or occupation of the Premises.

4.4 Sublessee's share of building costs

- (a) The Sublessee must pay to the Sublessor:
 - (i) all rates, assessments, fees and charges (including charges for water and sewerage usage, drainage, trade waste and fire services), costs, levies, impositions and duties of any authority, body, department, government or instrumentality assessed, charged, imposed or levied in respect of the Premises, the land or services to the Premises or the land (regardless of ownership); and
 - (ii) any property tax assessed on the Premises, including the Sublessor's land tax (calculated on the basis that the Premises is the only property the Sublessor owns).
- (b) The Sublessee is not obliged to pay:
 - (i) any commission or similar charge paid to any person in connection with letting or licensing any part of the Building;
 - (ii) the Sublessor's income tax or capital gains tax;
 - (iii) any amount for which a particular sublessee or licensee of any part of the Building is responsible; or
 - (iv) the cost of any structural work or cost treated by the Sublessor (acting in good faith) in its accounting statements as a capital expense.

4.5 Interest on late payments

- (a) If the Sublessee does not pay any money to the Sublessor on the due date, the Sublessor may charge interest on that money at the Overdue Rate.
- (b) The Sublessor may calculate the interest on any unpaid money on a daily basis from and including the day the unpaid money was due up to and including the day it is paid.

4.6 Errors

If either the Sublessee or the Sublessor identifies an error in any calculation or payment, the Sublessor must make any necessary adjustment in the Sublessee's next monthly statement (or as soon as practicable if this Sublease has ended).

4.7 Cost of sublease, default, approvals etc

The Sublessee must pay within 14 days after notice the Sublessor's reasonable costs (including legal costs) and all charges, duties, expenses and fees of or incidental to:

- (a) any request for the approval or consent of the Sublessor (and of any head lessor or mortgagee of the Sublessor); and
- (b) any breach or default by the Sublessee under this Sublease.

4.8 GST

- (a) Any reference in this clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this Sublease does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.
- (c) Any amount referred to in this Sublease (other than an amount referred to in clause 4.8(h)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this Sublease, the consideration to be provided under this Sublease for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 4.8(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 4.8(d) or at such other time as the parties agree.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Sublease the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 4.8(e) the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If one of the parties to this Sublease is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Sublease, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the

amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 4.8(d).

5. Rent review

5.1 CPI review

- (a) As at a CPI review date in Item 7, the Rent is adjusted using the following formula:

[REDACTED]

where

■

[REDACTED]

■

[REDACTED]

- (b) The Sublessee must pay the new Rent from the CPI review date.
- (c) Until the Sublessor notifies the Sublessee of the new Rent, the Sublessee must continue to pay the existing Rent to the Sublessor.
- (d) The Sublessor must calculate any necessary adjustment between the Rent the Sublessee has paid and the Rent the Sublessee should have paid from the CPI review date.
- (e) The Sublessee must pay any adjustment when the Sublessee's next monthly payment is due.

6. Sublessee's general obligations

6.1 Use

The Sublessee must:

- (a) use the Premises only for the permitted use in Item 8;
- (b) not put any safe or other heavy article in the Premises unless the Sublessor first consents;
- (c) not put any advertisement, plate or sign outside the Premises or on the inside face of the windows unless the Sublessor first consents;
- (d) not use the Premises in a way that interferes with the efficient operation of the Services to the Premises or the Building; and
- (e) not have or use dangerous substances (including hazardous materials or chemicals, flammable liquids, acetylene gas or alcohol, explosive oils or substances) in the Premises or the Building.

6.2 Maintaining premises and Sublessee's property

- (a) The Sublessee must keep the Premises clean and tidy and in at least as good a condition as they were in at the Commencement Date (for example, the Sublessee must repair damage and replace broken fittings), except for:

- (i) fair wear and tear;
 - (ii) damage caused by earthquake, fire, flood, storm, tempest, war damage or act of God; and
 - (iii) damage to the extent it was caused or contributed to by the Sublessor.
- (b) The Sublessee must replace all broken glass with glass of the same or similar quality.
- (c) Subject to clause 6.3, the Sublessee does not have to repair the structure of the Building or Premises.
- (d) The Sublessee must take reasonable precautions to keep the Premises free of vermin, insects, birds and animals and, as required by the Sublessor, employ qualified pest exterminators.

6.3 Damage caused by Sublessee

If the Sublessee damages the Building or the Premises (including structural damage, but excluding damage resulting from any latent defect in the Building) the Sublessee must at the Sublessor's option:

- (a) promptly repair the damage to the Sublessor's reasonable satisfaction; or
- (b) pay to the Sublessor within 14 days after demand the Sublessor's cost of repairing the damage.

6.4 Altering Premises

The Sublessee must not erect or construct upon the Premises or any part thereof any building, structure or improvement, nor carry out any alteration to any building structure or improvement on the Premises or any part thereof without the prior written consent of the Sublessor.

6.5 Sublessee must observe law and rules

The Sublessee must comply with the law and any notice from any authority that requires the Sublessee to do or not do anything concerning the Premises, the Sublessee's use of the Premises, the Sublessee's Property or this Sublease (for example, laws relating to occupational health and safety and environmental matters), excluding anything relating to the structure of the Building which does not arise as a result of the Sublessee's particular use of the Premises.

6.6 How Sublessee should behave

The Sublessee must not make any illegal, immoral, offensive or unlawful use of the Premises or the Common Areas, nor cause any nuisance, damage or disturbance to the Sublessor or any occupier of the Building or of any nearby property.

6.7 Using Common Areas

- (a) The Sublessee may use the Common Areas in common with others, but only for the purposes for which they were designed.
- (b) The Sublessee must comply with the Sublessor's reasonable requirements, the law and the requirements of statutory authorities in relation to the use of the Common Areas.

7. Risk and insurance

7.1 Sublessee's insurance

- (a) Except where prohibited by the *Residential Tenancies Act 2010* (NSW), the Sublessee must have current insurance policies covering:
 - (i) public liability arising out of the use or occupation of the Premises for the amount in Item 9 (or any reasonable higher amount notified by the Sublessor) in respect of any single event; and
 - (ii) cover for all other risks which from time to time a prudent property owner and landlord would effect for a property being used as Community Housing.
- (b) The Sublessee must deliver to the Sublessor adequate written evidence of the existence and contents of each policy immediately after the Sublessee takes it out and of its currency on each anniversary of the Commencement Date and when reasonably required by the Sublessor.

7.2 Sublessee not to void insurances; extra premiums

- (a) The Sublessee must not cause the rate of any insurance premium relating to the Premises or the Building to be increased, or prejudice or render void or voidable that insurance.
- (b) If the Sublessor approves (in its absolute discretion) any request of the Sublessee which increases an insurable risk, the Sublessee must pay to the Sublessor any extra premiums payable by the Sublessor due to the increased risk.

7.3 Sublessee releases and indemnifies Sublessor

- (a) The Sublessee releases the Sublessor (and its agents, contractors, employees and officers) from all Liabilities for any damage, loss, injury, or death occurring in the Premises or the Building, except to the extent that the damage, loss, injury or death was caused by the negligence or wilful act of the person seeking to be released.
- (b) The Sublessee indemnifies the Sublessor (and its agents, contractors, employees and officers) against all Liabilities arising out of or in relation to any faulty Sublessee's Property or any act or omission of any kind of the Sublessee.

7.4 Sublessee's obligations at Sublessee's risk and expense

Unless this Sublease expressly provides otherwise, all of the following are at the Sublessee's sole risk and expense:

- (a) anything which the Sublessee is required or permitted to do under this Sublease, whether or not the Sublessor gives its approval or consent to that thing;
- (b) the Sublessee's Property; and
- (c) the Sublessee's use and occupation of the Premises.

7.5 Sublessee to give notice of risk

The Sublessee must give the Sublessor notice of any of the following as soon as it becomes aware of them:

- (a) damage, death, injury or loss occurring in or any defect or lack of repair in the Premises; and
- (b) any circumstances likely to cause damage, risk or hazard to any person or property in or services and amenities of the Premises.

8. Sublessor's general rights

8.1 Sublessor may enter Premises

- (a) The Sublessor will have access to the Premises in the following circumstances:
 - (i) immediately and without notice where in the opinion of the Sublessor an emergency threatens life or substantial damage upon the Premises;
 - (ii) with reasonable prior notice to inspect or view the state of the Premises;
 - (iii) with reasonable prior notice to ascertain whether the Sublessee is complying with the provisions of this Sublease;
 - (iv) in accordance with any notice issued by the Sublessor with respect to any breach or default by the Sublessee;
 - (v) to do anything the Sublessor must or may do under this Sublease; or
 - (vi) as otherwise agreed between the parties.
- (b) Wherever the Sublessor exercises its right of entry to the Premises under this Sublease, the Sublessor must:
 - (i) use reasonable endeavours to not cause any undue interruption or inconvenience to the use or occupation of the Premises by the Sublessor or a Tenant including:
 - A. by giving reasonable notice to the Sublessee to allow it to comply with any of its notice obligations under an Existing Subtenant Sublease or a Sub-sublease; and
 - B. by complying with the Sublessee's reasonable directions relating to access to the Premises, having regard to the Sublessee's obligations under any Existing Subtenant Sublease or Sub-sublease.

8.2 Sublessor's consent or approval

Unless expressly stated in a particular clause:

- (a) the Sublessor must not unreasonably withhold or delay its consent or approval under this Sublease, but may give it on reasonable conditions; and
- (b) any consent or approval of the Sublessor must be in writing.

8.3 Sale of building

If the Sublessor wants to sell the Premises or the Building, it may put up a 'for sale' sign on the Premises, and enter the Premises for the purposes of showing the Premises to the prospective purchasers, subject to complying with the conditions in clause 8.1(b).

8.4 No waiver

- (a) Failure to exercise, delayed exercise or partial exercise of any available remedy or right does not waive any breach by a party.
- (b) Waiver by a party of a particular breach is not a waiver of any other breach or default.
- (c) Demand or acceptance by the Sublessor of money payable under this Sublease after the Sublessee's breach or default does not prejudice any other right or remedy of the Sublessor.

9. Transfers, sublettings, etc

9.1 Dealing with Premises

- (a) The Sublessee must not directly or indirectly Deal with the Premises (or any part of it) except as expressly permitted by this Sublease unless the prior written consent of the Sublessor is obtained (such consent not to be unreasonably withheld or delayed).
- (b) Despite clause 9.1(a):
 - (i) the Sublessee may Deal with the Premises (or any part of it) without the consent of the Sublessor where the proposed transferee is:
 - A. the NSW Government; or
 - B. any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality which is an agent of the NSW Government; and
 - (ii) the Sublessee may grant rights of possession in respect of the Premises without the consent of the Sublessor to any Tenant under a Sub-sublease, provided that the grant of such rights will not relieve the Sublessee of any of its obligations or liabilities under this Sublease.
- (c) Where the Sublessee Deals with its interest in the Premises under clause 9.1(b)(i), the Sublessee must as soon as reasonably practicable after the Dealing has occurred, provide the Sublessor with written notice of such Dealing.

