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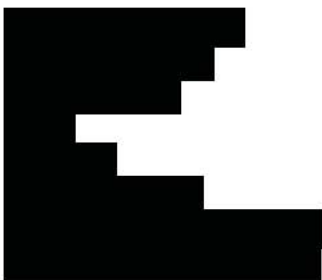
(1) HALTON BOROUGH COUNCIL

- and -

(2) MERSEY GATEWAY CROSSINGS BOARD LIMITED

GOVERNANCE AGREEMENT

relating to management of the construction,
operation and maintenance of the Mersey
Gateway Bridge and tolling of the Silver
Jubilee Bridge and Mersey Gateway Bridge on
behalf of Halton Borough Council



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BETWEEN:

- (1) **HALTON BOROUGH COUNCIL** of Municipal Building, Kingsway, Widnes, Cheshire WA8 7QF ("**Council**"); and
- (2) **MERSEY GATEWAY CROSSINGS BOARD LIMITED** a company registered in England and Wales (Registered No: 08751307) and with its registered office at The Municipal Building, Kingsway, Widnes, Cheshire WA8 7QF ("**Board**").

BACKGROUND:

- A The Council has promoted a project ("**Project**") for the procurement of a new crossing over the River Mersey within the Council's area ("**Mersey Gateway Crossing**") to relieve the congested Silver Jubilee Bridge ("**Silver Jubilee Bridge**" or "**SJB**").
- B The Council has been required by the Department for Transport ("**DfT**") in the terms of a funding agreement in respect of the Project to form the Board to assist the Council in managing delivery of the Mersey Gateway Crossing and the tolling of both the Mersey Gateway Crossing and the Silver Jubilee Bridge with due consideration of value for money and affordability.
- C The Council has procured pursuant to a notice published in the OJEU on 22 October 2011 (2011/S 204-332052) a design, build, finance, maintain and operate agreement ("**Project Agreement**") in respect of the Mersey Gateway Bridge and related infrastructure, and an agreement, in respect of the delivery of revenue collection services relating to Tolling on both the Mersey Gateway Bridge and the Silver Jubilee Bridge, ("**DMPA**").
- D The Council and the Board are entering into the Project Agreement and the DMPA.
- E The Council and the Board have entered into this agreement ("**Agreement**") to set out the terms under which the Board will assist the Council in administering the Project, and the respective obligations of the Council and the Board to the DfT.

IT IS AGREED:

1. DEFINITIONS

1.1 Definitions

In this Agreement unless the context otherwise requires:

"**Allowable Charges**" has the meaning given to it in the DMPA;

"**Additional Availability Support Grant**" means the contingent grant or loan provided by the DfT to the Council in respect of this Project in addition to the Availability Support Grant pursuant to the terms of the Funding Letter;



"Additional MMO Conditions" has the meaning given to it in the DMPA;

"Additional MMO Notice" has the meaning given to it in Clause 11.5;

"Agreed Measures" means such additional measures that the DfT and the Council agree to implement to reduce and seek to remove the Revenue Shortfall pursuant to paragraph (ix)5 of the Funding Letter;

"Agreement" has the meaning given to it in Recital E;

"Annual Business Plan" has the meaning given to it in Clause 5.8;

"Availability Support Grant" means the grant provided by the DfT to the Council in respect of this Project pursuant to the terms of the Funding Letter;

"Benchmarking" has the meaning given to it in paragraph 2 of Part 2 of Schedule 7;

"Benchmarking Date" has the meaning given to it in paragraph 2 of Part 2 of Schedule 7;

"Benchmarking Exercise" has the meaning given to it in paragraph 4.4 of Part 2 of Schedule 7;



"Board Default" means one of the following events:

- (a) the court has made an order that the Board be wound up pursuant to powers granted to it under section 125 of the Insolvency Act 1986 or a resolution is passed pursuant to section 84 of the Insolvency Act 1986 for the solvent or insolvent voluntary winding-up of the Board or the Board is otherwise wound-up;
- (b) any receiver or receiver manager is appointed in respect of the Board or possession is taken by or on behalf of any creditor of any property that is owned by or is in possession of the Board;
- (c) any voluntary arrangement is made for the composition of debts or a scheme of arrangement approved under the Insolvency Act 1986 or Companies Act 1986 in respect of the Board;
- (d) the Board is the subject of an administration order or an administrator is otherwise appointed in respect of the Board;
- (e) any event occurs, or proceedings are taken with respect to the Board, in any jurisdiction to which it is subject, or in which it has assets, which has an effect equivalent to, or similar to, any one of the events mentioned in limbs (a) to (d) above;
- (f) the abandonment or repudiation of this Agreement by the Board;
- (g) a material failure of the Board to comply with the terms of any Rectification Plan;

- (h) a breach by the Board of any of its obligations and/or warranties under this Agreement which in the opinion of the Council (acting reasonably) materially and adversely affects the performance of the Services, including any persistent breach of such obligations and/or warranties the cumulative effect of which is to materially and adversely affect the performance of the Services;
- (i) the Board acting outside its delegated powers or approvals, including any failure to comply with the procedures relating to Restricted Matters set out in this Agreement;
- (j) failure to obtain or maintain any insurances which the Board is required to maintain or take out pursuant to the Project Documents;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Board's Final Staff List" means the list of all the Board's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;

"Board's Provisional Staff List" means the list prepared and updated by the Board of all the Board's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list;

"Board Stakeholder Engagement" means any engagement with Stakeholders carried out by the Board in accordance with Clause 5.12 and Part 1 of Schedule 2;

[REDACTED]

"CEDR" has the meaning given to it in paragraph 4 of Schedule 9;

"Claiming Party" has the meaning given to it in paragraph 1 of Schedule 9;

"Conditions Precedent" means each of the conditions precedent to the Effective Date which are listed at Clause 2.2;

"Contract Period" means the period from the date of this Agreement until the earlier of:

- (a) the Expiry Date; and
- (b) the Termination Date;

[REDACTED]

"Council Change Notice" has the meaning given to it in Clause 15.1.1;

[REDACTED]

"Council KPIs" means the following key performance indicators against which the Council shall measure performance by the Board of its duties in respect of delivering the Project Objectives:

- (a) the performance indicators specified in the Project Agreement;
- (b) the Key Performance Indicators as defined and specified in the DMPA;
- (c) achievement of local employment and training opportunities as part of the Project;
- (d) achievement of diversity targets;
- (e) achievement of accessibility requirements;

"Council Liabilities" means the aggregate of:

- (a) the Unitary Charge or other sums payable by the Council pursuant to the Project Agreement (including any sums payable to the Project Company on termination of the Project Agreement provided that such termination payments are payable in instalments over the original life of the Project Agreement);
- (b) [REDACTED]
- (c) any payments due to the Board pursuant to the terms of this Agreement;
- (d) any payments due to the DfT pursuant to the terms of the Funding Letter;
- (e) any payments of interest due to lenders in respect of debt raised by the Council in relation to the Project;
- (f) payments of any insurance premia payable by the Council in respect of the OCIP Insurances; and
- (g) any other costs to be borne by the Council in respect of the Project;

[REDACTED]

"Council Policies" means the policies and constitution of the Council (as may be amended from time to time) to the extent applicable to the performance of the Services by a subsidiary of the Council, and including:

- (a) the Council Policies (as defined in the DMPA);
- (b) the Council Policies (as defined in the Project Agreement);

- (c) the Council's policies in respect of:
- (i) Freedom of Information;
 - (ii) Confidential Reporting Code (Whistleblowing Policy);
 - (iii) the Employee Code (subject to any employee policies that may be developed by or on behalf of the Board);
 - (iv) appointment of auditors;
 - (v) procurement of works, services and supplies; and
- (d) any other policy or procedure of the Council which the Council notifies to the Board (acting reasonably) as being applicable to the performance of the Services;

[REDACTED]

"Council Project Documents" means those Project Documents listed in Part 1 of Schedule 8;

[REDACTED]

"Council Stakeholder Engagement" means any engagement with Stakeholders carried out by the Council in accordance with Clause 5.11 and Part 2 of Schedule 2;

"Council Stakeholder Engagement Report" has the meaning given to it in Clause 5.11.1;

"Council Toll Level" has the meaning given to it in Clause 7.9;

"Council Toll Policies" has the meaning given to it in Clause 7.3.3;

"Data Protection Legislation" means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

"DfT" has the meaning given to it in Recital B;

[REDACTED]

"DfT Guarantee Period" means the period for which the DfT provides funding support to the Council in respect of this Project or is entitled to repayment of such funding support pursuant to the terms of the Funding Letter;

[REDACTED]

"**Dispute**" has the meaning given to it in Clause 18.2.1;

"**Disputed Amount**" has the meaning given to it in Clause 10.21;

"**Dispute Notice**" has the meaning given to it in paragraph 1 of Schedule 9;

"**Distribution Restrictions**" has the meaning given to it in Clause 25.2;

"**DMPA**" has the meaning given to it in Recital C;

"**DMPA Company**" means Sanef Tolling Limited, a company organised and existing under the laws of England, registered under number 06652372 and having its registered office at Hornbeam House, Hornbeam Park, Hookstone Road, Harrogate, North Yorkshire, United Kingdom, HG2 8QT;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"**Draft Rectification Plan**" has the meaning given to it in Clause 4.8;

"**Effective Date**" means the date upon which all of the Conditions Precedent have been satisfied or waived in accordance with Clause 2.2;

"**Employee Liability Information**" means the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE, including:

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two (2) years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two (2) years or where the transferor has reasonable grounds to believe that such action may be brought against the Board arising out of the employee's employment with the transferor; and
- (e) information about any collective agreement that will have effect after the Service Transfer Date in relation to the employee under regulation 5(a) of TUPE;

"Employment Liabilities" means all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation and any legal costs and expenses;

"Environmental Information Regulations" means the Environmental Information Regulations 2004 (SI 2004/3391), together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

"Environmental Works Fee" means the fee payable by the Council to the MGET pursuant to an environmental services contract for the delivery of various environmental initiatives and environmental risk mitigation plans in relation to the Project;

"Escalation Procedure" has the meaning given to it in paragraph 2 of Schedule 9;

"Exceptional Event" has the meaning given to it in the Project Agreement;

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

"Expiry Date" means the earlier of:

- (a) the date falling 60 years from the date of Financial Close of the Project Agreement; and
- (b) the date on which tolls are no longer levied in respect of the MGC and the SJB;

"Final Business Case" means the final business case produced by the Council in respect of the Project dated 23 January 2014;

"Financial Close" has the meaning given to it in the Project Agreement;

"Five Year Forecast" has the meaning given to it in Clause 12.8.1;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

"Funding Letter" means the funding letter from the DfT to the Council, in the form annexed at Schedule 5, as amended from time to time in accordance with its terms;

"Government" means the government of the United Kingdom and **"Government Department"** shall be construed accordingly;

"Grant Adjustments" has the meaning given to it in Clause 12.1;

"Guidance" means any applicable guidance or directions with which the relevant party is bound to comply;

"HMT" means Her Majesty's Treasury;

"HMT Letter" means the letter contained at Schedule 11;

"Initial Support Services Period" has the meaning given to it in Clause 8.1;

"Intellectual Property" means Intellectual Property (as defined under the Project Agreement) and Intellectual Property (as defined under the DMPA);

"Interest Rate" has the meaning given to it in the DMPA;

"Law" means any Legislation, Guidance or applicable judgment of a relevant court of law which changes a binding precedent;

"Legislation" means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any

enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom;

[REDACTED]

[REDACTED]

[REDACTED] out in Schedule 12 or such other scheme as may be issued by the Council to the Board from time to time;

"**Material Consequence**" has the meaning given to it in Schedule 1;

"**Mersey Gateway Crossing**" has the meaning given to it in Recital A;

[REDACTED]

[REDACTED]

"**Month**" means a calendar month, provided that:

- (a) in the case of the month in which the Effective Date falls, it means the period from the Effective Date to the end of such calendar month;
- (b) in the case of the month in which the Expiry Date or Termination Date occurs it means the period from the start of such calendar month to the Expiry Date or Termination Date, as relevant;

[REDACTED]

"**Objection Deadline**" has the meaning given to it in paragraph 1 of Schedule 9;

"**OCIP Insurances**" has the meaning given to it in the Project Agreement;

"**Orange Restricted Matter**" means a Restricted Matter which is identified as "Orange" in the third column (*Matter categorisation*) of Schedule 1;

"**Order**" means the River Mersey (Mersey Gateway Bridge) Order 2011;

"**Other Discount Schemes**" means discount schemes other than the Local User Discount Schemes or variations to the Tolling of Users which the DMPA Company have proposed and/or implemented pursuant to the terms of the DMPA;

"**Other Toll Transactions**" means Post-Paid Tolls, Allowable Charges and Monthly Subscriptions;

[REDACTED]

"Performance Audit" has the meaning given to it in Clause 4.5;

"Performance Failure" has the meaning given to it in Clause 4.11;

"Performance Requirements" has the meaning given to it in Clause 4.7;

"Post-Paid Tolls" has the meaning given to it in the DMPA;

"Pre-Paid Toll Collections Account" means the bank account in the name of the Council set up pursuant to clause 28.5.1.1(a) of the DMPA;

"Pre-Paid Toll Reimbursement Request" has the meaning given to it in the DMPA;

"Pre-Paid Toll Reimbursements" has the meaning given to it in the DMPA;

"Pre-Paid Toll Revenue" has the meaning given to it in the DMPA;

"Pre-Paid Toll Transfers" has the meaning given to it in the DMPA;

"Primary Measures" has the meaning given to it in Clause 12.5;

"Procurement Law" means applicable Law in relation to the procurement of goods and/or services;

[REDACTED]

"Procurement Savings Repayment Schedule" means the provisions in relation to the repayment of Procurement Savings set out in Annex A of the Funding Letter;

"Project" has the meaning given to it in Recital A;

"Project Agreement" has the meaning given to it in Recital C;

"Project Company" means Merseylink Limited, a company organised and existing under the laws of England and Wales, registered under number 08780602 and having its registered office at 7400 Daresbury Park, Daresbury, Warrington, WA4 4BS;

[REDACTED]

"Project Documents" means the Project Documents (as defined under the Project Agreement), the DMPA Documents (as defined under the DMPA) and the Funding Letter, copies of which have been initialled by the Parties for the purposes of identification;

"Project Objectives" means:

- (a) to ensure the on-going affordability and value for money of the Project;
- (b) to relieve the congested Silver Jubilee Bridge, thereby removing the constraints on local and regional development and better provide for local transport needs;

- (c) to apply minimum Toll charges to both the Mersey Gateway Crossing and the Silver Jubilee Bridge consistent with the amount required to satisfy affordability constraints;
- (d) to improve accessibility in order to maximise local development and regional economic growth opportunities;
- (e) to improve local air quality and enhance the general urban environment;
- (f) to improve public transport links across the River Mersey;
- (g) to encourage the increased use of cycling and walking;
- (h) to restore effective network resilience for road transport across the River Mersey;

"Providing Party" has the meaning given to it in Clause 25.2;

"Prudential Code" means *"The Prudential Code for Capital Finance in Local Authorities"* as published and updated from time to time by the Chartered Institute of Public Finance and Accountancy or its relevant successor;

"Quarter" means each quarter year commencing on 1 April, 1 July, 1 October and 1 January in each Year (and "quarterly" shall be construed accordingly), provided that:

- (a) in the case of the quarter year in which the Effective Date falls, it means the period from the Effective Date to the end of such quarter year;
- (b) in the case of the quarter year in which the Expiry Date or Termination Date occurs it means the period from the start of such quarter year to the Expiry Date or Termination Date, as relevant;

"Receiving Party" has the meaning given to it in Clause 25.2;

"Rectification Plan" has the meaning given to it in Clause 4.8;

"Red Restricted Matter" means a Restricted Matter which is identified as "Red" in the third column (*Matter categorisation*) of Schedule 1, and any matter which does not relate directly to performance by the Board of its obligations pursuant to this Agreement;

"Relevant Employees" means those employees who are named in the Board's Final Staff List and whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider by virtue of the application of TUPE;

"Relevant Month" has the meaning given to it in Clause 10.3;

"Relevant Transfer" means a relevant transfer for the purposes of TUPE;

"Replacement Services" means any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Service Provider;

"Replacement Service Provider" means any third party supplier of Replacement Services appointed by the Council from time to time;

"Responding Party" has the meaning given to it in paragraph 1 of Schedule 9;

"Response" has the meaning given to it in Clause 15.1.3;

"Restricted Action" has the meaning given to it in Clause 4.4;

"Restricted Matter" each matter listed in the first column (*Restricted Matters*) of Schedule 1;

"Restricted Matter Consultation Period" has the meaning given to it in Clause 4.4.2.1;

"Restricted Matter Party" means in respect of a Restricted Matter, the parties listed against such Restricted Matter in the second column (Restricted Matter Parties) of Schedule 1;



"Revenue Rectification Plan" has the meaning given to it in clause 12.6;

"Revenue Shortfall" means where the Availability Support Grant received by the Council and Toll Revenue collected by or on behalf of the Council is insufficient to pay the Council Liabilities excluding limb (d) of the definition of Council Liabilities;

"Review Point" means the review points at which the Council, the Board and the DfT will consider the financial performance of the MGC and the SJB pursuant to paragraphs (x) to (xiii) inclusive of the Funding Letter;

"RUCO" means the A533 (Silver Jubilee Bridge) Road User Charging Scheme Order 2008;

"Secretary of State" means the Secretary of State for Transport;

"Senior Representative" has the meaning given to it in paragraph 2 of Schedule 9;

"Services" means the services to be carried out by the Board pursuant to the terms of this Agreement;

"Service Transfer Date" means the date on which the Services (or any part of the Services), transfer from the Board or Sub-Contractor to the Council or any Replacement Service Provider;

"Silver Jubilee Bridge" or **"SJB"** has the meaning given to it in Recital A;

"Silver Jubilee Bridge Works" means the works to repair and reconfigure the Silver Jubilee Bridge to be undertaken by or on behalf of the Council after the completion of the Mersey Gateway Crossing;

"Staffing Information" means in relation to all persons detailed on the Board's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services;

"Stakeholder" means those external stakeholders in the Project which the Council has agreed to liaise with in accordance with the requirements for Council Stakeholder Engagement or the requirements for Board Stakeholder Engagement;

"Stakeholder Engagement Report" has the meaning given to it in Clause 5.12.1;

"Sub-Contractor" means the contractors or service providers engaged by the Board to provide goods, services or works to, for or on behalf of the Board for the purposes of providing the Services to the Council;

"Subsequent Transfer" has the meaning given to it in Clause 14.2.1;

"Support Services" means the services to be provided by the Council to the Board in accordance with Clause 8, as set out in Schedule 4 (*Support Services*);

"Support Services Tender" has the meaning given to it in paragraph 1 of Part 1, Section 1 of Schedule 7;

"Termination Date" means any date of early termination of this Agreement in accordance with the terms of this Agreement;

"Toll" shall have the meaning ascribed to it in the DMPA, and **"Tolls"** and **"Tolling"** shall be construed accordingly;

"Toll Collections Account" means the bank account in the name of the Council set up pursuant to clause 28.5.1.1(b) of the DMPA;

"Toll Collecting Party" has the meaning given to it in Clause 7.5;

"Toll Obligations" has the meaning given to it in Clause 7.1;

"Toll Enforcement Regulations" has the meaning given to it in the DMPA;

"Toll Fare Discount Scheme" has the meaning given to it in the DMPA;

"Toll Revenue" has the meaning given to it in the DMPA;

"Tolling Commencement Date" means the date on which Tolling commences on the Mersey Gateway Crossing;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended, replaced, consolidated or re-enacted from time to time;

"TUPE Information" has the meaning given to it in Clause 14.2.5;

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

"Year" means as period of twelve (12) consecutive Months starting on 1 April, with the exception of:

- (a) the first Year, which shall commence on the Effective Date and end on 31 March second occurring thereafter; and

- (b) the final Year, which shall commence on 1 April and end on the Expiry Date or the Termination Date, as relevant.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice-versa;
- 1.2.2 the singular includes the plural and vice-versa;
- 1.2.3 a reference in this Agreement to any Clause or Schedule is, except where it is expressly stated to the contrary, a reference to such Clause or Schedule to this Agreement and all references to Parts, Sections, Paragraphs, Annexes or Appendices are references to Parts, Sections and Paragraphs contained in and Annexes and Appendices to the Schedules;
- 1.2.4 except where it is expressly stated otherwise, a reference in a Schedule to a Part, Section, Annex or Appendix is a reference to a Part or Section of, or Annex or Appendix to, that Schedule (as the case may be);
- 1.2.5 except where it is expressly stated otherwise, a reference in a Schedule, a Part or Section of a Schedule or an Annex or Appendix to a Schedule to a Paragraph is a reference to a Paragraph in that Schedule, Part, Section, Annex or Appendix (as the case may be);
- 1.2.6 the Schedules to this Agreement (including any Annexes or Appendices thereto) are an integral part of this Agreement and reference to this Agreement includes reference thereto and reference to any Schedule includes reference to any Annex or Appendix thereto;
- 1.2.7 save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment, or supplement to, or substitution, novation or assignment of, such document;
- 1.2.8 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted and shall include any legally binding codes of practice (within the meaning of section 21(1) of the Interpretation Act 1978) made thereunder;
- 1.2.9 references to any documents and/or items being "in the agreed form" means such documents and/or items have been initialled by or on behalf of each of the Parties for the purpose of identification;
- 1.2.10 reference to a person includes any individual, firm, partnership, corporation, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or association and their successors and permitted assignees or transferees;
- 1.2.11 headings are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;