9.2 Costs in relation to dealings

The Sublessee must pay the Sublessor's reasonable expenses (including administration and legal costs) in relation to any proposed dealing under clause 9.1, even if the Sublessee (or other party) does not comply with clause 9.1 or if the proposed dealing does not proceed.

10. Damage, destruction or resumption of building

10.1 Damage or destruction

- (a) If the Premises are damaged or destroyed or affected by hazardous or injurious materials or substances so as to render the Premises substantially unfit for use and occupation then the Sublessee may:
 - (i) ask the Sublessor to re-build the Premises; or
 - (ii) terminate this Sublease by notice in writing to the Sublessor.
- (b) Where the Sublessee gives notice under clause 10.1(a)(i), if the Sublessor does not notify the Sublessee within 2 months after the Sublessee's request that the Sublessor intends to rebuild, or does not rebuild within 6 months after stating its intention to do so, the Sublessor or the Sublessee may terminate this Sublease by notice to the other, in which case the Sublease ends on the date of the notice.
- (c) If the Premises are damaged or destroyed or affected by hazardous or injurious materials or substances so as to render the Premises substantially unfit for use and occupation, then the Sublessor must reduce the Rent and other money payable by a reasonable amount (depending on the kind and extent of the damage and destruction) from the date of the damage or destruction until the Premises are again fit for use or this Sublease is ended.
- (d) Despite any other provision, the Sublessee has no right to the reduction to the extent that the Sublessee's act or omission caused the damage, destruction or affectation and has no right to terminate this Sublease if the Sublessee caused or substantially contributed to the damage, destruction or effect.

10.2 Resumption

If a competent authority resumes the Premises or the Building, and this makes the Premises unfit or unavailable for the Sublessee's use during the term, then the Sublessor or the Sublessee may terminate this Sublease by notice to the other and the Sublessor is not liable to pay the Sublessee any compensation.

10.3 Resolving disputes about reduction in rent on damage or destruction

- (a) If the Sublessee does not agree with the reduction made by the Sublessor under clause 10.1(c) or the Sublessor and the Sublessee do not agree on whether there should be a reduction under that clause, either party may give the other notice of the dispute within 14 days after the damage or destruction occurs.
- (b) The parties must negotiate in good faith to agree on a reduced amount within 14 days after delivery of the notice of dispute.
- (c) If the Sublessee and the Sublessor agree on a reduced amount, the Sublessee must pay that amount from the agreed date.
- (d) If the Sublessee and the Sublessor do not agree then, within 30 days after the period in clause 10.3(b), either party may ask the President of the API to appoint a valuer who is a current full member of the API with at least 5 years' experience in valuing properties similar to the Premises to decide the reduced amount (if any) and the date from which the reduced amount must be paid.

- (e) The Sublessee and the Sublessor must instruct the valuer to decide the reduced amount within 30 days after being appointed.
- (f) If the Sublessee does not keep to a time limit in this clause which applies to it, the right attached is lost and there is no reduction in the Rent and other money payable, except to the extent that the Sublessor made a reduction under clause 10.1(c).
- (g) Until the dispute is resolved, the Sublessee must pay the current Rent and other money payable, subject to any reduction under clause 10.1(c). The Sublessor must calculate and refund any adjustment within 14 days after the agreement or decision by the valuer.
- (h) In deciding the dispute, the valuer acts as an expert and not as an arbitrator and must give written reasons for the decision.
- (i) The valuer's decision is final and binding on the parties (except for manifest error).
- (j) The Sublessor and the Sublessee must each pay one half of the valuer's costs.

11. End of Sublease

11.1 Handing back Premises

When this Sublease ends, the Sublessee must vacate the Premises and give them back to the Sublessor clean and free from rubbish and in the same condition as they were in before the Commencement Date, except for fair wear and tear and damage which the Sublessee is not required to repair under clause 6.2.

11.2 Continuing occupation after end of Sublease

- (a) If the Sublessor agrees, the Sublessee may continue to occupy the Premises after the expiry of the Term for a fixed term of 4 months and then for continuing periods of 4 months' each.
- (b) The Rent for the 4 monthly occupation is one third of the annual Rent current on the date.
- (c) The 4 monthly occupation is on the same provisions as in this Sublease, so far as applicable, but the Sublessor or the Sublessee may end the occupation by 1 month's notice to the other expiring on any day.

11.3 Assignment of Residual Occupancy Arrangements and Guarantees

Upon termination or expiration of this Sublease, the Sublessee assigns to the Sublessor with effect from the date of termination or expiration:

- (a) the Sublessee's interest in the Residual Occupancy Arrangements; and
- (b) the benefits of the covenants by the Existing Subtenants under the Residual Occupancy Arrangements,

and the Sublessor accepts the assignment.

11.4 Reassignment of Existing Sublease Guarantees

- (a) On the termination of this Sublease, the Sublessee assigns to the Sublessor its interest in assignable Existing Sublease Guarantees and New Sublease Guarantees.
- (b) The Sublessee does not warrant that the Existing Sublease Guarantees or New Sublease Guarantees are valid, enforceable or assignable to the Sublessor.

11.5 Bank guarantees that are not assignable

If on the date of termination of this Sublease the Sublessee holds an Existing Sublease Guarantee or New Sublease Guarantee and the Existing Sublease Guarantee or New Sublease Guarantee (as applicable) is not assignable, then:

- (a) the Sublessee's interest in the Existing Sublease Guarantee or New Sublease Guarantee (as applicable) is not assigned to the Sublessor; and
- (b) from the date of termination:
 - (i) the Sublessee holds the rights under the Existing Sublease Guarantee or New Sublease Guarantee (as applicable) for the benefit of the Sublessor; and
 - (ii) if directed by the Sublessor the Sublessee must claim under the Existing Sublease Guarantee or New Sublease Guarantee (as applicable) and pay the money to the Sublessor.

12. Breach of Sublease

12.1 Termination for Sublessee's default

The Sublessor may terminate this Sublease if:

- (a) the Sublessee does not pay any money payable to the Sublessor under this Sublease within 60 days after the due date;
- (b) the Sublessee does not observe any provision of this Sublease and within a reasonable time after service of a notice by the Sublessor (such period being not less than 60 days) specifying the non-observance:
 - (i) if the matter is capable of remedy, does not remedy it to the Sublessor's reasonable satisfaction; or
 - (ii) if the matter is not capable of remedy, does not pay compensation to the Sublessor's reasonable satisfaction; or
- (c) an order is made or a resolution is effectively passed for the winding up, liquidation, compromise, arrangement, amalgamation, arrangement or comprise with creditors of the Sublessee which is a company.

This clause does not affect any claim or other remedy of the Sublessor against the Sublessee for breach of this Sublease and has effect despite any other term in this Sublease.

13. General

13.1 Notices

- (a) A notice under this Sublease must be in legible writing and in English.
- (b) If the Sublessor wants to give a notice to the Sublessee, the Sublessor must:
 - (i) give it to the Sublessee personally; or
 - (ii) leave it at, or post or fax it to, the Premises, the Sublessee's registered office or the Sublessee's last known business address.
- (c) If the Sublessee wants to give a notice to the Sublessor, the Sublessee must leave it at, or send it by security post or fax it to the Sublessor's registered office or any other address that the Sublessor nominates.
- (d) If any notice is given on a day which is not a Business Day or after 5.00pm (addressee's time), it is taken not to be given until the next Business Day.
- (e) Any notice given by the Sublessor is valid and effective if given under the common seal of the Sublessor or signed by an attorney, director, company secretary, authorised officer or solicitor of the Sublessor.

13.2 Governing Law

This Sublease is governed by New South Wales law.

13.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day.

13.4 Variation

A variation of any provision of this Sublease must be in writing and signed by the parties.

13.5 Whole Agreement

This Sublease comprises the whole agreement between the parties in respect of its subject matter.

13.6 Severability

If a court decides that any part of this Sublease is void, voidable, illegal or unenforceable or this Sublease would be void, voidable, illegal or unenforceable unless a part is severed from this Sublease, then that part is severed from this Sublease and does not affect the continued operation of the rest of this Sublease.

13.7 Head Lease

- (a) The Sublessor must:
 - (i) obey the Head Lease in the Sublessor's capacity as lessee under the Head Lease, except to the extent that the Sublessee assumes the Sublessor's obligations under this Sublease;

- (ii) promptly inform the Sublessee of any notice to Sublessor receives from the Head Lessor and of anything else that may affect the performance of the Sublessee's obligations under this Sublease;
 - (iii) not transfer the Sublessor's interest or rights under the Head Lease;
 - (iv) not surrender the Head Lease to the Head Lessor without the Sublessee's consent (which may be withheld in the Sublessee's absolute discretion); and
 - (v) must not do anything that may end the Head Lease before its expiry date.
- (b) If the Sublessor breaches the Head Lease in a way that may prejudice the Sublessee's interests, the Sublessee may:
 - (i) do anything reasonably required to remedy the breach; and
 - (ii) recover the cost of doing so from the Sublessor as money due under this Sublease.
- (c) The Sublessor must ensure the Sublessee has the benefit of the Head Lessor's obligations under the Head Lease as if those obligations were imposed on the Sublessor by this Sublease, with only those changes necessary for them to apply to this Sublease.

13.8 Head Lessor's consent

- (a) The Head Lessor consents to this Sublease.
- (b) The Head Lessor acknowledges and agrees that provided it continues to receive rent in accordance with the terms of the Head Lease, the Head Lessor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the Head Lease under any circumstance.

Reference Schedule

Items

- | | | |
|----|------------------------------------|--|
| 1 | Land | [insert] |
| 2 | Premises: | The Land and the Sublessor's improvements on the Land. |
| 3 | Term: | [insert] |
| 4 | Commencement Date: | [insert] |
| 5 | Expiry Date: | [insert] |
| 6 | Rent: | [insert] per annum (excluding GST) |
| 7 | CPI Review Date | On each anniversary of the Commencement Date. |
| 8 | Permitted Use: | Community Housing. |
| 9 | Public liability insurance amount: | ██████████ |
| 10 | Head Lessor | [insert]. |
-

Confidential

Schedule 28 – Termination Bond

*Termination Bond – Social and
Affordable Housing Fund*

*Department of Family and Community Services
(FACS)*

and

[Insert Issuer]

THIS DEED POLL (BOND) is made on

20

BETWEEN:

| | |
|-----------------|--|
| Name | The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the <i>Community Housing Providers (Adoption of National Law) Act 2012</i> (NSW) |
| Short form name | FACS |
| Notice details | Eleri Morgan-Thomas, FACS Representative Address: 2 Cavill Avenue, Ashfield, NSW, 2131 Email: eleri.morgan-thomas@facs.nsw.gov.au Telephone: (02) 9716 2917 |

Given by:

| | |
|-----------------|---|
| Name | [insert] |
| ABN | [insert] |
| Short form name | Issuer |
| Notice details | [insert] Address: [insert] Email: [insert] Telephone: [insert] |

BACKGROUND:

- (a) By a deed dated **[insert]** entitled 'Social and Affordable Housing Fund - Services Agreement' (**Services Agreement**) between Compass Housing Services Co Ltd ACN 002 862 213 (**ServiceCo**) and FACS, ServiceCo agreed to, amongst other things, carry out the service package activities, including by providing accommodation services.
- (b) Under the provisions of the Services Agreement, ServiceCo is required to procure the provision of this Bond to FACS.

AGREED TERMS:

This deed poll provides as follows:

- 1. The Issuer unconditionally and irrevocably undertakes and covenants to pay to FACS on written demand without reference to ServiceCo and notwithstanding any notice given by ServiceCo to the Issuer not to do so, any sum or sums which may from time to time be demanded in writing by FACS to a maximum aggregate sum of **[\$insert]**.
- 2. The Issuer's liability under this Bond will be a continuing liability and will continue until the earlier of the date:
 - (a) on which payment is made under this Bond of the maximum aggregate sum;
 - or

- (b) on which FACS notifies the Issuer in writing that this Bond is no longer required.
3. The liability of the Issuer under this Bond will not be discharged or impaired by reason of any change or changes (with or without the knowledge or consent of the Issuer) in any of the stipulations or provisions of the Services Agreement or acts or things to be executed, performed or done under the Services Agreement or by reason of any breach or breaches of the Services Agreement by ServiceCo or FACS.
 4. The Issuer may at any time without being required to do so pay to FACS the maximum aggregate sum less any amount or amounts it may previously have paid under this Bond or such lesser sum as may be required and specified by FACS and thereupon the liability of the Issuer hereunder in respect of that amount paid shall immediately cease.
 5. FACS may not assign, grant a Security Interest (as that term is defined in the Services Agreement) over, or otherwise dispose of all or any benefit, right or interest under this Bond without the prior consent (not to be unreasonably withheld) of the Issuer, provided that the prior consent of the Issuer will not be required if FACS assigns, grants a Security Interest over, or otherwise disposes of all or any benefit, right or interest under this Bond consequent upon the assignment, grant of a Security Interest over, or disposal otherwise of all or any benefit, right or interest in the Services Agreement pursuant to clause 42 (*Assignment and amendments*) of the Services Agreement.
 6. This Bond will be governed by and construed in accordance with the laws for the time being of New South Wales.

Executed as a deed poll.

[Signature of Issuer]

Confidential

Schedule 29 – Financiers’ Tripartite Deed

*Social and Affordable Housing Fund –
Financiers’ Tripartite Deed*

Department of Family and Community Services (FACS)

and

Compass Housing Services Co Ltd (ServiceCo)

and

[Insert] (Security Trustee)

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Social and Affordable Housing Fund – Financiers’ Tripartite Deed

Date

Parties The Secretary of the Department of Family and Community Services as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**)

Compass Housing Services Co Limited ACN 002 862 213 (**ServiceCo**)

[*Insert*] (**Security Trustee**)

Background

- A. FACS and ServiceCo have entered, or will enter, into the Services Agreement for the provision of the Service Package.
- B. ServiceCo, the Security Trustee and others have entered, or will enter, into the Finance Documents to finance the Service Package.
- C. The parties are entering into this Deed to record the agreement between them in relation to the interaction of their respective rights and obligations under the Service Package Documents and the Financiers' Securities.

Operative provisions

1. Definitions

1.1 Definitions

In this Deed:

Appointed Representative means a Representative appointed in accordance with clause 5.5.

Australian Prudential Regulation Authority means the statutory body with responsibility for regulation of the Australian financial services industry established pursuant to the *Australian Prudential Regulation Authority Act 1998* (Cth), or any replacement body.

FACS Intention to Terminate Notice has the meaning given to that term in clause 4.2.

FACS Tripartite Rights has the meaning given to it in clause 7.1(a).

Finance Default Notice has the meaning given to it in clause 4.3.

Finance Event of Default means an "**Event of Default**" as defined in the Finance Documents.

Finance Party has the meaning given to it in the Security Trust Deed.

Financiers' Subcontract Tripartite has the meaning given to it in the Finance Documents.

Financiers' Security means the security interest granted in favour of the Security Trustee under the Finance Documents, in accordance with clause 42.1(b) (*Assignment, amendments and other dealings by ServiceCo*) of the Services Agreement.

Financiers' Tripartite Rights has the meaning given to that term in clause 7.1(a).

Fit and Proper Person means a person or entity who:

- (a) is solvent and reputable;
- (b) does not have an interest which conflicts in a material way with the interests of FACS or is involved in a business or activity which is incompatible or inappropriate in relation to the Service Package;
- (c) (in the case of a Suitable Substitute notified pursuant to clause 8.1(a)(i)) has or has available to it a sufficient level of financial, managerial and technical capacity to carry out the Service Package Activities under the Service Package Documents; and
- (d) is a Registered CHP with Tier 1 or 2 accreditation,

provided that:

- (e) a novation or transfer of ServiceCo's rights and liabilities under the Service Package Documents to that person; or
- (f) a transfer of the legal or beneficial ownership of the equity or ownership interests in ServiceCo to that person,

would not:

- (g) be against the public interest;
- (h) lead to the occurrence of a Probity Event;
- (i) have a Material Adverse Effect; or
- (j) increase the level of risk or liabilities of FACS or any Associate of FACS.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of ServiceCo to comply with its obligations under any Service Package Document;
- (b) FACS' rights under any Service Package Document; or
- (c) the ability of ServiceCo to pay to the Financiers the amounts due under, and substantially in accordance with, the Finance Documents.

Nominated Dwellings has the meaning given to that term in Schedule 20 of the Services Agreement.

Nominated Relevant Infrastructure has the meaning given that term in Schedule 20 of the Services Agreement.

Novation Date means the date any novation or change in ownership referred to in clause 8.1(a) becomes effective.

Permitted Financier List means the list of financial institutions set out in the letter provided by ServiceCo to and approved by FACS on or prior to date of this Deed, as updated from time to time by agreement of ServiceCo, the Security Trustee and FACS.

Permitted Investment Fund List means the list of investment funds set out in the letter provided by ServiceCo to and approved by FACS on or prior to the date of this Deed, as updated from time to time by agreement of ServiceCo, the Security Trustee and FACS.

Personal Property Securities Act (PPSA) means the *Personal Property Securities Act 2009* (Cth).

Personal Property Securities Register means the register established under chapter 5 of the PPSA.

President has the meaning given to that term in clause 5.6(b).

Related Entity has the meaning given to that term in the Corporations Act.

Relevant Property means:

- (a) where clause 8.4(a) applies, the property referred to in that clause; or
- (b) where clause 8.4(b) applies, each:
 - (i) Nominated Dwelling and any Nominated Relevant Infrastructure corresponding to that Nominated Dwelling subject to the exercise of the Option to Lease by FACS; and
 - (ii) Site lease to be novated to FACS or its nominee in accordance with a Lease Side Deed.

Remedy means, with respect to a breach, default or event (an "**Event**"):

- (a) if the Event is capable of being cured, to cure the Event in accordance with the applicable contract; and
- (b) if the Event is not capable of being cured, to take steps reasonably acceptable to FACS to overcome the effects of the Event and to prevent the recurrence of the Event; or
- (c) otherwise making arrangements satisfactory to FACS (acting in its sole discretion),

and may include the replacement of a defaulting contractor, the assignment or novation of ServiceCo's interests in the Service Package Documents or the payment of reasonable compensation.

Representative means each of:

- (a) the Security Trustee; and
- (b) an attorney, agent, manager, receiver, receiver and manager, administrator or analogous person appointed by the Security Trustee under any Financiers' Security.

Revival Date means, if a FACS Intention to Terminate Notice has been issued by FACS and:

- (a) if no Step-In Notice is issued by the Security Trustee in accordance with clause 5.2, the proposed date of issue of the Termination Notice (as specified in the FACS Intention to Terminate Notice); or

- (b) if a Step-In Notice has been issued by the Security Trustee in accordance with clause 5.2 and:
 - (i) it is withdrawn in accordance with this Deed, the date of the withdrawal; or
 - (ii) a Step-In Period has commenced, the expiry of that Step-In Period.

Secured Money has the meaning given to it in the Security Trust Deed.

Security Trust means the security trust established under the Security Trust Deed named *[insert name of security trust]*.

Service Package Breach means a breach by ServiceCo of any of its obligations under the Service Package Documents and includes the occurrence of any Major Default or Default Termination Event.

Services Agreement means the deed entitled Social and Affordable Housing Fund - Services Agreement dated on or about the date of this Deed between FACS and ServiceCo.

Statutory Step-In Event means the appointment of a statutory manager to conduct the affairs and activities of ServiceCo, as described in clause 28 (*Step-In by appointment of statutory manager*) of the Services Agreement.

Step-In Date means the date specified in the Step-In Notice issued by the Security Trustee to FACS under clause 5.2 on which a step in is to be effected in accordance with clause 5.5 or such later date as may be agreed between FACS and the Security Trustee.

Step-In Notice has the meaning given to that term in clause 5.2.

Step-In Period means the period on and from the Step-In Date up to and including the earliest of:

- (a) the date specified in a notice issued in accordance with clause 5.8(a) or 5.9;
- (b) the Novation Date;
- (c) the Expiry Date; and
- (d) the date contained in the Step-In Report as agreed under clause 5.4 and, if applicable, extended under clause 5.10.

Step-In Report means the report produced and agreed between FACS and the Security Trustee in accordance with clause 5.4, as updated in accordance with this Deed.

Suitable Substitute means a Suitable Substitute Owner or a Suitable Substitute ServiceCo (as applicable).

Suitable Substitute Owner means a proposed owner of ServiceCo notified to FACS under clause 8.1(a) as approved by FACS under clause 8.1(b).

Suitable Substitute ServiceCo means a proposed contractor notified to FACS under clause 8.1(a) as approved by FACS under clause 8.1(b).

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by an Authority, together with any related interest, penalty, fine or other charge.

Termination Notice means a notice given by FACS to ServiceCo under clause 32.4 (*Termination for Default Termination Event*) of the Services Agreement.

1.2 Definitions in Services Agreement

Subject to clause 1.1, terms used in this Deed that are defined in the Services Agreement have the same meanings in this Deed.