- 1.2.12 headings and words in parentheses and italics after a Clause reference or a reference to a Schedule are for convenience and reference only;
- 1.2.13 all references to time of day shall be a reference to whatever time of day shall be in force in England and Wales;
- 1.2.14 any reference to "**day**" shall, unless otherwise stated, mean the period of time which begins with one midnight and ends with the next;
- 1.2.15 the words "**herein**", "**hereto**" and "**hereunder**" refer to this Agreement as a whole and not to the particular Clause, Schedule, Part, Section, Paragraph, Annex or Appendix in which such word may be used;
- 1.2.16 any reference to a public organisation or representative shall be deemed to include a reference to any successor to such public organisation or representative or any organisation or entity or representative which has taken over the functions or responsibilities of such public organisation or representative in whole or in part;
- 1.2.17 references to "**Parties**" mean the Parties to this Agreement and references to a "**Party**" mean one of the Parties to this Agreement;
- 1.2.18 references to "**sub-contractors**" are to contractors or sub-contractors of any tier;
- 1.2.19 references to drawings are references to drawings appearing or listed in the Schedules hereto having the revision numbers set against the relevant drawing numbers in the relevant Schedule;
- 1.2.20 all monetary amounts are expressed in pounds sterling;
- 1.2.21 references to "including" and "include" shall be construed as "including without limitation";
- 1.2.22 references to a numbered Clause to another numbered Clause shall be construed as including both numbered Clauses and all Clauses in between them;
- 1.2.23 wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate or determination by any person, then unless otherwise specified, such notice, endorsement, consent, approval, certificate or determination shall be in writing, and the words notify, endorse, consent, approve, certify or determine and cognate expressions shall be construed accordingly; and
- 1.2.24 In the event of any conflict between the requirements of this Agreement and requirements of the Funding Letter, the requirements of the Funding Letter shall take priority.

2. COMMENCEMENT AND DURATION

Duration

- 2.1 Subject to Clause 2.2, the rights and obligations of the Parties to this Agreement shall come into effect on the date of this Agreement and shall continue for the Contract Period.

2.2 Save for Clauses 1, 2, 14 to 28 (inclusive), this Agreement shall only be effective from the date upon which ("**Effective Date**") the following Conditions Precedent have either been satisfied or waived by the Council (at the Council's sole discretion):

2.2.1 the Board has executed each of the Board Project Documents, and such documents have been executed by all relevant counterparties to the same;

2.2.2 the Council has executed the Project Agreement and the DMPA;

2.2.3 a certified copy of all documents relating to the constitution of the Board (including, without limitation, all contracts entered into by shareholders, Articles of Association and memorandum), which shall be in the same, or substantially similar form, to those set out in Schedule 3 (*Board Constitution*), have been provided to the Council; and

2.2.4 the DfT has provided a Funding Letter signed by or on behalf of the Secretary of State; and

2.2.5 HMT has provided the HMT Letter.

3. PROJECT DOCUMENTS

Execution of and compliance with Project Documents

3.1 The Board shall:

3.1.1 on or about the date of this Agreement, enter into the Board Project Documents;

3.1.2 during the Contract Period, enter into such other documents as may be required, for the purposes of the on-going procurement and/or operation of the Mersey Gateway Bridge or the Silver Jubilee Bridge; and

3.1.3 during the Contract Period, comply with the terms of the Board Project Documents and any other documents it enters into in accordance with clause 3.1.2.

3.2 The Council shall:

3.2.1 on or about the date of this Agreement, enter into the Council Project Documents; and

3.2.2 during the Contract Period, comply with the terms of the Council Project Documents.

Compliance with Funding Letter

3.3 The Board acknowledges the terms of the Funding Letter and undertakes to:

3.3.1 comply with the terms of the Funding Letter to the extent that any obligation of the Council pursuant to the terms of the Funding Letter is performed, in whole or in part, by the Board pursuant to the terms of this Agreement;

- 3.3.2 carry out the Services pursuant to this Agreement in a manner which is consistent with the terms of the Funding Letter; and
 - 3.3.3 have due regard to the Council's obligations pursuant to the Funding Letter and not to do (or omit to do) anything which may, reasonably, be expected to put the Council in breach of the terms of the Funding Letter.
- 3.4 If the Council, the Board or the DfT cannot agree actions in relation to ensuring compliance with the requirements of this Agreement or the Funding Letter, the Council, the Board and the DfT agree that any such dispute will be determined in accordance with clause 19 (Dispute Resolution).

4. CO-OPERATION AND RESTRICTED MATTERS

- 4.1 The Council undertakes to the Board that it shall not wilfully impede the Board in the performance of its obligations under this Agreement having regard always to any other operations or activities carried out by the Council for the purposes contemplated by this Agreement or any other of the Council's statutory duties or functions.
- 4.2 Each party agrees to co-operate, at its own expense (but without being compelled to incur material expenditure) with the other party in the fulfilment of the purposes and intent of this Agreement and the Funding Letter.

Consultation on Restricted Matters

- 4.3 The Board shall, in providing the Services pursuant to this Agreement, consider and have regard to comments received from:
- 4.3.1 the Council;
 - 4.3.2 the DfT;
 - 4.3.3 HMT; and
 - 4.3.4 any Stakeholder with whom the Board is required to consult in accordance with the terms of this Agreement,

and notwithstanding the generality of the foregoing, the Board shall not do anything which amounts to a Restricted Matter without complying with the procedure set out in Clause 4.4;

Restricted Matter Procedure

- 4.4 Where any action (including any omission) or decision of the Board is, or relates to, a Restricted Matter ("**Restricted Action**"), the following procedure shall apply:
- 4.4.1 Where a Restricted Matter is a Red Restricted Matter, the Board shall:
 - 4.4.1.1 where it wishes to carry out a Restricted Action, notify each relevant Restricted Matter Party, of the proposed Restricted Action, providing sufficient detail of the proposed Restricted Action for the Restricted Matter Parties to be able to understand the effect of the proposed Restricted Action;

- 4.4.1.2 have due regard to all comments received from Restricted Matter Parties in respect of such Restricted Action, and amend the Restricted Action appropriately to reflect such comments. Where such amendments are made, the Board shall notify all relevant Restricted Matter Parties of the revised Restricted Action and Clauses 4.4.1.1 and 4.4.1.2 shall apply *mutatis mutandis*;
- 4.4.1.3 only proceed with a Restricted Action where each relevant Restricted Matter Party has expressly consented to such Restricted Action. Restricted Matter Parties shall be entitled to consent to a Restricted Action, subject to conditions, in which case the Board shall only be entitled to proceed with such a Restricted Action where the Board:
- (a) complies with all material requirements of such conditions; and
 - (b) all other Relevant Matter Parties have consented to the Board complying with such conditions; and
- 4.4.1.4 any documentation provided to the Council in relation to any Red Restricted Matter should be provided simultaneously to the DfT in its entirety, including but not limited to background information, Board correspondence and supporting analysis.
- 4.4.2 Where a Restricted Matter is an Orange Restricted Matter, the Board shall:
- 4.4.2.1 as soon as reasonably practicable after determining that it wishes to carry out a Restricted Action, consult with the relevant Restricted Matter Parties, providing sufficient detail of the proposed Restricted Action for the Restricted Matter Parties to be able to understand the effect of the proposed Restricted Action. The Board shall provide each Restricted Matter Party sufficient time to respond to such consultation as may be reasonable ("**Restricted Matter Consultation Period**"), having regard to the nature of the Restricted Action, the consideration that may be required by the Restricted Matter Parties and any urgency in proceeding with the Restricted Action;
 - 4.4.2.2 the Board shall have due regard to all comments received from Restricted Matter Parties during the Restricted Matter Consultation Period, in determining whether to proceed with the Restricted Action, and any amendments reasonably required to the Restricted Action; and
 - 4.4.2.3 any documentation provided to the Council in relation to any Orange Restricted Matter, that has a material impact on the Funding Letter, should be provided simultaneously to the DfT in its entirety, including but not limited to background information, Board correspondence and supporting analysis,
- provided that the Board has complied with the requirements of Clauses 4.4.2.1 to 4.4.2.2, the Board shall be entitled to proceed with a Restricted Action relating to an Orange Restricted Matter, notwithstanding that any relevant Restricted Matter Party has objected to such Restricted Action;

- 4.4.3 Where any matter is ancillary to a Restricted Matter then it shall be classified as part of such Restricted Matter and Clause 4.4 shall apply in respect of such matter.
- 4.4.4 Where a matter is ancillary to more than one Restricted Matter, or a Restricted Action would relate to more than one Restricted Matter then such matter shall be deemed to be the highest classified of such Restricted Matters (where a Red Restricted Matter is most highly classified, and an Orange Restricted Matter is least highly classified), and Clause 4.4 shall apply in respect of such matter.

Performance Management

- 4.5 The Council may audit (or procure the auditing of) the performance of the Services and compliance with by the Board with its other obligations under this Agreement ("**Performance Audit**"), in accordance with this Clause 4:
 - 4.5.1 subject to clauses 4.5.2 and 4.5.3, no more frequently than quarterly;
 - 4.5.2 at the Council's discretion, at any point where the Board notifies the Council of Board Default in accordance with Clause 4.13, or where the Council has otherwise determined that a Board Default has arisen or, acting reasonably, believes that a Board Default is likely to arise; and
 - 4.5.3 whenever otherwise required by the terms of this Agreement;
- 4.6 Where the Council intends to carry out a Performance Audit, it may request from the Board, and the Board shall provide, as soon as reasonably practicable:
 - 4.6.1 such information as may be reasonably required by the Council to determine whether the Board is performing the Services in accordance with this Agreement;
 - 4.6.2 any reports in respect of performance of the Services received by the Board pursuant to the terms of the Project Agreement or the DMPA, including, but not limited to:
 - 4.6.2.1 any KPI Rectification Plan produced pursuant to the DMPA; and
 - 4.6.2.2 any increased monitoring of performance of the DMPA Company pursuant to Clause 19.9 of the DMPA.
- 4.7 Where the Council carries out a Performance Audit, it shall review the performance of the Services and other obligations of the Board under this Agreement, by reference to:
 - 4.7.1 the performance by the Board against any actions, targets and requirements of the Annual Business Plan;
 - 4.7.2 whether the Board has met any income or expenditure targets as specified in:
 - 4.7.2.1 any Rectification Plan; or
 - 4.7.2.2 the Annual Business Plan;
 - 4.7.3 performance of the Board against any Council KPIs;

- 4.7.4 any material breaches of this Agreement by the Board which have been identified; and
- 4.7.5 any material breaches of the Project Agreement, the DMPA, the Funding Letter or any other Project Document by either the Board, the Project Company, the DMPA Company or any other counterparty to the relevant Project Document, which has not been rectified or enforced in accordance with the terms of such agreement.