2. General rules of interpretation

2.1 Services Agreement provisions incorporated by reference

The parties agree to be bound by clause 2 (*General rules of interpretation*) of the Services Agreement (other than clauses 2.2 (*Composition of this Agreement and order of precedence*) and 2.26 (*Community housing agreement*)) in the form that clause takes as at the date of this Deed, as if set out in its entirety in this clause 2, except that for the purposes of this Deed:

- (a) references in those clauses to 'this Agreement' shall be read as references to 'this Deed'; and
- (b) references in those clauses to ServiceCo shall be read as references to ServiceCo and the Security Trustee.

2.2 Remedies cumulative

The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law or any other agreement, except to the extent expressly provided in this Deed.

2.3 Multiple parties

If a party to this Deed is made up of more than one person, or a term is used in this Deed to refer to more than one party (but excluding any reference to the Finance Parties):

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

2.4 Service Package Documents

The Security Trustee acknowledges that it has received a copy of:

- (a) the Services Agreement; and
- (b) the Side Deeds.

2.5 Order of precedence

If there is an ambiguity, discrepancy or inconsistency between this Deed and the Services Agreement, then the provisions of this Deed will take precedence over those of the Services Agreement.

2.6 Approvals and consents

- (a) For the avoidance of doubt, all approvals, consents, decisions or exercises of discretion required to be given or made by FACS:

- (i) relating to, or arising under or in connection with this Deed (including in respect of a Step-In Report under clause 5.4); or
- (ii) sought in relation to or in connection with, or referable to, or determinative of, the occurrence of any Service Package Breach,

and regardless of whether the requirement of the approval, consent, decision or exercise of discretion is express or implied, FACS has the right to give or make its approval, consent or decision or exercise its discretion conditionally or unconditionally or to withhold its approval, consent, decision or exercise of discretion but in giving or withholding its approval, consent, decision or exercise of discretion, or in imposing any conditions, FACS must act reasonably.

- (b) Without limitation, FACS will not be acting unreasonably merely because, in giving or withholding any approval or consent, or in imposing any conditions, FACS:
 - (i) acts in accordance with relevant government policies;
 - (ii) adopts a "whole of government" approach; or
 - (iii) acts to protect its reputation.

2.7 Security Trustee limitation of liability

- (a) Subject to this clause 2.7, the Security Trustee enters into and performs this Deed and the transactions it contemplates only as the trustee of the Security Trust, except where expressly stated otherwise. This applies also in respect of any past and future conduct (including omissions) relating to this Deed or those transactions.
- (b) Subject to this clause 2.7, under and in connection with this Deed and those transactions and conduct:
 - (i) the Security Trustee's liability (including for negligence) to parties other than the Financiers is limited to the extent it can be satisfied out of the assets of the Security Trust. The Security Trustee need not pay any such liability out of other assets;
 - (ii) another party may only do the following with respect to the Security Trustee (but any resulting liability remains subject to the limitations in this clause):
 - A. prove and participate in, and otherwise benefit from, any form of insolvency administration of the Security Trustee but only with respect to Security Trust assets;
 - B. exercise rights and remedies with respect to Security Trust assets, including set-off;
 - C. enforce its security (if any) and exercise contractual rights; and
 - D. bring any proceedings against the Security Trustee seeking relief or orders that are not inconsistent with the limitations in this clause,
 and may not:
 - E. bring other proceedings against the Security Trustee;

- F. take any steps to have the Security Trustee placed in any form of insolvency administration or to have a receiver or receiver and manager appointed; or
 - G. seek by any means (including set-off) to have a liability of the Security Trustee to that party satisfied out of any assets of the Security Trustee other than Security Trust assets.
- (c) Clauses 2.7(a) and 2.7(b) apply despite any other provision in this Deed but do not apply with respect to any liability of the Security Trustee to another party (including for negligence) to the extent that the Security Trustee has under the Security Trust Deed no right or power to have Security Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in either case because the Security Trustee's behaviour was beyond power or improper in relation to the Security Trust.
 - (d) The limitation in clause 2.7(b)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in clause 2.7(b)(ii), and interpreting this Deed and any security for it, including determining the following:
 - (i) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as a payable if they would have been owed had a suit or action barred under clause 2.7(b)(ii) been brought);
 - (ii) the calculation of amounts owing; or
 - (iii) whether a breach or default has occurred,
 but any resulting liability will be subject to the limitations in this clause.
 - (e) The Security Trustee confirms that it is indemnified for its actions under this Deed out of the assets of the Security Trust, subject to the exceptions in clause 2.7(c).

2.8 Security Trustee liability must be limited and must be indemnified

The Security Trustee is not obliged to do or not do anything in connection with this Deed unless:

- (a) the Security Trustee's liability is limited in a manner which is consistent with clause 2.7;
- (b) the Security Trustee is indemnified by the Financiers (or otherwise put in funds) in accordance with the Security Trust Deed to its reasonable satisfaction against any liability or loss arising from, and any costs, charges and expenses (including those incurred in connection with advisers) properly incurred in connection with, doing or not doing that thing; and
- (c) it has been given instructions by the required majority of Financiers in accordance with the Finance Documents.

2.9 Replacement of Security Trustee

If the Security Trustee is replaced as trustee under the Security Trust Deed, then the Security Trustee:

- (a) may assign, novate or otherwise transfer its rights and obligations under this Deed to the replacement trustee without the consent of FACS if it:
 - (i) is a Related Entity of the Security Trustee; or

- (ii) has all of the required qualifications, consents, authorisations and approvals necessary to carry on the business of a security trustee and is carrying on a business similar to that of the Security Trustee; and
- (b) will be released from its obligations under this Deed when the replacement trustee provides, in form and substance reasonably acceptable to the other parties to this Deed:
 - (i) copies of a deed poll under which the replacement trustee undertakes to be bound by this Deed as the Security Trustee with effect from the date of that deed poll; and
 - (ii) evidence that it has undertaken to be bound by each other Service Package Document and each Finance Document to which the Security Trustee is a party.

2.10 Role of Representative

Where in this Deed there is a reference to:

- (a) the Security Trustee doing, or refraining from doing, any act, matter or thing, it is taken to include a reference to the Security Trustee procuring any Representative appointed by the Security Trustee in accordance with the Security Trust Deed, any Financiers' Security and this Deed which has been notified to and approved by FACS in accordance with this Deed doing, or refraining from doing, that act, matter or thing;
- (b) FACS doing, or refraining from doing, any act, matter or thing, it is taken to include a reference to the FACS Representative which has been notified to ServiceCo in accordance with the Services Agreement doing, or refraining from doing, that act, matter or thing; or
- (c) ServiceCo doing, or refraining from doing, any act, matter or thing, it is taken to include a reference to ServiceCo procuring any ServiceCo Representative appointed by ServiceCo in accordance with the Services Agreement which has been notified to and approved by FACS in accordance with the Services Agreement doing, or refraining from doing, that act, matter or thing.

2.11 Acknowledgments of ServiceCo

ServiceCo acknowledges, consents and agrees to the arrangements set out herein, and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Deed.

3. Acknowledgments and consents

3.1 Acknowledgments of FACS

FACS:

- (a) acknowledges and consents to the creation and existence of the Financiers' Securities;
- (b) acknowledges and agrees that the Security Trustee is not subject to any duty or obligation under the Service Package Documents as a result of the Financiers' Securities, except as specifically set out under this Deed;
- (c) acknowledges and agrees that the creation and existence of the Financiers' Securities is not, of itself, a Service Package Breach; and

- (d) acknowledges and agrees that, without limiting the liability of ServiceCo (which continues to be responsible for the performance of its obligations under the Service Package Documents), neither the Security Trustee nor any other Representative will be liable, or taken to have assumed liability, for any obligations of ServiceCo under the Service Package Documents by reason only of the creation or enforcement of any rights under the Financiers' Securities, the appointment of the Representative or the exercise by the Representative of any of ServiceCo's rights or powers under the Service Package Documents, other than to the extent confirmed in writing by the Security Trustee or Representative.

3.2 No extension of rights

- (a) Unless expressly authorised or set out under this Deed, nothing in this Deed or the Finance Documents:
 - (i) authorises the Security Trustee to do anything which ServiceCo may not do under the Services Agreement;
 - (ii) operates to grant the Security Trustee rights greater than the rights of ServiceCo under the Services Agreement; or
 - (iii) authorises a Financier, the Security Trustee or any Representative to do any act or thing without FACS' consent where, under the Services Agreement, ServiceCo requires FACS' consent to such act or thing.
- (b) To the extent that there is an inconsistency with a right of the Security Trustee or FACS to exercise any power or do anything under the Finance Documents or the Service Package Documents (respectively) and this Deed, the Security Trustee and FACS agree not to exercise that power or do anything under the Finance Documents or the Service Package Documents (respectively) in a manner which is inconsistent with this Deed.

4. Notices and Events of Default

4.1 FACS notice obligations

FACS will provide to the Security Trustee a copy of any:

- (a) Major Default Notice; or
- (b) notice (if any) of the occurrence of a Default Termination Event,

in each case on or about the date that such notice is provided to ServiceCo.

4.2 FACS restricted from issuing a Termination Notice

FACS shall not issue a Termination Notice without giving to the Security Trustee a prior written notice (**FACS Intention to Terminate Notice**) setting out:

- (a) the proposed date of issue by FACS to ServiceCo of the Termination Notice (which must not be less than 20 Business Days from the date of the FACS Intention to Terminate Notice);
- (b) the proposed date on which the Services Agreement will terminate; and
- (c) details of the Default Termination Event giving rise to the Termination Notice.

4.3 Security Trustee notice obligations

- (a) The Security Trustee must, within:
 - (i) 2 Business Days of becoming aware of a Finance Event of Default, give notice (**Finance Default Notice**) to FACS setting out reasonable details of the Finance Event of Default; and
 - (ii) a further 8 Business Days of the date of the Finance Default Notice, notify FACS whether the Security Trustee intends or has been instructed to exercise its rights under the Finance Documents and, if so, the proposed date for, and proposed method of, such exercise.
- (b) If at any time after a Finance Default Notice has been given, the intentions of or instructions given to the Security Trustee change or, as referred to in clause 4.3(a)(ii) above it intends or is instructed to exercise its rights under the Finance Documents to take action to enforce any Financiers' Security, the Security Trustee must promptly give a further notice to FACS setting out the action it has been instructed or otherwise proposes to take.
- (c) Subject to the Security Trustee providing the notices under clauses 4.3(a) and (b) and otherwise complying with its obligations under this Deed, nothing in this Deed restricts the rights of the Security Trustee to enforce the Finance Documents in accordance with their terms.

5. Financiers' cure rights

5.1 FACS acknowledgments regarding the Financiers' cure rights

FACS acknowledges and agrees that:

- (a) the Security Trustee will have rights under the Finance Documents and this Deed to take steps to Remedy, or procure the Remedy, of a Service Package Breach, in conjunction with ServiceCo's rights to Remedy Service Package Breaches under the Services Agreement;
- (b) all acts, matters or things done or effected by the Security Trustee which would satisfy (had they been done or effected by ServiceCo) any of the obligations of ServiceCo (including any Remedy of any Service Package Breach or performance of ServiceCo's obligations under a Service Package Document effected by the Security Trustee or an Appointed Representative under the remainder of this clause 5) shall be effective, as between FACS and ServiceCo, to satisfy and discharge the relevant obligations of ServiceCo or to Remedy the relevant Service Package Breach to the same extent as if it had been done or effected by ServiceCo;
- (c) ServiceCo or the Appointed Representative will be taken to have Remedied a Service Package Breach which cannot be remedied, if ServiceCo or Appointed Representative has implemented a program acceptable to FACS to prevent the recurrence of the Service Package Breach (including in accordance with a Step-In Report), or has taken such other steps or made such other arrangements as are satisfactory to FACS to overcome or mitigate the effects of the Service Package Breach;
- (d) without derogating from any other rights the Security Trustee may have under this Deed or the Financiers' Securities, FACS agrees that:
 - (i) if the Security Trustee appoints a Representative under the Financiers' Securities; or

- (ii) if any enforcement action is taken in accordance with the remainder of this clause 5,

that appointment or enforcement action will not, for the duration of the Representative's appointment in accordance with this Deed or the duration of the enforcement action, of itself constitute a Service Package Breach; and

- (e) during a Step-In Period, the Services Agreement shall remain in full force and effect and FACS' and ServiceCo's rights and obligations under the Services Agreement and other Service Package Documents will, subject to this Deed and except as otherwise agreed in the Step-In Report, continue.

5.2 Security Trustee may give notice of intention to step-in

At any time during the period:

- (a) in the case of a Default Termination Event, commencing upon receipt by the Security Trustee of a FACS Intention to Terminate Notice and ending one Business Day prior to the proposed date termination of the Services Agreement will take effect as specified in the FACS Intention to Terminate Notice; or
- (b) in the case of a Finance Event of Default, commencing upon receipt by FACS of a Finance Default Notice under clause 4.3(a)(i) or subsequent notice provided under clause 4.3(b) which includes a statement that the Security Trustee intends or has been instructed to exercise its rights under the Finance Documents, and ending one Business Day prior to the proposed date of exercise of rights under the Finance Documents,

the Security Trustee may (but is not obliged to) give notice to FACS (**Step-In Notice**) stating that a Representative intends to step in within 20 Business Days from the date of the Step-In Notice and specifying the date on which a step in is to be effected in accordance with clause 5.5 with such date being no earlier than the date the information set out in clause 5.4(a) has been provided to FACS.

5.3 FACS Termination Rights restricted

- (a) FACS must not issue a Termination Notice:
 - (i) in respect of a Default Termination Event (other than Default Termination Events arising solely as a result of a Finance Event of Default), during the period referred to in clause 5.2(a);
 - (ii) in respect of a Default Termination Event arising solely as a result of a Finance Event of Default, during the period referred to in clause 5.2(b) unless FACS has issued or issues during such period a FACS Intention to Terminate Notice and the period referred to in clause 5.2(a) has expired without the Security Trustee having given a Step In Notice;
 - (iii) once a Step-In Notice is given by the Security Trustee under clause 5.2 above, at any time prior to the Step-In Date proposed in the Step-In Notice, unless the Step-In Notice is withdrawn;
 - (iv) otherwise than in accordance with clause 5.8, during the Step-In Period; or
 - (v) in respect of any Service Package Breach which has been Remedied by ServiceCo or the Appointed Representative including:

- A. in accordance with a remedy program provided under clause 31.3 (*ServiceCo to provide remedy program and comply with Major Default Notice*) of the Services Agreement;
 - B. in accordance with a Step-In Report; or
 - C. as otherwise agreed with FACS.
- (b) Subject to the operation of clause 6 and without limiting FACS' rights to terminate the Services Agreement during the Step-In Period under clause 5.8, if a FACS Intention to Terminate Notice has been issued and any Default Termination Event specified in that FACS Intention to Terminate Notice is continuing, FACS will be entitled on and after the Revival Date to:
 - (i) exercise any rights available to it in relation to that Default Termination Event, including issuing a Termination Notice; and
 - (ii) pursue any claims and exercise any remedies, in addition to termination, which FACS may have under the Service Package Documents or otherwise against ServiceCo.

5.4 Step-In Report

- (a) Within 10 Business Days of receipt by FACS of a Step-In Notice, the Security Trustee must provide FACS with:
 - (i) a draft proposal for a Step-In Report; and
 - (ii) details of any Representative the Security Trustee proposes to exercise the rights set out in clause 5.5, including any reasonable particulars requested by FACS.
- (b) Within 5 Business Days of receipt by FACS of the information set out in clause 5.4(a), FACS and the Security Trustee must meet to agree the Step-In Report in accordance with this clause.
- (c) FACS and the Security Trustee will jointly develop a report in relation to the Step-In Period, which will include the following details:
 - (i) any obligations which are or will become outstanding by ServiceCo to FACS under the Service Package Documents during the Step-In Period;
 - (ii) a detailed program to Remedy or overcome the effects of any Service Package Breaches and/or prevent the recurrence of Service Package Breaches where the relevant Service Package Breaches are not remediable;
 - (iii) details of the proposal for the performance of obligations which are or will become outstanding by ServiceCo to FACS under the Service Package Documents during the Step-In Period including the extent to which the Security Trustee or an Appointed Representative will continue to perform the Service Package Activities during the Step-In Period;
 - (iv) a program to Remedy any Finance Events of Default;
 - (v) the duration of the Step-In Period, which must be for a period of no less than the period reasonably required by the Security Trustee or an Appointed Representative to Remedy the relevant Service Package Breach and no longer than 180 days after the Step-In Date (or any longer period agreed by FACS (acting reasonably) including in

- circumstances where clause 5.4(c)(vi) applies), and the actions to be taken by each party during the Step-In Period;
- (vi) where the Remedy involves the replacement of a Key Subcontractor that holds any necessary accreditation, a detailed program for the replacement contractor to obtain the required accreditation to undertake the applicable Service Package Activities;
 - (vii) details of the proposed insurance arrangements during the Step-In Period; and
 - (viii) the Service Package Documents under which the Appointed Representative will be assuming ServiceCo's rights and obligations.
- (d) FACS and the Security Trustee will use all reasonable efforts for a period of 20 Business Days after the date of the first meeting pursuant to clause 5.4(b) to jointly produce and settle a report in relation to the Step-In Period. If, at the end of that period, FACS and the Security Trustee have not reached agreement on a Step-In Report, either party may refer the matter for dispute resolution on an expedited basis in accordance with clause 5.11.
 - (e) FACS may designate an auditor and/or technical adviser to verify any information provided in relation to the Step-In Report. Each party to this Deed must provide access to and make copies of all records, documents, data and accounting and other information relating to the Service Package in its possession which the auditor or technical adviser reasonably requires in order to make such verification or itself determine such information.
 - (f) All costs incurred by any party in relation to the production or verification of the Step-In Report will be paid or reimbursed on demand by ServiceCo unless, in relation to the verification of the Step-In Report requested by FACS under clause 5.4(e) above, the auditor and/or technical adviser did not make any adverse findings against the content of the report provided by ServiceCo, in which case FACS will bear the cost of such verification.
 - (g) The Security Trustee must give written notice to FACS of any further details, plans and reports regarding the status of the Service Package and the implementation of the Step-In Report (and any consequential changes to the Step-In Report) at least once in each month during the Step-In Period. Upon request by FACS (which may be made no more than once in each month), the Step-In Report will be updated by the Security Trustee and submitted to FACS for approval (not to be unreasonably withheld or delayed) to take into consideration matters raised by the Security Trustee not contemplated in the original Step-In Report.
 - (h) Each of ServiceCo and FACS must notify the other and the Security Trustee as soon as it becomes aware of a Service Package Breach which is subsisting at any time during the Step-In Period, but is not identified in the Step-In Report, and the Step-In Report must be updated by the Security Trustee in accordance with this clause 5.4 to take account of such event or circumstance.

5.5 Appointed Representative may step-in

- (a) Provided the Security Trustee has complied, and continues to comply, with its obligations under clauses 4 and 5, and without limiting the other actions which the Security Trustee is permitted to take under this Deed, following the occurrence of a Service Package Breach or a Finance Event of Default, a Representative may be appointed by the Security Trustee to step in to possession and control of ServiceCo's rights and obligations under and interest in the Service Package Documents on the Step-In Date (**Appointed Representative**).

- (b) The Security Trustee acknowledges and agrees that it will not appoint a Representative to exercise the rights set out in this clause 5.5 unless the proposed Representative:
 - (i) is a suitable and appropriate person to carry on the Service Package during the Step-In Period; and
 - (ii) will continue to be able to carry out or procure the performance of the obligations of ServiceCo under the Services Agreement during the Step-In Period unless otherwise agreed by FACS (acting reasonably).
- (c) ServiceCo acknowledges that any action taken under this clause 5 will not affect any rights the Appointed Representative, FACS, the Security Trustee and the Financiers may have against ServiceCo.
- (d) The Security Trustee must require that the Appointed Representative:
 - (i) observes ServiceCo's rights and obligations under the Service Package Documents (as if the Appointed Representative was ServiceCo); and
 - (ii) minimises any disruption to the Service Package Activities under the Services Agreement, as a result of it exercising its rights or carrying out its obligations under this Deed (except to the extent expressly contemplated in the Step-In Report).
- (e) The Security Trustee acknowledges and agrees that, except as expressly contemplated by the Step-In Report, neither it nor any Appointed Representative shall in any way knowingly interfere with the performance by each Key Subcontractor of its obligations under its Key Subcontract, including by limiting or otherwise restricting its access to the Site, except to the extent set out in the Step-in Report.
- (f) ServiceCo (and to the extent confirmed in writing by the Security Trustee in accordance with the Step-In Report or otherwise, the Security Trustee) is liable to FACS for the acts and omissions of any Appointed Representative and contractor or person engaged by the Appointed Representative in connection with this Deed and ServiceCo:
 - (i) consents to the Appointed Representative exercising its rights under this clause 5; and
 - (ii) agrees that any act or omission of the Appointed Representative or any contractor or person engaged by the Appointed Representative in exercising the rights and powers of ServiceCo under the Service Package Documents is deemed to be an act or omission of ServiceCo under the Service Package Documents.
- (g) If the Appointed Representative takes any steps to remedy a Service Package Breach, the Security Trustee must require that the Appointed Representative must not, in doing so, do anything which, if it were done by ServiceCo, would be a breach of the terms of any Service Package Document, unless otherwise agreed in the Step-In Report.