(together the "**Performance Requirements**").

4.8 Where one or more Performance Requirements have not been satisfied, the Council shall promptly notify the Board of such failure, specifying clearly the nature of each such failure, and the Board shall, within twenty (20) Working Days (or such other period as the Parties may reasonably agree, having regard to the nature of the failure to meet the Performance Requirements and the urgency of any required rectification) develop a rectification plan ("**Rectification Plan**") in respect of rectifying performance of the relevant Performance Requirements, including:

- 4.8.1 any performance, income or other targets to be met;
- 4.8.2 the timescales in which they will be met;
- 4.8.3 the costs to be incurred in meeting the Rectification Plan, and who will bear such costs (taking into consideration the principle at Clause 4.10);
- 4.8.4 any amendments required to the DMPA, Project Agreement or other Project Documents to comply with the Rectification Plan;
- 4.8.5 any amendments required to this Agreement;
- 4.8.6 any performance required by a third party in order to comply with the Rectification Plan, including any action to be performed by the Council, the DfT or HMT, in order to rectify the Performance Requirements,

and the Board shall notify the Council of the proposed terms of such Rectification Plan ("**Draft Rectification Plan**").

4.9 The Council shall review the Draft Rectification Plan and provide comments to the Board within twenty (20) Working Days (or such other period as the Parties may reasonably agree, having regard to the nature of the failure to meet the Performance Requirements and the urgency of any required rectification). The Board shall take into account such comments, but shall only be required to implement such comments where and to the extent that they relate to:

- 4.9.1 any Restricted Matter which forms part of the Draft Rectification Plan;
- 4.9.2 any amendments required to the Project Documents or to this Agreement;
- 4.9.3 any action required to be taken by the Council, DfT or HMT pursuant to the terms of the Rectification Plan, including any costs to be incurred,

in which case the Board shall be required to fully reflect such comments in the finalised Rectification Plan, and once the Rectification Plan has been amended to reflect such comments the Board shall notify the Council of such revised Rectification Plan.

- 4.10 The Board shall implement the Rectification Plan in accordance with its terms, at the sole cost of the Board (subject to any costs which the Council has expressly agreed to incur or which it is to be determined are to be borne by a third party, in which case the Board shall be responsible for ensuring that such third party bears such costs).
- 4.11 Where a failure to meet any Performance Requirement ("**Performance Failure**") continues following implementation of a Rectification Plan in accordance with its terms then the Board shall propose, agree and implement further Rectification Plans in accordance with this Clause 4, save that, where a single Performance Failure, or Performance Failures arising from the same cause, continue to arise following implementation of two Rectification Plans in respect of such Performance Failure, then the Council may at its discretion deem such continued failure to rectify the Performance Failure a Board Default.
- 4.12 Where:
- 4.12.1 the Board fails to implement a Rectification Plan materially in accordance with its terms; or
 - 4.12.2 the Board is in material breach of this Agreement which cannot be rectified, or would cause the Council to be in breach of any of its legal duties or obligations; or
 - 4.12.3 there is a deemed Board Default pursuant to Clause 4.11

then the Council shall be entitled to:

- 4.12.4 exercise any rights of the Board under the Project Documents on behalf of the Board, to the extent that this is required to ensure continued compliance with the terms of this Agreement; and/or
- 4.12.5 terminate this Agreement for Board Default in accordance with Clause 4.15;

and the Council, or the DfT, shall be entitled to:

- 4.12.6 require the replacement of one or more Executive Directors, in accordance with Part 2 of Schedule 3;

Board Default

- 4.13 Where a Board Default occurs or the Board believes that such a Board Default is likely to occur then the Board shall notify the Council and the DfT promptly providing details of such Board Default (or potential Board Default).
- 4.14 Following any notification pursuant to Clause 4.13, the Council shall notify the Board of any action that the Council requires the Board to take, including rectification of any Board Default which is capable of rectification.
- 4.15 Where any Board Default is not rectifiable, or has not been rectified within a reasonable period of notification of the requirement to rectify by the Council pursuant to Clause 4.14, then the Council shall be entitled to terminate this Agreement on no less than 30 days' notice.

Termination of this Agreement

- 4.16 Upon termination for Board Default:
- 4.16.1 the Board shall, on the election of the Council, take all necessary steps at nil cost to the Council to novate or transfer to the Council, or such other party as the Council may nominate, such Project Documents and assets as the Council may reasonably require in order to continue to deliver the Project; and
 - 4.16.2 no compensation shall be payable to the Board.
- 4.17 Save as otherwise expressly provided for in this Agreement, termination of this Agreement:
- 4.17.1 shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination; and
 - 4.17.2 shall not affect the continuing rights and obligations of the Council and the Board under any provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of termination.
- 4.18 Upon termination of this Agreement, the Board shall procure at nil cost to the Council the transfer to the Council of all Intellectual Property required by the Council for the provision of the Services.

5. SERVICES

Supervision and management of construction of Mersey Gateway

- 5.1 The Board shall supervise the construction and operation of the Mersey Gateway Crossing and associated infrastructure in accordance with the terms of the Project Agreement, and otherwise comply with and perform the obligations of the Board under the Project Agreement in an effective, efficient and economic manner.
- 5.2 The Board shall supervise the Tolling of the Mersey Gateway Crossing and Silver Jubilee Bridge:
- 5.2.1 for the term of the DMPA, in accordance with the terms of the DMPA, and otherwise comply with and perform the obligations of the Board under the DMPA in an effective, efficient and economic manner;
 - 5.2.2 for the Contract Period, so as to ensure that the Tolling is carried out in an effective, efficient and economic manner, in accordance with the terms of:
 - 5.2.2.1 Clause 7 of this Agreement; and
 - 5.2.2.2 the requirements of the Funding Letter.
- 5.3 The Board shall otherwise ensure that:
- 5.3.1 during the term of the Project Agreement:
 - 5.3.1.1 the Board complies with its obligations under the Project Agreement; and

- 5.3.1.2 the Project Company complies with its obligations under the Project Agreement; and
 - 5.3.2 during the term of the DMPA:
 - 5.3.2.1 the Board complies with its obligations under the DMPA; and
 - 5.3.2.2 the DMPA Company complies with its obligations under the DMPA,
- in each case, such that the Services are performed:
- 5.3.3 in an economic, efficient, effective and safe manner;
 - 5.3.4 in accordance with Good Industry Practice;
 - 5.3.5 in a manner that is not likely to be injurious to health or to cause damage to property;
 - 5.3.6 in such a manner as:
 - 5.3.6.1 not to detract from the image and reputation of the Council as highway authority and/or as tolling and charging authority;
 - 5.3.6.2 to enable the Council to discharge its statutory duties; and
 - 5.3.7 in compliance with:
 - 5.3.7.1 the Order, the RUCO and the Toll Enforcement Regulations; and
 - 5.3.7.2 all applicable Law.
- 5.4 The Board shall continuously seek improvements to the procedures and processes used in the performance of the Services.
- 5.5 The Board undertakes to the Council that it shall not perform any activities other than the Services without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed provided that the Parties agree that the Council shall be entitled to withhold its consent where the Council believes that any such performance of activities by the Board may cause the Council and/or the Board to be in breach of any Law, including Procurement Law.
- 5.6 The Board shall provide reports to the Council in a format and frequency as may be agreed by the Council, acting reasonably, and having regard to the stage of construction or operation of the Mersey Gateway Crossing in respect of:
- 5.6.1 during the term of the Construction Period (as defined in the Project Agreement) under the Project Agreement, the progress of construction, including the occurrence of any Compensation Events or Relief Event or similar events under the terms of the Project Agreement;
 - 5.6.2 during the remainder of the term of the Project Agreement, the operation of the Mersey Gateway Crossing and associated infrastructure, including the performance of services under the Project Agreement and the occurrence of any

Compensation Events or Relief Events or similar events under the terms of the Project Agreement;

- 5.6.3 during the term of the DMPA, the operation of the Tolling, including the occurrence of any Compensation Events or Relief Events or similar events under the terms of the DMPA;
- 5.6.4 costs incurred by the Board, including any additional costs arising from the operation of the Project Documents, including from any Compensation Events that may arise under the Project Agreement or the DMPA;
- 5.6.5 costs to be incurred by the Council, including any payments to be made pursuant to the terms of the DMPA, the Project Agreement, this Agreement or any other Project Documents to which the Council is a party, and any requirement for borrowing to fund the Liquidity Maintenance Reserve or additional borrowing in accordance with Clause 11.8;
- 5.6.6 any delays in the programme for the construction and/or operation of the Mersey Gateway Crossing;
- 5.6.7 performance against key performance indicators and other performance measures within the Project Agreement and DMPA, including any reports required pursuant to Clause 4.6; and
- 5.6.8 performance against the Council KPIs.

Financial Robustness Review

- 5.7 The Board shall provide such assistance as the Council requires in undertaking the review of the financial robustness and value for money of the Project required by the DfT pursuant to paragraph (v)(10) of the Funding Letter.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Stakeholder Engagement

- 5.11 The Council undertakes to the Board to engage with stakeholders in accordance with its obligations as set out in Part 2 of Schedule 2 (Stakeholder Engagement):
- 5.11.1 on a quarterly basis report to the Board ("**Council Stakeholder Engagement Report**"), setting out details of:
 - 5.11.1.1 the outcomes of any Council Stakeholder Engagement carried out in the preceding Quarter;
 - 5.11.1.2 any actions which the Council has determined, or undertaken, to take to reflect any responses received during such Council Stakeholder Engagement;
 - 5.11.1.3 updates in respect of outcomes or actions set out in previous Council Stakeholder Engagement Reports;
- 5.12 The Board undertakes to the Council to engage with stakeholders in accordance with its obligations as set out in Part 1 of Schedule 2 (Stakeholder Engagement), and shall:
- 5.12.1 on a quarterly basis report to the Council ("**Stakeholder Engagement Report**"), setting out details of:
 - 5.12.1.1 the outcomes of any Board Stakeholder Engagement carried out in the preceding Quarter;
 - 5.12.1.2 any actions which the Board has determined, or undertaken, to take to reflect any responses received during such Board Stakeholder Engagement;
 - 5.12.1.3 any actions which the Board has determined, or undertaken, to take to reflect any actions or undertakings set out in the Council Stakeholder Engagement Report