5.6 FACS may request replacement of Appointed Representative

- (a) If:
 - (i) at any time after receiving the information set out in clause 5.4(a), FACS notifies the Security Trustee that it is not satisfied that a Representative

meets the criteria contained in clause 5.5(b) (which notice must specify the reasons why FACS has reached that view); or

- (ii) at any time during the Step-In Period, FACS notifies the Security Trustee that it reasonably considers that the Representative no longer meets the criteria in clause 5.5(b) (which notice must specify the reasons why FACS has reached that view),

the Security Trustee must nominate a substitute Representative, acceptable to FACS, to replace the Appointed Representative within 10 Business Days.

- (b) If the proposed Representative nominated by the Security Trustee to replace the Appointed Representative pursuant to clause 5.6(a) is not acceptable to FACS, either party may refer the selection of an appropriate Representative to the President for the time being of the Chartered Accountants Australia and New Zealand (the **President**) who must only select an appropriate Representative who, in the opinion of the President meets the criteria contained in clause 5.5(b), and the parties agree that the decision of the President on the identity of the Representative will be final and binding on both parties, provided the decision of the President is based on the criteria set out in clause 5.5(b). The Step-In Period will be extended by the period of time required to find and appoint a substitute Representative acceptable to FACS or appointed by the President for the time being of the Chartered Accountants Australia and New Zealand.
- (c) Subject to FACS' prior written approval (such approval not to be unreasonably withheld or delayed and must be given if details of any such engagement are agreed in the Step-In Report), the Representative may engage additional skilled consultants or contractors to assist it in carrying out the obligations of ServiceCo under the Service Package Documents.

5.7 Deemed cure

FACS acknowledges and agrees that if the Security Trustee appoints an Appointed Representative under the Financiers' Securities and that Appointed Representative continues to act in accordance with the Step-In Report and this Deed then that appointment will be taken, for the duration of the Appointed Representative's appointment in accordance with this Deed, to Remedy the Default Termination Event constituted by:

- (a) an Insolvency Event in relation to ServiceCo which occurred prior to the appointment or which subsists or occurs during the appointment; or
- (b) a Change in Control (which is not a Permitted Change in Control) occurring in respect of ServiceCo other than in accordance with clause 43 (*Change in Control*) of the Services Agreement.

5.8 Termination during Step-In Period

- (a) FACS will be entitled to terminate the Services Agreement during the Step-In Period by written notice to ServiceCo, the Security Trustee and the Appointed Representative only where one or more of the following has occurred:
 - (i) the Security Trustee or its Appointed Representative notify FACS in writing that they do not intend to Remedy the breach which gave rise to the FACS Intention to Terminate Notice or the Step-In Period has been terminated by the Appointed Representative under clause 5.9;
 - (ii) prior to FACS and the Security Trustee agreeing a Step-In Report in accordance with clause 5.4:

- A. the Security Trustee or its Appointed Representative in the reasonable opinion of FACS engage in conduct that indicates that they do not intend to Remedy any Service Package Breach (in respect of which the Security Trustee has received notice under clauses 4.1 or 4.2) that:
 - 1) arose prior to the Step-In Date;
 - 2) is continuing (and capable of Remedy); and
 - 3) would have entitled FACS to terminate the Services Agreement at that time,

other than to the extent that the parties are unable to agree what action is required to Remedy a Service Package Breach and the matter has been referred to dispute resolution in accordance with clause 5.11, and until the dispute is resolved FACS will not be entitled to issue a notice or terminate the Services Agreement under this clause 5.8(a)(ii) on the basis that the Security Trustee or its Appointed Representative has engaged in conduct that indicates that they do not intend to Remedy any such Service Package Breach; or
 - B. unless otherwise agreed by FACS, ServiceCo, the Security Trustee or an Appointed Representative is not continuing to perform the Service Package Activities to the extent it is able to do so;
 - (iii) once FACS and the Security Trustee have agreed a Step-In Report in accordance with clause 5.4:
 - A. the Appointed Representative does not use all reasonable endeavours to Remedy any Service Package Breach in accordance with the Step-In Report; or
 - B. the Security Trustee or an Appointed Representative is not continuing to perform the Service Package Activities to the extent agreed in the Step-In Report; or
 - (iv) in relation to a Step-In Period that commenced as a result of a Finance Event of Default, a Default Termination Event occurs during the Step-In Period (other than a Default Termination Event which is already the subject of the Finance Event of Default and is identified in the Step-In Report and which is being remedied or its effects overcome in accordance with the Step-In Report) in which case following the occurrence of that Default Termination Event FACS may issue a FACS Intention to Terminate Notice and follow the procedure contained in this clause 5.
- (b) If an event described in clause 5.8(a) has occurred, FACS may not terminate the Services Agreement under clause 5.8(a)(ii) or 5.8(a)(iii) unless FACS would (but for this Deed) be entitled to terminate the Services Agreement, and:
 - (i) FACS has given prior notice to the Security Trustee of its intention to terminate the Services Agreement; and
 - (ii) the Security Trustee or Appointed Representative does not:
 - A. commence or resume using all reasonable endeavours to Remedy a Service Package Breach referred to in clause

5.8(a)(ii)A or 5.8(a)(iii)A within 10 Business Days of receipt of such notice and continues to use all reasonable endeavours to Remedy the relevant Service Package Breach; or

- B. commence or resume and continue to perform the Service Package Activities to the extent it is able to do so, in the case of clause 5.8(a)(ii)B, or to the extent agreed in the Step-In Report in the case of clause 5.8(a)(iii)B.

5.9 Step out

- (a) The Security Trustee or its Appointed Representative may, at any time during the Step-In Period, with at least 10 Business Days prior written notice to FACS, terminate the Step-In Period with effect from the date specified in that notice.
- (b) The giving of a notice under clause 5.9(a) by the Appointed Representative will not limit any of the rights (if any) of FACS against the Appointed Representative arising during the Step-In Period.

5.10 Extension of Step-In Period

- (a) The Security Trustee may, by written notice to FACS, request that the Step-In Period be extended. If the Security Trustee makes a request, it must provide to FACS an updated Step-In Report containing full details of all steps which the Security Trustee or Appointed Representative is taking, or proposes to take and the status of such steps, during the Step-In Period and any extension of it.
- (b) Following receipt of a notice under clause 5.10(a) above, where the Security Trustee or its Appointed Representative is diligently pursuing the Remedy of any Service Package Breach and the performance of the requirements of the Step-In Report during the Step-In Period (including continuing to perform the Service Package Activities in accordance with the Step-In Report), FACS may extend the Step-In Period for a period that is reasonably required (taking into account the nature of the Service Package Breach and the Remedy necessary) up to 120 days in aggregate by written notice to the Security Trustee and the Appointed Representative.
- (c) FACS must, upon written request by the Security Trustee, grant an extension to any Step-In Period if the Security Trustee or its Appointed Representative is continuing to perform the Service Package Activities in accordance with the agreed Step-In Report) and if:
 - (i) the Security Trustee has been unable to procure or cause the assignment, transfer or other disposal proposed in any notice given to FACS under clause 8.1(a) because FACS has withheld consent in breach of its obligations under clauses 8.1(b) or 8.1(c); or
 - (ii) a Force Majeure Event, Change Compensation Event, Relief Event or Statutory Step-In Event occurs during the Step-In Period which in the reasonable opinion of FACS adversely affects the ability of the Security Trustee or its Appointed Representative to procure a Remedy of the relevant Service Package Breach in accordance with the Step-In Report,

provided that the Step-In Period will only be extended for a period determined by FACS which is reasonably necessary to overcome the delays caused by those events and does not extend further than the relief period granted under the Services Agreement.

- (d) The Security Trustee acknowledges that any extension resulting from a Force Majeure Event does not in any way limit the rights of FACS in connection with the occurrence of the Force Majeure Event under the Service Package Documents.
- (e) If an application for extension has been made in accordance with clause 5.10(a) or clause 5.10(c) and has not been determined by FACS before the Step-In Period expires, then the Step-In Period will be extended until FACS has determined the application for extension.
- (f) Notwithstanding any other clause in this Deed, FACS may, in its absolute discretion, extend the Step-In Period by written notice to the Security Trustee and the Appointed Representative.

5.11 Dispute Resolution

The Security Trustee and FACS agree that if there is a dispute in relation to the production or contents of the Step-In Report under clause 5.4 (other than in respect of the appointment of the Appointed Representative), either party may refer that dispute for resolution in accordance with clauses 34 (*Dispute Resolution procedure*) to 38 (*Arbitration*) of the Services Agreement as if those clauses were set out in full in this Deed and:

- (a) each reference to ServiceCo was a reference to the Security Trustee; and
- (b) the reference to the Chief Executive Officers of ServiceCo in the Services Agreement is a reference to senior representatives of the Security Trustee.

6. Statutory step-in rights

- (a) Each of the Security Trustee and ServiceCo recognise and acknowledge:
 - (i) the rights available to the Registrar to appoint a statutory manager to conduct the affairs and activities of ServiceCo as they relate to the community housing assets of ServiceCo under the Community Housing Act (clause 21 of the National Law);
 - (ii) the rights available to the statutory manager to pay monies (including rent) under any Subcontract or Lease and enforce any rights under any such Subcontract or Lease; and
 - (iii) that while a statutory manager is appointed to exercise functions of a Registered CHP, the governing body of the Registered CHP may not exercise any of those functions without the consent of the statutory manager.
- (b) Without limitation, the Security Trustee agrees that:
 - (i) those rights may be exercised even if an Appointed Representative has been appointed or the Security Trustee has otherwise taken enforcement action under a Financiers' Security; and
 - (ii) the Security Trustee must ensure that such Appointed Representative does such things as FACS or the Registrar may reasonably require in order to enable or facilitate the effective exercise of such rights.

7. Priority of Tripartite Agreements

7.1 Tripartite Priority

- (a) The Security Trustee acknowledges the rights of FACS under each Side Deed (**FACS Tripartite Rights**) and FACS acknowledges the rights of the Security Trustee under each Financiers' Subcontract Tripartite (**Financiers' Tripartite Rights**).
- (b) FACS and the Security Trustee agree that:
 - (i) the Financiers' Tripartite Rights will take precedence over FACS Tripartite Rights for the duration of the period referred to in clause 5.2(a) or 5.2(b);
 - (ii) if the Security Trustee exercises its rights to step in in accordance with clause 5, the Financiers' Tripartite Rights will take precedence over FACS Tripartite Rights from the date of the Step-In Notice for the duration of the Step-In Period, provided that FACS' prior written consent will be required to any substitution of, or the termination, assignment or novation of, a Key Subcontract or Significant Subcontract; and
 - (iii) if the Security Trustee does not exercise its rights to step in in accordance with clause 5 or if its Step-In Period ends, FACS Tripartite Rights will take precedence over the Financiers' Tripartite Rights.
- (c) The Security Trustee will use its best endeavours to ensure that rights under the Finance Documents are exercised in a way which facilitates the effective exercise by FACS of FACS Tripartite Rights.

7.2 Marshalling

Neither the Security Trustee nor FACS are obliged to marshal in favour of the other. If any of the Financiers' Securities become enforceable in accordance with their terms, the Security Trustee in its absolute discretion may determine the extent (if any) to which it will have recourse to any of the Financiers' Securities.

8. Financier sale and other rights

8.1 Suitable Substitute

- (a) At any time during the Step-In Period, the Security Trustee may notify FACS that it wishes to:
 - (i) procure the novation of ServiceCo's rights and liabilities under the Services Agreement and other relevant Service Package Documents; or
 - (ii) cause a direct or indirect transfer in the legal or beneficial ownership of the equity or ownership interests in ServiceCo,to a Suitable Substitute.
- (b) Subject to clause 8.1(c), FACS must notify the Security Trustee as to whether the proposed Suitable Substitute is acceptable on or before the date falling 30 days after the date of receipt of all information reasonably required by FACS to decide whether the proposed Suitable Substitute is acceptable. If FACS notifies the Security Trustee that the subject person is unacceptable:

- (i) the Security Trustee may, within the then current Step-In Period, propose an alternative Suitable Substitute, in which case, the provisions of clauses 8.1(b) and 8.1(c) will apply to that alternative person; and
 - (ii) the parties will agree in good faith any amendments to the Step-In Report and FACS may grant an extension to the Step-In Period for a period that is reasonably required to take into consideration the resulting delay to novation of ServiceCo's rights and liabilities under the Services Agreement and other relevant Service Package Documents, provided that FACS is not required to agree to more than one extension to the Step-In Period.
- (c) A proposed Suitable Substitute will be acceptable to FACS if it is satisfied (acting reasonably) that that person:
 - (i) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and
 - (ii) in the case of a Suitable Substitute ServiceCo, will assume all of the obligations of ServiceCo under the Service Package Documents.
- (d) At any time after the approval of a proposed Suitable Substitute by FACS in accordance with clauses 8.1(b) and 8.1(c), the Security Trustee may, on 10 Business Days' prior written notice to FACS, procure or cause the assignment, transfer or other disposal proposed in the notice given to FACS under clause 8.1(a).
- (e) FACS acknowledges and agrees that the approval of a proposed Suitable Substitute by FACS in accordance with clauses 8.1(b) and 8.1(c) will constitute the consent of FACS for the purposes of clause 42.1 (*Assignment, amendments and other dealings by ServiceCo*) and 43.3 (*Restrictions on Change in Control*) of the Services Agreement (as applicable).

8.2 Effect of Novation or change in ownership

On and from the Novation Date:

- (a) any then subsisting ground for termination of the Services Agreement by FACS shall be deemed to have no effect provided the Suitable Substitute Remedies any Default Termination Event continuing at that time within the time periods specified in the Step-In Report (or such other period as FACS may agree in writing in connection with the novation);
- (b) in the case of a novation of ServiceCo's rights and liabilities under the Services Agreement:
 - (i) the Suitable Substitute ServiceCo will become a party to the Services Agreement in place of ServiceCo and the Suitable Substitute ServiceCo will be treated as if it had originally been named as a party to the Services Agreement in place of ServiceCo;
 - (ii) the Suitable Substitute ServiceCo will assume and enjoy the rights and powers and perform and discharge the obligations and liabilities of ServiceCo under the Services Agreement, whether such obligations and liabilities have arisen before, or will arise after, the Novation Date, and ServiceCo will be released from all such obligations and liabilities;
 - (iii) FACS will owe the obligations and liabilities on the part of FACS under the Services Agreement to the Suitable Substitute ServiceCo in place of (and will be released by) ServiceCo, including any undischarged liability in respect of any loss or damage suffered or incurred by ServiceCo or

adjustment, rebate or other amounts due from FACS to ServiceCo in respect of any period prior to the Novation Date; and

- (iv) the Security Trustee (or new financiers if applicable) must enter into a tripartite deed with FACS and the Suitable Substitute ServiceCo on substantially the same terms as this Deed.

8.3 Replacement Key Subcontractor

- (a) During the Step-In Period, the Security Trustee must ensure that no person is engaged by it to replace a Key Subcontractor other than in accordance with a Step-In Report without first:
 - (i) obtaining the prior consent of FACS; and
 - (ii) disclosing to FACS such details of the relevant person and of the proposed terms and conditions of that person's engagement as a Key Subcontractor as may be reasonably necessary in order to enable FACS to determine whether it will so consent.
- (b) If FACS' consent is sought under clause 8.3(a), FACS will not unreasonably withhold or delay giving that consent if:
 - (i) it has received all of the details referred to in clause 8.3(a)(ii);
 - (ii) the same appointment were made by ServiceCo, the appointment and the new Key Subcontractor would comply with the Services Agreement; and
 - (iii) the proposed terms and conditions of that person's engagement include a requirement to perform such of the obligations of the current Key Subcontractor under the relevant subcontract which remain unsatisfied.

8.4 Release of and consents under Financiers' security

- (a) Subject to clause 8.4(c), to the extent that ServiceCo is required to handover, surrender, transfer, pay or otherwise dispose of property (including rights to insurance proceeds) to FACS or its nominee under the Services Agreement and the Relevant Property is in whole or part the subject of any Security Interest in favour of the Security Trustee or any other Finance Party (including any Security Interest under the Financiers' Securities), the Security Trustee will promptly ensure that the Security Interest is released in respect of the Relevant Property and will do all things (including registering documents and procuring registration of financing change statements on the Personal Property Securities Register) as FACS may reasonably require as may be necessary or desirable to give effect to that release.
- (b) To the extent that:
 - (i) FACS exercises an Option to Lease; or
 - (ii) ServiceCo is required to novate the lease of a Site to FACS or its nominee in accordance with a Lease Side Deed,

and the Relevant Property is in whole or part the subject of any Security Interest in favour of the Security Trustee or any other Finance Party (including any Security Interest under the Financiers' Securities), the Security Trustee will promptly ensure that all necessary consents under the Finance Documents in respect of the Lease or novation (as the case may be) are given and will do all things (including producing the relevant certificate of title or lease to enable FACS or its nominee to register the Lease or the novation and procuring registration of financing change

statements on the Personal Property Securities Register) as FACS may reasonably require as may be necessary or desirable to give effect to the exercise of the Option to Lease or the novation (as the case may be).

- (c) Nothing in clause 8.4(a) requires the Security Trustee to release a Security Interest over the right of ServiceCo to be paid an amount under clause 32.6 (*Payment on termination*) of the Services Agreement or amounts paid under that clause.

9. Undertakings

9.1 Copies of Finance Documents

ServiceCo agrees to promptly give to FACS a copy of each Finance Document once executed and certified by an authorised officer of ServiceCo to be a true copy.

9.2 Financing agreements

ServiceCo and the Security Trustee undertake and agree that they may not enter into any financing agreements (including in respect of present or contingent indebtedness, deferred purchase or leasing arrangements or similar obligations, but excluding indebtedness incurred in the ordinary course of business) other than:

- (a) the Finance Documents;
- (b) to effect a novation, assignment or substitution of a Financier or any of the rights or obligations of a Financier permitted under clause 9.4;
- (c) to effect a novation or assignment permitted under clause 15.2; or
- (d) with the prior written consent of FACS (in its absolute discretion).

9.3 Money secured under Financiers' Securities

- (a) ServiceCo and the Security Trustee each warrant to FACS that the only obligations of ServiceCo to the Security Trustee which form part of the Secured Money are the obligations of ServiceCo under the Finance Documents.
- (b) The warranty in clause 9.3(a) will be deemed to be repeated on each anniversary of the date of this Deed.

9.4 Financier Assignment

- (a) Subject to the terms of this Deed and the Finance Documents, the Security Trustee, acknowledges and agrees that neither it nor any Representative may assign, transfer or otherwise dispose of any of the Relevant Secured Property.
- (b) The Security Trustee acknowledges and agrees that it must not (and it must not permit any Financier to) assign, transfer or otherwise dispose of all or any part of its (or that Financier's) rights, benefits or obligations under any of the Finance Documents unless:
 - (i) it is permitted under clause 2.9; or
 - (ii) the assignee, novatee or transferee:
 - A. is an existing Financier or any of its Related Bodies Corporate so long as that Related Body Corporate's primary business does not involve investing in distressed assets;

- B. is a financier that, unless FACS consents otherwise, has a credit rating of at least:
 - 1) prior to the Service Commencement Date for all Stages, A- (issued by Standard and Poor's Australia) or A3 (issued by Moody's Investor Service); or
 - 2) on or after the Service Commencement Date for all Stages, BBB+ (issued by Standard and Poor's Australia) or Baa1 (issued by Moody's Investor Service),

or is, in FACS' opinion, suitably guaranteed by an entity which has such an applicable credit rating and:

 - 3) is on the Permitted Financier List; or
 - 4) is regulated by the Australian Prudential Regulation Authority;
- C. is an investment fund that:
 - 1) is on the Permitted Investment Fund List; and
 - 2) holds or manages total net assets of at least \$500 million and has sufficient available assets to fund the commitments of the Financier under the Finance Documents which are being transferred to it;
- D. is a securitisation or funding vehicle of the transferring Financier where the transferring Financier remains lender of record; or
- E. is a financial institution which has been consented to by FACS (acting reasonably), with such consent being deemed to be given if FACS does not respond within 10 Business Days of the request for consent.

- (c) FACS, in determining whether or not to provide consent under clause 9.4(b)(ii)B, will:
 - (i) take into account the financial position of the financier (including the ability of that financier to fund the commitments of the Financier which are being transferred to it) and the prudential and regulatory regime applicable to that financier's business; and
 - (ii) have been deemed to have given its consent if it does not respond within 10 Business Days of the request for consent.

9.5 Services Agreement notices

FACS acknowledges and agrees that ServiceCo will be required to give the Security Trustee and the Financiers a copy of certain documents issued to it or issued by it under the Services Agreement. FACS consents to ServiceCo giving the Security Trustee and the Financiers copies of those documents.

9.6 Finance Document Notices

The Security Trustee must give FACS a copy of any document issued by the Security Trustee under:

- (a) *[insert notice provisions from Finance Documents]*,

within 2 Business Days of the issue of the relevant document. ServiceCo consents to the Security Trustee giving FACS copies of those documents.

10. Insurance proceeds

Notwithstanding the Financiers' Security, to the extent the insurance proceeds paid or payable in connection with the Service Package are received by the Security Trustee or any other Finance Party, the Security Trustee acknowledges and agrees with FACS that:

- (a) the insurance proceeds paid or payable in connection with the Service Package must be applied in accordance with clause 5 (*Application of Insurance proceeds*) of Schedule 10 (*Insurance Schedule*) of the Services Agreement; and
- (b) the Security Trustee will use reasonable endeavours to assist ServiceCo to comply with the relevant provisions of the Services Agreement referred to in clause 10(a) above.