- 5.12.1.4 updates in respect of outcomes or actions set out in previous Stakeholder Engagement Reports or Council Stakeholder Engagement Reports;
- 5.12.2 consider any comments provided by the Council in respect of Board Stakeholder Engagement, and take such comments into account (acting reasonably) in carrying out future Board Stakeholder Engagement and performing the Services;
- 5.12.3 consider any comments provided by the Council arising from any Council Stakeholder Engagement and take such comments into account (acting reasonably) in carrying out future Board Stakeholder Engagement and performing the Services;

Arrangements after the expiry of the Project Agreement

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. POWERS AND DELEGATION

- 6.1 To the extent that such powers are required for the purposes of delivering the Services (including, but not limited to and requirements for the performance by the DMPA Company of obligations under the DMPA or the Project Company under the Project Agreement), the Council shall:
 - 6.1.1 procure the renewal, replacement or extension of the RUCO on the same, or similar, terms prior to any expiry or termination of the RUCO, so as to ensure that the powers set out in the RUCO continue for the term of this Agreement;
 - 6.1.2 procure the renewal, replacement or extension of the Toll Enforcement Regulations on the same or similar, terms prior to any expiry of termination of

the Toll Enforcement Regulations, so as to ensure that the powers set out in the Toll Enforcement Regulations continue for the term of this Agreement;

6.2 The Council shall release and indemnify the Board against all costs, losses, claims and expenses arising from, associated with, or as a consequence of, any failure by the Council to comply with Clause 6.1, provided that:

6.2.1 the Council shall not be responsible for or be obliged to indemnify the Board against any cost, loss, claim or expense arising out of:

6.2.1.1 any injury, loss, damage, cost or expense caused by the negligence or wilful misconduct of the Board occurring after the date of this Agreement;

6.2.1.2 any breach by the Board of its obligations under this Agreement; and

6.2.2 where exercise by the Board of a right under the Project Agreement or the DMPA would (in the opinion of the Council, acting reasonably) reduce any cost, loss, claim or expense, then the Council shall be entitled to step-in and exercise such right on behalf of the Board, provided that the Council's indemnity at Clause 6.2 shall include any costs, losses, claims and expenses arising from the exercise of such right. The Board shall be entitled to take over the exercise of such right at any time, provided that where the Board takes over the exercise of a right from the Council, then the Council shall be released from the indemnity at Clause 6.2 where and to the extent that any cost, loss, claim or expense cannot be mitigated as a result of such step-in by the Board.

6.3 The Council and the Board both acknowledge that the levying of Tolls on the SJB, at the same rates applying to the Mersey Gateway Crossing, is a requirement of the Funding Letter, and each party undertakes to the other not to vary Tolling on the Silver Jubilee Bridge contrary to the terms of the Funding Letter without the express consent of:

6.3.1 the DMPA Company;

6.3.2 the Project Company; and

6.3.3 the DfT,

provided that such consent shall not be unreasonably withheld, taking into account any amendments to the DMPA, Project Agreement and Funding Letter, respectively.

6.4 The Council undertakes to the Board to perform all of its obligations pursuant to the terms of the Project Documents to which it is a party, to support delivery of the Project Objectives through such Project Documents.

6.5 The Board shall ensure that it performs the Services in accordance with current Council Policies so far as they are relevant to the powers, obligations or duties of the Board.

6.6 For the Contract Period:

6.6.1 the Council undertakes to the Board to delegate to the Project Company in accordance with and pursuant to the terms of the Project Agreement;

- 6.6.2 the Council undertakes to the Board to delegate to the DMPA Company in accordance with and pursuant to the terms of the DMPA;
- 6.6.3 the Council undertakes to the Board to delegate to any contractor replacing the Project Company or the DMPA Company, on similar terms to those specified in the Project Agreement or the DMPA (as the case may be),

in each case the relevant powers, rights and obligations under:

- 6.6.4 the Order;
 - 6.6.5 to the extent that they are capable of delegation, the powers under the RUCO;
 - 6.6.6 to the extent that they are capable of delegation, the powers under the Toll Enforcement Regulations; and
 - 6.6.7 any other statutory powers that are capable of delegation.
- 6.7 To the extent that any delegation of power made pursuant to Clause 6.6 requires renewal or amendment during the Contract Period in order to meet the requirements of Clause 6.6, then the Council shall either:
- 6.7.1 renew or amend such delegation of power; or
 - 6.7.2 indemnify the Board in respect of all costs, losses or expenses arising from such failure to renew or amend such delegation.
- 6.8 For the Contract Period, the Council shall delegate, assign or otherwise transfer to the Board such powers, rights and obligations and shall do everything reasonably within its power (at all times in compliance with applicable Law) to enable the Board to efficiently and effectively perform its obligations under this Agreement, the Project Agreement, the DMPA and any other documents entered into by the Board pursuant to those agreements.

7. TOLLING

Toll Obligations

- 7.1 The Board shall act as the agent of Council, and not as principal, in:
- 7.1.1 collecting Toll Revenue (or procuring the collection of Toll Revenue through the arrangements set out in the Project Documents) on behalf of the Council; and
 - 7.1.2 managing the setting of Tolls on behalf of the Council,
- in respect of both the Mersey Gateway Crossing and the Silver Jubilee Bridge (the "**Toll Obligations**").
- 7.2 The Board may only sub-contract performance of the Toll Obligations in accordance with the terms of the DMPA (including any replacement DMPA procured in accordance with the terms of this Agreement), or otherwise with the consent of the Council (such consent to be at the sole discretion of the Council).

- 7.3 In performing the Toll Obligations during the Contract Period:
- 7.3.1 the Board shall provide the Annual Business Plan to the Council in accordance with Clause 5.8 of this Agreement and to the DfT in accordance with Clause 5.10;
 - 7.3.2 the Board shall ensure that in performing the Toll Obligations it complies with Clause 4.4 in respect of any Restricted Action which may be required to carry out such Toll Obligations;
 - 7.3.3 the Board shall comply with, and procure that the DMPA Company shall comply with, the provisions of Part 1 of Schedule 6 to the DMPA ("**Council Toll Policies**"); and
 - 7.3.4 where the Board sub-contracts performance of any Toll Obligations pursuant to Clause 7.2, the Board shall procure that such sub-contractor does not carry out any Restricted Action save to the extent that the Board is entitled to carry out such Restricted Action, and the Board undertake that it shall procure that either the Board, or such sub-contractor on behalf of the Board, has fully complied with the requirements of Clause 4.4 in respect of such Restricted Action, and that such Restricted Action is permitted to be carried out pursuant to the terms of this Agreement.
- 7.4 The Board and the Council acknowledge the obligations in the Funding Letter to consult with the DfT in relation to the benefits of continuing with Tolling on the MGB and the SJB in light of:
- 7.4.1 the economic and transport network needs of the region;
 - 7.4.2 the overall context relating to road charging;
 - 7.4.3 any legal constraints and the prevailing legal position at the time; and
 - 7.4.4 the proposed sharing of Toll Revenues with the DfT pursuant to the Funding Letter.

Application of Tolls and Additional Fees

- 7.5 The Board shall procure that:
- 7.5.1 all Tolls or additional fees related to the use of the MGB and or SJB (other than Pre-Paid Tolls Revenue) collected by the Board, the DMPA Company or any sub-contractor of the Board or the DMPA Company (each a "**Toll Collecting Party**") are collected on behalf of the Council, and are deposited promptly into the Toll Collections Account; and
 - 7.5.2 all Pre-Paid Tolls Revenue collected by a Toll Collecting Party is collected on behalf of the Council, and is be deposited promptly into the Pre-Paid Toll Collections Account.

Local User Discount Scheme

- 7.6 The Board shall implement and manage the Local User Discount Scheme to reflect the Council's requirements (as may be revised from time to time by the Council in its absolute discretion).
- 7.7 The Board shall recommend to the Council changes to the Local User Discount Scheme having regard to:
- 7.7.1 ensuring that the Project Objectives are met;
 - 7.7.2 ensuring that a Revenue Shortfall does not occur;
 - 7.7.3 ensuring that any proposed changes comply with all applicable Law; and
 - 7.7.4 the requirements of the Funding Letter.

Setting the Toll Level

- 7.8 The Board shall recommend to the Council the level of Tolls to be set for both the Silver Jubilee Bridge and the Mersey Gateway Crossing, having regard to:
- 7.8.1 ensuring that the Project Objectives are met;
 - 7.8.2 ensuring that a Revenue Shortfall does not occur;
 - 7.8.3 ensuring that Tolls are set in accordance with all applicable Law; and
 - 7.8.4 the requirements of the Funding Letter.
- 7.9 The Council may elect to adopt the recommendations provided by the Board pursuant to clause 7.8 ("**Toll Level Recommendation**") or it may adopt, and require the Board (and any DMPA Company) to levy, Tolls and Allowable Charges at different rates specified by the Council ("**Council Toll Level**").
- 7.10 Where:
- 7.10.1 the Board has complied with its obligations under clause 7.8;
 - 7.10.2 the Toll Level Recommendation provided for an increase in average weighted Tolls of twenty per cent (20%) or less in real terms than the Toll levels set out in the Final Business Case; and
 - 7.10.3 the Council Toll Level adopts a lower Toll level than the Toll Level Recommendation,

the Council shall pay into the Toll Collections Account an amount equal to the lower of (i) the additional Toll Revenue that would have been received had the Council elected to adopt the Toll Level Recommendation or (ii) any Revenue Shortfall existing at that time. For the avoidance of doubt if there is no Revenue Shortfall, the Council will not be obliged to pay any additional sums into the Toll Collections Account pursuant to this clause 7.10.

- 7.11 The Board shall be entitled to take into account the advice of the DMPA Company pursuant to the DMPA in recommending to the Council the level of Tolls and discounts to be applied

and shall provide copies of such advice to the Council when requesting any change in Tolls or discount levels, whether pursuant to a Restricted Matter or otherwise.

7.12 Subject to clause 6.3, where the Council either determines not to, or is otherwise unable to, ensure continued powers to toll or charge users of the Silver Jubilee Bridge (including, but not limited to, where it is unable to renew or replace the RUCO), the Council shall indemnify the Board against all costs and losses arising from the loss of such power to toll or charge users of the Silver Jubilee Bridge, including but not limited to:

7.12.1 the inability to meet financial obligations or make payments under the Project Documents;

7.12.2 the effect of any funding withdrawn due to breach of the Funding Letter;

7.12.3 any additional costs incurred by the Board under the Project Agreement or DMPA as a result of changes in travel patterns and/or reduced Toll Revenue arising from such failure to toll or charge, including any costs, losses or expenses of the DMPA Company or Project Company which may become payable by the Board as a result of such failure.

7.13 Where, notwithstanding Clause 7.9, the Council determines that it wishes to vary the level of Tolls, any Local User Discount Scheme or Allowable Charges ("**Council Toll Change**") then the Council shall notify the Board of the proposed changes, and the Board shall, as soon as reasonably practicable following such notification, notify the Council of:

7.13.1 any effect that such change would have on the Board delivering Services pursuant to this Agreement;

7.13.2 any effect that such change would have on the DMPA Company, the Board or the Council performing their respective obligations under the DMPA or the Funding Letter;

7.13.3 any effect that such change would have on the Project Company, the Board or the Council performing their respective obligations under the Project Agreement;

7.13.4 any change in the ability of the Council to make any payments due or that may become due and payable under any Project Documents; and

7.13.5 any other effect on the Board or the Council that may be reasonably foreseeable as a result of such proposed change,

and the Council shall consider such information in advance of making any such Council Toll Change and, if the Council proceeds with the Council Toll Change, shall indemnify the Board against all losses incurred/Toll Revenue that would otherwise have been received as a result of making any such Council Toll Change.

7.14 Where the average weighted Tolls are 20% or less than the Toll levels set out in the Final Business Case and the Council Toll Change adopts a lower Toll level, the Council shall pay into the Toll Collections Account an amount equal to the additional Toll Revenue that would have been received had the Council not elected to implement the Council Toll Change.

8. STAFFING AND SUPPORT

- 8.1 For a period of three (3) Years from the Effective Date ("**Initial Support Services Period**"), the Council shall provide the Support Services to the Board subject to payment by the Board of the Council Service Provision Fee.
- 8.2 The provisions of Schedule 7 (*Market testing and benchmarking of Support Services*) shall apply in respect of benchmarking and market testing of the provision of the Support Services and the Board shall:
 - 8.2.1 be entitled to market test the provision of all Support Services in accordance with Part 1 of Schedule 7 prior to the end of the Initial Support Services Period;
 - 8.2.2 be entitled to market test or benchmark the provision of Support Services by the Council or any other service provider at any time during the Contract Period, in accordance with the provisions of Schedule 7; and
 - 8.2.3 ensure that all contracts entered into in respect of the provision of Support Services allow for market testing and benchmarking in accordance with this Clause 8.
- 8.3 Save for Support Services provided pursuant to Clause 8.1, the Board shall not be obliged to procure any Support Services from the Council.

9. WORKS TO SILVER JUBILEE BRIDGE

The Council shall carry out the Silver Jubilee Bridge Works and shall indemnify the Board against all costs, losses, liabilities or expenses of the Board which may arise from any failure to carry out the Silver Jubilee Bridge Works, save that where the Board's liability in respect of completion of such works is limited under the terms of the Project Agreement and/or the DMPA, the Council's liability pursuant to this indemnity shall be limited to the same extent, to the extent that such cost, loss, liability or expense arises pursuant to the terms of the Project Agreement and/or the DMPA, as the case may be.

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- 11.7 Where the Council elects to terminate the Project Agreement pursuant to clause 10.9.10 of the Project Agreement, the Council shall so instruct the Board in writing within ten (10) Working Days of receiving the Additional MMO Notice, and the Board shall promptly notify the Project Company that it wishes to terminate the Project Agreement pursuant to clause 10.9.10 of the Project Agreement. The Board shall not terminate the Project Agreement without the prior written consent of the Council.
- 11.8 Where the Council elects not to terminate the Project Agreement pursuant to clause 10.9.10 of the Project Agreement, the Board shall review each written notice issued by the Project Company pursuant to clause 10.9.11 of the Project Agreement and confirm, within five (5) Working Days of receiving the respective notice, whether the sums set out in such notice are payable (in whole or in part) by the Council to the Project Company pursuant to clause 10.9.11 of the Project Agreement.

[REDACTED]

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12. SUPPORT GRANTS

Grant Adjustments and Applications

- 12.1 The Board shall co-operate with the Council in respect of any proposed:
 - 12.1.1 adjustment to the Procurement Savings Repayment Schedule;
 - 12.1.2 application for an Additional Availability Support Grant; and/or
 - 12.1.3 potential or actual requirement to draw on the Additional Availability Support Grant,
- pursuant to the terms of the Funding Letter ("**Grant Adjustments**"), and shall provide the Council with all reasonable support required in relation to the Grant Adjustments, including:
- 12.1.4 promptly providing the Council with all information:
 - 12.1.4.1 requested by the Council; and
 - 12.1.4.2 otherwise identified by the Board,
- as may be reasonably necessary to support the Council in the Grant Adjustments with the DfT and HMT;
- 12.1.5 promptly providing such forecasts or financial information that may be required by the Council or DfT to support the Grant Adjustments;

- 12.1.6 promptly providing such other reports and presentations that may be required to support the Grant Adjustments; and
 - 12.1.7 promptly procuring the attendance of any officers, directors, employees or consultants of the Board at any meeting where they may reasonably be required to attend in respect of the Grant Adjustments.
- 12.2 The Council shall, in advance of any Grant Adjustments, provide the Board with reasonable notice of such proposed Grant Adjustments, and to the extent that the Council is reasonably able to do so, provide the Board with sufficient notice of any reports, information, meeting attendance or other support required to allow the Board to provide such support in an efficient manner, provided that any failure to provide such notice shall not relieve the Board from its obligations pursuant to Clauses 12.1 and 12.2.

Council's Use of Funding

- 12.3 The Council undertakes to the Board to use all Availability Support Grant and Additional Availability Support Grant received by the Council from the DfT pursuant to the Funding Letter solely in accordance with the terms of this Agreement and the Funding Letter and for the purposes of the Project.
- 12.4 The Council shall pay all Availability Support Grant and Additional Availability Support Grant received from DfT by the Council promptly into the Toll Collections Account.

Additional Availability Support Grant

- 12.5 Where the Board and/or the Council considers (acting reasonably) that the Council may require an Additional Availability Support Grant from the DfT, the Board shall:
 - 12.5.1 demonstrate (on behalf of the Council), to the reasonable satisfaction of the DfT, that the Board and the Council have undertaken all of the measures set out below in clauses 12.5.1.1 to 12.5.1.4 inclusive (together the "**Primary Measures**") to reduce and attempt to remove the Revenue Shortfall:
 - █ █
 - 12.5.1.2 if and to the extent legally possible, increasing the Toll levels above the levels set out in the Final Business Case by up to twenty per cent (20%);
 - 12.5.1.3 taking steps to reduce the Board's costs; and
 - 12.5.1.4 re-scoping the services to be provided by the Project Company under the Project Agreement and the DMPA Company under the DMPA; and
 - 12.5.2 advise the Council in relation to the impact of reducing or removing the Local User Discount Scheme on the ability of the Council to reduce or remove the Revenue Shortfall.

- 12.6 The Board shall co-operate with the Council in formulating and seeking to agree a rectification plan with the DfT ("**Revenue Rectification Plan**") pursuant to the Funding Letter detailing:
- 12.6.1 the Primary Measures that have been implemented and the extent to which the Primary Measures have reduced the Revenue Shortfall
 - 12.6.2 why any Primary Measures have not been implemented; and
 - 12.6.3 such additional measures ("**Agreed Measures**") that:
 - 12.6.3.1 the DfT and the Council agree to implement to reduce and seek to remove the Revenue Shortfall pursuant to paragraph (ix)5 of the Funding Letter; and
 - 12.6.3.2 the Council instructs the Board in writing to implement pursuant to paragraph (ix)8(a) of the Funding Letter.
- 12.7 The Board shall promptly:
- 12.7.1 provide the Council with such forecasts, reports, presentations, financial information or other information requested by the Council or otherwise identified by the Board as may be reasonably necessary to support the Council in formulating and agreeing the Revenue Rectification Plan with the DfT; and
 - 12.7.2 procure the attendance of any officers, directors, employees or consultants of the Board at any meeting in relation to the Revenue Rectification Plan where they may reasonably be required to attend.
- 12.8 By no later than twenty (20) Working Days prior to the end of each Year, the Board shall produce and provide to the Council a report showing:
- 12.8.1 projections of the income and expenditure of the Board and the Council in respect of the Mersey Gateway Crossing and the Silver Jubilee Bridge for the following five (5) Years ("**Five Year Forecast**"), which shall include the Board's assessment of the likelihood of any Revenue Shortfall during the following five (5) Years and the extent of any such Revenue Shortfall;
 - 12.8.2 the performance of the Board and the Council to date in implementing any current Primary Measures and Agreed Measures; and
 - 12.8.3 the actions that the Board and the Council intends to take during the following Year in order to implement and maintain any Primary Measures and Agreed Measures,

and, as soon as reasonably practicable after the Council and Board have agreed the report, the Board shall send a copy of the report to the DfT.

- 12.9 Where any Additional Availability Support Grant has been paid to the Council pursuant to the Funding Letter subject to the performance of certain Primary Measures and Agreed Measures, the Board and the Council undertake to each other that they shall comply with the Revenue Rectification Plan and shall perform and maintain the Primary Measures and Agreed Measures for the period ("**Measures Period**") from the date on which the Revenue Rectification Plan is agreed until such time as:
- 12.9.1 the Additional Availability Support Grant, if lent as a loan, has been repaid in full together with an interest that is then due and payable; or
 - 12.9.2 at the sole discretion of the DfT, the DfT agrees that the relevant Primary Measures and/or Agreed Measures can cease.
- 12.10 The Council and the Board shall work together to minimise the duration of any Measures Period provided that the Parties shall comply with the Revenue Rectification Plan at all times.
- 12.11 The Board acknowledges that, pursuant to the Funding Letter, where the Board and/or the Council have failed to comply with their obligations under:
- 12.11.1 the Funding Letter in respect of the Additional Availability Support Grant; and/or
 - 12.11.2 clauses 12.5 to 12.8 of this Agreement,
- the DfT may step in and assume the role of the Council under this Agreement in order to direct the Board to undertake the relevant Primary Measures and Agreed Measures, and the Board undertakes to the Council and to the DfT that it shall comply with the directions of the DfT in respect of the undertaking of the Primary Measures and Agreed Measures as if such directions were given by the Council pursuant to this Agreement.
- 12.12 If the Council has not, to the reasonable satisfaction of DfT, acted upon a requirement to instruct the Board in accordance with paragraph (ix)(8)(a) of the Funding Letter within 3 Working Days then DfT shall be entitled to issue an instruction to the Board directly in accordance with clause 12.6.3.2.
- 12.13 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to Clause 12.11 and 12.12 to the extent necessary to ensure that the DfT shall have the right to enforce the obligations owed to the DfT by the Board for the duration of the DfT Guarantee Period in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

13. BOARD GOVERNANCE REQUIREMENTS

- 13.1 The Board undertakes to the Council that, for the duration of the Contract Period:
- 13.1.1 it shall not to vary any of the Board's documents relating to the constitution and operation of the Board (including, without limitation, all contracts entered into by shareholders and the articles of association and memorandum of association of the Board) without the consent of the Council (such consent to be at the sole discretion of the Council); and
 - 13.1.2 it shall comply with all applicable Law, including Procurement Law.
- 13.2 The Directors of the Board shall be appointed in accordance with Schedule 3 (Board Governance) and carry out their duties in accordance with that Schedule.