11. Representations and warranties

- (a) FACS represents and warrants that:
- (i) **(power)** it has the power to execute, deliver and carry out its obligations under this Deed and all necessary action has been taken to authorise that execution, delivery and performance;
 - (ii) **(binding obligations)** this Deed constitutes a valid and legally binding obligation on it in accordance with its terms;
 - (iii) **(no contravention)** the execution, delivery and performance of this Deed does not violate any Law to which FACS is subject;
 - (iv) **(Services Agreement)** for the benefit of the Security Trustee only, to FACS' knowledge as at the date of this Deed, FACS has no right, without ServiceCo's consent, which is now exercisable or with the giving of notice or lapse of time will or may become exercisable to:
 - A. terminate, rescind, repudiate or vary the Services Agreement; or
 - B. refuse to perform or observe any of FACS' obligations under the Services Agreement; and
 - (v) **(Service Package Documents)** for the benefit of the Security Trustee only, the FACS Service Package Documents set out all of the terms, conditions and warranties of the agreements, arrangements and understandings between ServiceCo of the one part and FACS of the other part in respect of the subject matter of the Service Package.
- (b) ServiceCo represents and warrants that:
- (i) **(incorporation)** it is duly incorporated in Australia and is existing under Australian Law;

- (ii) **(power to execute)** it has the capacity and power to execute, deliver and perform its obligations under this Deed and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (iii) **(legality)** the execution, delivery and performance of this Deed does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iv) **(validity)** this Deed constitutes a valid and legally binding obligation on it, enforceable in accordance with its terms; and
 - (v) **(Finance Documents)** the Finance Documents to which it is a party set out all the terms, conditions and warranties of the agreements, arrangements and understandings between it and the other parties to the Finance Documents in respect of the subject matter of those Finance Documents.
- (c) The Security Trustee (both in its own right and as trustee of the Security Trust) represents and warrants that:
- (i) **(power)** it has the power under the Security Trust Deed to execute, deliver and carry out its obligations under this Deed and all necessary action has been taken to authorise that execution, delivery and performance; and
 - (ii) **(trust authority)** all action that is necessary under the Security Trust Deed or at law to:
 - A. authorise it entering into this Deed and carrying out the transactions that this Deed contemplates;
 - B. ensure that this Deed is legal, valid and binding on it as trustee of the Security Trust and admissible in evidence against it in that capacity; and
 - C. enable it to properly carry on the business of the Security Trust,
- has been taken.

12. Continuing obligation

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) It is not necessary for a party to incur expenses or to make any payment before enforcing a right of indemnity under this Deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Deed.

13. Indemnity

ServiceCo indemnifies each of FACS and the Security Trustee against, and must pay them on demand the amount of, all losses, liabilities, expenses and Taxes incurred in connection with the administration and any actual or attempted preservation or enforcement, of any rights under this Deed subject to, in respect of:

- (a) FACS, clause 29.5 (*Limits on ServiceCo liability to indemnify and release*) and 29.9 (*Exclusion of Consequential or Indirect Loss – ServiceCo*) of the Services Agreement; and
- (b) the Security Trustee, clause [*insert*] of the Security Trust Deed.

14. Taxes

14.1 Taxes

ServiceCo:

- (a) must pay all taxes in respect of this Deed, the performance of this Deed and each transaction effected by or made under this Deed;
- (b) indemnifies each other party against liability arising from failure to comply with clause 14.1(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of any taxes paid under this clause 14.1.

14.2 GST

- (a) **(Interpretation)**
 - (i) Except where the context suggests otherwise, terms used in this clause 14.2 have the meanings given to those terms by the GST Act (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.2.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 14.2.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements)** Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable)** Subject to paragraph (e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:
 - (i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 14.2), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**),

at the same time as any other consideration is to be first provided for that supply; and

- (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with paragraph 14.2(c)(ii).

(d) **(Variation of GST)**

- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with paragraphs 14.2(c) and 14.2(e)), varies from the additional amount paid by the Recipient under paragraph 14.2(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph 14.2(d) is deemed to be a payment, credit or refund of the GST Amount payable under paragraph 14.2(c).
- (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

(e) **(Exchange of non-monetary consideration)**

- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which paragraph 14.2(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with paragraph 14.2(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with paragraph 14.2(c) (or the time at which such GST Amount would have been payable in accordance with paragraph 14.2(c) but for the operation of paragraph 14.2(e)(i)).

- (f) **(No merger)** This clause 14.2 will not merge on completion or termination of this Deed.

15. Amendment and assignment

15.1 Amendment of this Deed

Except as otherwise expressly provided in this Deed, no amendment to this Deed is valid or binding on a party unless made in writing and executed by FACS and all other parties to this Deed.

15.2 Assignment

- (a) Subject to any express provisions of this Deed, the Security Trustee and ServiceCo may only dispose of, declare a trust over or otherwise create an interest in its rights under this Deed with the consent of FACS.
- (b) FACS may dispose of, declare a trust over or otherwise create an interest in its rights under this Deed without the consent of any other party provided it complies with the terms of clause 42.3 (*Assignment by FACS*) of the Services Agreement and the person to or for whom FACS transfers, disposes, declares a trust over or

otherwise creates an interest in its rights under this Deed is the same person as the transferee of FACS' rights under and in accordance with the Services Agreement.

- (c) Subject to any express provision of this Deed, the parties may not, without the prior written consent of the others, assign, grant a Security Interest over, or otherwise dispose of all or any benefit, right or interest under this Deed, provided always that an assignment by FACS of its interest to a FACS Nominee will not require ServiceCo's or the Security Trustee's prior written consent.
- (d) The provisions of clauses 15.2(a) and 15.2(c) do not apply to the granting of Security Interests in accordance with the Finance Documents or Service Package Documents.

16. Disclosure, confidentiality and publicity

16.1 Confidential Information and disclosure by FACS

- (a) Subject to clause 16.1(b), FACS or any Authority may disclose any information in connection with the Service Package, including Information Documents.
- (b) FACS may only disclose the Commercially Sensitive Information:
 - (i) in accordance with Laws or for the enforcement of any criminal law;
 - (ii) clause 16.5 of this Deed;
 - (iii) where disclosure is in the course of the official duties of the responsible Minister, the Treasurer, the Premier or the Attorney General;
 - (iv) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (v) to satisfy the requirements of Parliamentary accountability;
 - (vi) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintaining the confidentiality of any Confidential Information;
 - (vii) in annual reports of FACS or the NSW Government;
 - (viii) in accordance with policies of FACS or the NSW Government or any Authority;
 - (ix) for any tender process required to be conducted under the Termination Payments Schedule; or
 - (x) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of the Services Agreement.

16.2 Confidential Information and disclosure by the Security Trustee

- (a) Subject to clauses 16.2(b) and 16.3, the Security Trustee must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS make public or disclose to any person any Confidential Information.

- (b) Without limiting the Security Trustee's obligation under clause 16.2(a) and subject to clause 16.2(c), the Security Trustee may disclose Confidential Information:
 - (i) to its Associates and to any Representative or its Associates, in each case to the extent necessary for the purpose of undertaking the Service Package or exercising its rights and obligations under the Finance Documents;
 - (ii) to a Finance Party and any officer, agent, adviser, consultant, contractor or employee of that Finance Party to the extent necessary for the purpose of undertaking the Service Package or exercising its rights and obligations under the Finance Documents;
 - (iii) to any prospective financier or equity investor of the Service Package, subject to FACS having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that FACS considers necessary; or
 - (iv) in accordance with clause 16.4.
- (c) Before disclosing any Confidential Information, the Security Trustee (as applicable) must ensure that the person to whom the information is disclosed enters into a confidentiality deed to keep the Confidential Information confidential in accordance with this clause 16.
- (d) The Security Trustee may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 16.2(a) or 16.3(a) where the disclosure announcement or statement is:
 - (i) required by Law, provided that it:
 - A. notifies FACS of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal advice or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which the Security Trustee is a party; or
 - (iv) required by a relevant stock exchange, subject to:
 - A. the disclosure, announcement, or statement does not refer to FACS' or any of its Associates' involvement in the Service Package; and
 - B. the Security Trustee having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant stock exchange.

16.3 Public announcements by Security Trustee

Subject to clause 16.2(d), the Security Trustee must:

- (a) not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package before the relevant disclosure, announcement or statement is made; and
- (c) as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 16.3 or for which FACS' consent or approval was not required in accordance with clause 16.4.

16.4 Information public or known

Notwithstanding anything in this clause 16 any party may disclose information in connection with this Deed (including any Confidential Information) if:

- (a) the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 16; or
- (b) the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

16.5 Disclosure by FACS under GIPA Act

- (a) Notwithstanding the other provisions of this clause 16.5, the parties acknowledge that:
 - (i) the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) FACS will notify the Security Trustee of any proposed disclosure of Commercially Sensitive Information in relation to the Finance Parties by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (ii) following notification by FACS in accordance with clause 16.5(b)(i), FACS will take reasonable steps to consult with the Security Trustee before disclosing such Commercially Sensitive Information, including under the GIPA Act;
 - (iii) if, following:
 - A. notification by FACS in accordance with clause 16.5(b)(i); or
 - B. consultation between FACS and the Security Trustee in accordance with clause 16.5(b)(ii),
 the Security Trustee objects to disclosure of some or all of the relevant Commercially Sensitive Information, the Security Trustee must provide

details of any such objection within five Business Days after the date the Security Trustee received notification from FACS or the date on which the consultation process concluded (as relevant);

- (iv) FACS may take into account any objection received from the Security Trustee pursuant to clause 16.5(b)(iii) in determining whether the Commercially Sensitive Information identified by the Security Trustee should be disclosed; and
- (v) nothing in this clause 16.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

17. Notices

FACS

Attention: Eleri Morgan-Thomas
Address: 2 Cavill Avenue, Ashfield, NSW
Telephone: (02) 9716 2917
Email: eleri.morgan-thomas@facs.nsw.gov.au

ServiceCo

Attention: Lyndall Robertshaw
Address: Suite 1/44 Beaumont Street, Hamilton, NSW, 2303
Telephone: (02) 4920 2682
Email: LyndallR@compasshousing.org
cc: Katrina.Reye@harriswheeler.com.au

Security Trustee

Attention: [insert]
Address: [insert]
Telephone: [insert]
Email: [insert]

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as specified above, or as otherwise notified by that party to each other party from time to time;
- (c) must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out above; and
- (e) are taken to be received by the addressee at the address set out above:
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

- (ii) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia; and
- (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day.

18. Governing law

- (a) This deed is governed by the Law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

Executed as a deed.

[Insert execution blocks]