- 13.3 The Council undertakes to:
- 13.3.1 exercise all voting rights and powers of control available to it in relation to the Board so as to give full effect to the terms of this Agreement, including where appropriate, but without limitation, the carrying into effect of such terms as if they were embodied in the articles of association of the Board;
 - 13.3.2 use reasonable endeavours to procure that all third parties, directly or indirectly under its control shall refrain from acting in a manner which is likely to hinder the Board from carrying out the Services in accordance with this Agreement; and
 - 13.3.3 generally use reasonable endeavours to promote the interests of the Board where they are consistent with the terms of this Agreement.
- 13.4 The Board shall be responsible for and shall release and indemnify the Council on demand from and against all claims, costs, losses and expenses which may arise out of or in consequence of breach of the undertaking in Clause 13.1.

14. EMPLOYEES

14.1 Transfer of Employees to the Board

The Council and the Board confirm their understanding and agreement that the commencement of the provision of the Services by the Board on the commencement of this Agreement is not intended or expected to give rise to a Relevant Transfer.

14.2 Employment Exit Provisions

- 14.2.1 This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of expiry or termination of this Agreement, part or otherwise) resulting in a transfer of the Services in whole or in part ("**Subsequent Transfer**"). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 14.2.2 The Board shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement or at any time within the period of twelve (12) months prior to the Expiry Date at the Council's request provide in respect of any person engaged or employed by the Board or any Sub-Contractor in the provision of the Services, the Board's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the relevant employees. The Board shall notify the Council of any material changes to this information as and when they occur and shall provide an updated Staff List and Staffing Information at the Council's request.
- 14.2.3 At least twenty-eight (28) days prior to the Service Transfer Date, the Board shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Service Provider, the Board's Final Staff List, and updated Staffing Information, which shall be complete and accurate in all material respects. The Board's Final Staff

List shall identify which of the Board's and Sub-Contractor's personnel named are Relevant Employees.

- 14.2.4 The Council shall be permitted to use and disclose the Board's Provisional Staff List, the Board's Final Staff List and the Staffing Information to any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.
- 14.2.5 The Board warrants that the Board's Provisional Staff List, the Board Final Staff List and the Staffing Information (the "**TUPE Information**") will be true and accurate in all material respects and that as at the Service Transfer Date no persons are employed or engaged in the provision of the Services other than those included on the Board's Final Staff List. The Board shall indemnify the Council and any Replacement Service Provider in respect of any costs, claims, liabilities, expenses or damages arising from any inaccuracies in or omissions from the TUPE Information.
- 14.2.6 The Board shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 14.2.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6) months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Board shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 14.2.8 In the six (6) months prior to termination of this Agreement, the Board shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Board's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent.
- 14.2.9 The Board shall indemnify and keep indemnified in full the Council and at the Council's request each and every Replacement Service Provider against all Employment Liabilities relating to:
- 14.2.9.1 the termination by the Board or any Sub-Contractor of the employment of any of its/their employees (including but not limited to the Relevant Employees) on or before the Service Transfer Date;
 - 14.2.9.2 any act or omission of the Board or any Sub-Contractor in respect of the Relevant Employees in the period up to and including the Service Transfer Date;
 - 14.2.9.3 any person who is or has been employed or engaged by the Board or any Sub-Contractor in connection with the provision of any of the Services;
 - 14.2.9.4 any trade union or staff association or employee representative (whether such claim arises as a result of any act, fault or omission of the Board and/or any Sub-Contractor);

- 14.2.9.5 any breach by the Board or any Sub-Contractor of its/their obligations under Regulations 13 or 14 of TUPE; or
- 14.2.9.6 any claim by any person other than a Relevant Employee that their contract of employment or any liabilities, rights or obligations thereunder has transferred from the Board or any Sub-Contractor to the Council or to any Replacement Service Provider on the Service Transfer Date pursuant to TUPE (including any Employment Liabilities arising from the termination of such person's employment whether before on or after the Service Transfer Date).
- 14.2.10 The parties shall co-operate to ensure that any requirements to inform and consult with the employees and/or employee representatives in relation to any Relevant Transfer will be fulfilled.
- 14.3 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to Clause 14.2.2 to 14.2.10, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Board or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

15. CHANGES

15.1 Changes to the Services

- 15.1.1 The Council has the right to propose changes to the Services in accordance with this Clause 15.1. If the Council requires a change to the Services, it must serve a written notice ("**Council Change Notice**") on the Board.
- 15.1.2 The Council Change Notice shall set out the change in the Services required in sufficient detail to enable the Board to provide the Council with a detailed breakdown of the financial and other implications of implementing the change to the Services.
- 15.1.3 As soon as practicable and in any event within 10 Working Days after having received the Council Change Notice, the Board shall deliver to the Council its response ("**Response**") setting out:
 - 15.1.3.1 whether relief from compliance with obligations under this Agreement is required;
 - 15.1.3.2 any impact on the provision of the Services;
 - 15.1.3.3 any amendment required to this Agreement or to any other Project Document as a result of the change in Service;
 - 15.1.3.4 any estimated change in the costs of the Project that result from the change in Services including any change in the Board Service Fee;
 - 15.1.3.5 any required changes to the Council Support Services and any consequent change in the Council Service Provision Fee;
 - 15.1.3.6 any loss of revenue that results from the change in Services;

- 15.1.3.7 any capital expenditure and/or operational expenditure that is required or no longer required as a result of the change in Service; and
- 15.1.3.8 any regulatory approvals or other consents or permissions which are required.
- 15.1.4 As soon as practicable after the Council receives the Response, the Parties shall discuss and agree the issues set out in the Response.
- 15.1.5 If the Parties cannot agree on the contents of the Response then the dispute will be determined in accordance with Clause 19 (*Dispute Resolution*).
- 15.1.6 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to Clause 19 (*Dispute Resolution*), the Council shall:
 - 15.1.6.1 confirm in writing the Response (as modified); or
 - 15.1.6.2 withdraw the Council Change Notice.
- 15.1.7 If the Council does not confirm in writing the Council Change (as modified) within 30 days of the contents of the Council Change having been agreed in accordance with paragraph 15.1.4 above or determined pursuant to paragraph 15.1.5 above, then the Council Change Notice shall be deemed to have been withdrawn.

15.2 Changes to the Project Agreement and/or DMPA proposed by the Board

- 15.2.1 The Board shall not propose a Board Change pursuant to Schedule 19 of the Project Agreement or Schedule 10 of the DMPA without first obtaining the written consent of the Council.
- 15.2.2 Without prejudice to Clause 15.2.1, if the Board wishes to propose a Board Change under the Project Agreement and/or the DMPA, it must:
 - 15.2.2.1 send a copy of the draft Board Change Notice to the Council; and
 - 15.2.2.2 if so requested by the Council within ten (10) Working Days of receipt of the draft Board Change Notice in accordance with Clause 15.2.2.1, meet with the Council to discuss the content of such draft notice.
- 15.2.3 Following a request by the Council pursuant to Clause 15.2.2.2, the Board and the Council shall meet within ten (10) Working Days to discuss the draft Board Change Notice. For the avoidance of doubt, the Council shall not be required to accept any such proposed Board Change, save to the extent that the Board is required to progress such a Board Change pursuant to the terms of the Project Agreement or DMPA.

15.3 Changes to the Project Agreement and/or DMPA proposed by the Council

- 15.3.1 The Council may require the Board to propose a Board Change in accordance with the provisions of Schedule 19 of the Project Agreement and/or

Schedule 10 of the DMPA (as relevant) by issuing a written notice of the same to the Board including reasonable details of, and justification for, the proposed change.

15.3.2 If so requested by the Board within ten (10) Working Days of receipt by it of the notice referred to in Clause 15.3.1, the parties shall meet to discuss the proposed Board Change.

15.3.3 As soon as reasonably practicable following such meeting, or otherwise if a meeting is not requested, the Board shall propose and pursue such change pursuant to Schedule 19 of the Project Agreement and/or Schedule 10 of the DMPA (as relevant).

15.4 Changes to the Project Agreement/DMPA proposed by the Project Company/DMPA Company

15.4.1 The Board shall not accept, reject or comment upon any Project Company Change Notice it receives from the Project Company pursuant to Schedule 19 of the Project Agreement or DMPA Company Change Notice it receives from the DMPA Company pursuant to Schedule 10 of the DMPA without the prior written consent of the Council.

15.4.2 The Board shall provide the Council with copies of all Project Company Change Notices and DMPA Company Change Notices received by the Board pursuant to Schedule 19 of the Project Agreement or Schedule 10 of the DMPA as soon as reasonably practicable after the Board receives such a notice.

15.4.3 If so requested by the Council within ten (10) Working Days of receipt by the Council of the Project Company Change Notice or DMPA Company Change Notice, the Council and the Board shall meet to discuss such notice.

15.4.4 Within ten (10) Working Days of the meeting pursuant to Clause 15.4.3, the Council shall inform the Board, at its absolute discretion, whether it requires the Board to accept (with or without comment and/or amendment) or reject the Project Company Change Notice or DMPA Company Change Notice as the case may be.

16. ENTIRE AGREEMENT

16.1 This Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersedes any previous negotiations, communications, representations, understanding or agreements between the Parties relating to such matters.

16.2 Each of the parties acknowledges and agrees that:

16.2.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement and the only remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement.

16.2.2 this Clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

17. FURTHER ASSURANCE

Each party will at its own cost and expense use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such documents as may from time to time be necessary for the purpose of giving effect to the provisions of this Agreement.

18. GOVERNING LAW AND ENFORCEMENT

18.1 Governing law

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales.

18.2 Jurisdiction of English courts

18.2.1 Subject to Clause 19 (*Dispute Resolution*), the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to non-contractual obligations) arising out of or in connection with this Agreement or a dispute regarding the existence, validity or termination of this Agreement (a "**Dispute**").

18.2.2 The parties agree that the courts of England are the most appropriate and convenience courts to settle Disputes and accordingly no party will argue to the contrary.

19. DISPUTE RESOLUTION

Where a Dispute is referred to the Disputes Resolution Procedure, the provisions set out in Schedule 9 (*Dispute Resolution Procedure*) shall apply.

20. VARIATIONS

20.1 No variation, alteration or waiver of any of the provisions of this Agreement, except as otherwise provided in this Agreement, shall be effective unless it is in writing and signed by or on behalf of the party against which the enforcement of such variation, alteration or waiver is sought.

20.2 No variation of or amendment to any of the provisions of this Agreement, shall be effective without the consent of the Secretary of State such consent not to be unreasonably withheld or delayed.

20.3 No waiver under this Clause 20 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement, unless (and then only to the extent) expressly stated in that waiver.

20.4 No failure or delay by any party to exercise any right or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right

or remedy. All such rights and remedies are several and cumulative and not exclusive of each other.

21. NO PARTNERSHIP

21.1 The Parties to this Agreement are not partners nor is the Board able to act as the agent of the Council except to the extent expressly set out in this Agreement, and in particular:

21.1.1 the Board shall not hold itself out as having authority or power to bind the Council in any way;

21.1.2 no provision of this Agreement shall be construed as a delegation by the Council of any statutory authority to the Board (or to the DMPA Company) save where expressly set out;

21.1.3 the Board shall not be entitled to give any consent on behalf of the Council, make any approval or decision reserved to the Council or waive any right of the Council save to the extent expressly permitted pursuant to the terms of this Agreement, and where the Board has fully complied with all of its obligations relating to such consent, approval, decision or waiver in accordance with the terms of this Agreement.

22. NOTICES

22.1 All notices under this Agreement shall be in writing and shall be served by sending the same by recorded delivery post, facsimile, electronically or by hand, or by leaving the same at:

22.1.1 the Council

Address: Halton Borough Council
Municipal Building
Kingsway
Widnes
WA8 7QF

Attention: The Council's Chief Legal Officer or Head of Legal Services, presently known as Operational Director – Legal & Democratic Services

22.1.2 the Board

Address: Mersey Gateway Crossings Board
Municipal Building
Kingsway
Widnes
WA8 7QF

Attention: Company Secretary

22.2 Any Party may change its nominated address, email address or facsimile number to another address or facsimile number in England or Wales by not less than five (5) Working Days prior written notice to the other Party.

22.3 Notices shall be deemed to have been received:

22.3.1 if sent by hand or recorded delivery post, when delivered to the addressee;

22.3.2 if sent by facsimile, upon sending, subject to:

22.3.2.1 confirmation of uninterrupted transmission by a transmission report;
and

22.3.2.2 there having been no telephonic communication by the recipient to the sender (any such telephonic communication to be confirmed in writing) that the facsimile has not been received in legible form:

(a) within three (3) hours after sending, if sent on a Working Day and between the hours of 9.00am and 4.00pm; or

(b) by noon on the next following Working Day if sent after 4.00pm on a Working Day but before 9.00am on the next following Working Day,

provided that any notice (other than a routine notice) given by fax shall be confirmed by letter sent by hand or post, but without prejudice to the original facsimile notice if received in accordance with this Clause 22.3.2

22.3.3 if sent as an electronic communication, when received by the receiving party in readable form.

23. SEVERABILITY

If any term of this Agreement shall be held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provisions eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Council and the Board shall immediately commence good faith negotiations to remedy such invalidity.

24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

24.1 Except as expressly provided in clauses 12.12, 12.13 and 14.3, and subject to clause 24.2, a person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

24.2 The Secretary of State shall be entitled to enforce his rights under clauses 12.12 and 14.3 during the DfT Guarantee Period against the Council or Board (as the case maybe).

24.3 Notwithstanding clauses 12.12, 12.13 and 14.3, the parties expressly agree that they may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

25. CONFIDENTIALITY

- 25.1 Subject to Clauses 25.2 and Clause 26, each party undertakes to comply with the requirements of any confidentiality undertaking set out in the Project Documents and Funding Letter (including the provisions of Clause 16 of the DMPA and Clause 30 of the Project Agreement).
- 25.2 Where information which is confidential (or deemed confidential pursuant to the terms of the Project Documents or the Funding Letter) is provided by one party ("**Providing Party**") to another party ("**Receiving Party**") pursuant to this Agreement, the Providing Party shall notify the Receiving Party that such information is confidential (or deemed confidential) and specify any restrictions on distribution ("**Distribution Restrictions**") which apply in respect of such information including any applicable provisions under the Project Documents or Funding Letter, and the Receiving Party shall be deemed to have complied with this Clause 25.2 provided that:
- 25.2.1 the Receiving Party only uses and distributes such information in accordance with the terms of any disclosed Distribution Restrictions;
 - 25.2.2 the Receiving Party complies with the applicable terms of the relevant Project Document or Funding Letter.

26. FREEDOM OF INFORMATION

- 26.1 Each Party acknowledges that the other is subject to the requirements of the FOIA, the Environmental Information Regulations, the Audit Commission Act 1998 and other statutory requirements for the disclosure of information to other parties and shall facilitate compliance with each other's information disclosure requirements pursuant to the same.
- 26.2 The Board shall procure the compliance by the DMPA Company and the Project Company with the requirements of the DMPA and Project Agreement in respect of FOIA and the Environmental Information Regulations, and other disclosure obligations within the DMPA and the Project Agreement to the extent required for either or both of the Board and the Council to comply with the requirements of the FOIA, the Environmental Information Regulations, the Audit Commission Act 1998 or any other statutory requirement for the disclosure of information imposed upon either the Council or the Board.
- 26.3 Each Party shall comply with the Council Policies in respect of Freedom of Information.

27. BOARD RECORDS

- 27.1 The Board shall:
- 27.1.1 at all times maintain a full record of particulars of the costs of performing the Services, including those provided pursuant to the terms of the Project Agreement and the DMPA;
 - 27.1.2 when requested by the Council, provide a summary of any of the costs referred to in Clause 27.1.1, including details of any funds held by the Board specifically to cover such costs, in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Board of its obligations under this Agreement;

- 27.1.3 provide such facilities as the Board may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause 27; and
- 27.2 Compliance with the above shall require the Board to keep books of account in accordance with best accountancy practice with respect to the Agreement showing in detail:
 - 27.2.1 administrative overheads;
 - 27.2.2 payments made to under the Project Agreement and the DMPA, including payments made by the Project Company and the DMPA Company to sub-contractors under such agreements;
 - 27.2.3 capital and revenue expenditure;
 - 27.2.4 such other items as the Council may reasonably require to conduct cost audits for verification of cost expenditure or otherwise,

and the Board shall have (and procure that the Project Company and the DMPA Company shall have) the books of account evidencing the items listed in Clauses 27.2.1 to 27.2.4 available for inspection by the Council (and any expert) upon reasonable notice, and shall present a report of these to the Council as and when requested.

- 27.3 The Board shall maintain or procure that the following are maintained:
 - 27.3.1 a full record of all incidents relating to health, safety and security which occur during the term of the Agreement; and
 - 27.3.2 full records of all maintenance procedures carried out during the term of the Agreement,

and the Board shall have the items referred to in Clauses 27.3.1 and 27.3.2 available for inspection by the Council upon reasonable notice, and shall present a report of them to the Council, as and when requested.

- 27.4 For the purposes of:
 - 27.4.1 the Local Government Finance Act 1982 (and any other applicable Legislation relating to the inspection, examination and auditing of the Council's accounts);
 - 27.4.2 the examination and certification of the Council's accounts; and/or
 - 27.4.3 an examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Council has performed its function,

the District Auditor and the Audit Commission may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Board and may require the Board to produce such oral or written explanations as he or it considers necessary.

- 27.5 The records referred to in this Clause 27 shall be retained for a period of at least five (5) years after the Board's obligations under the Agreement have come to an end.

27.6 Upon termination of the Agreement, and in the event that the Council wishes to enter into another agreement for the operation and management of the Project the Board shall (and shall ensure that the Project Company and DMPA Company) comply with all reasonable requests of the Council to provide information relating to the Board's costs of operating and maintaining the Project.

27.7 The Board shall:

27.7.1 provide to the Council copies of its annual report and accounts within 30 days of publication;

27.7.2 provide to the Council a copy of the Financial Model (as defined in the Project Agreement) and the DMPA Financial Model (as defined in the DMPA) at Financial Close and (as the same may be amended) within 30 days of any amendment thereto;

27.7.3 use all reasonable endeavours to assist the Council in its preparation of any report required by the DfT or HM Treasury from time to time.

28. SOLE REMEDY

28.1 Without prejudice to any entitlement of the Board to specific performance of any obligation under this Agreement or to injunctive relief the Board's sole remedy in relation to matters for which an express right or remedy is stated in this Agreement shall be that right or remedy and the Board shall have no other right or remedy arising by common law, in equity, by statute or otherwise.

28.2 Nothing in this Clause 28 shall prevent or restrict the right of the Council to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

IN WITNESS whereof the Parties hereto have executed this Agreement as a deed.

The Official Seal of **HALTON BOROUGH**)
COUNCIL hereunto affixed in the presence of) *SEAL*
the Authorised Signatory)

Signature _____

Name (block capitals) _____

Executed as a deed by **MERSEY GATEWAY**)
CROSSINGS BOARD LIMITED acting by:)

Signature _____

Name (block capitals) _____

Director

in the presence of:

Witness signature _____

Witness name
(block capitals) _____

Witness address

SCHEDULE 1: RESTRICTED MATTERS

No.	Restricted Matter	Restricted Matter Parties	Matter categorisation	Restricted Matter obligations
1	An increase (by the Board or the DMPA Company on behalf of the Board) of average weighted Tolls of more than twenty per cent (20%) in real terms than the Toll levels set out in the Final Business Case	Council	Red	
2	An increase (by the Board or the DMPA Company on behalf of the Board) of average weighted Tolls of twenty per cent (20%) or less in real terms than the Toll levels set out in the Final Business Case	Council	Orange	
3	Any change (by the Board or by the DMPA Company on behalf of the Board) to the Local User Discount Scheme or the application of the Local User Discount Scheme or any increase (by the Board or by the DMPA Company on behalf of the Board) of the Toll Fare that will be payable following application of the Local User Discount Scheme save to the extent that such increase arises from a change in the Tolls in accordance with the terms of this Agreement.	Council	Red	
4	Any reduction by the Board, or the DMPA Company on behalf of the Board, of any Tolls.	Council	Orange	
5	A decision by the Board, or the DMPA Company on behalf of the Board, to not vary the Tolls in accordance with the Council Toll Policies	Council	Orange	

No.	Restricted Matter	Restricted Matter Parties	Matter categorisation	Restricted Matter obligations
6	Providing advice or consulting with other toll operators for profit, where the Board can demonstrate that provision of such services shall not interfere with compliance with all duties and obligations under this Agreement and shall be compliant with Law.	Council	Red	Board to confirm that proposals are in compliance with applicable Council Policies. Where entering into such an arrangement with a third party would lead to a breach of any Law then the Board shall not proceed with such arrangement.
7	Any material change to, introduction of, or withdrawal of, a discount scheme proposed by the Board	Council	Orange	
8	Termination of any Project Document to which the Council is not a party	Council	Red	

No.	Restricted Matter	Restricted Matter Parties	Matter categorisation	Restricted Matter obligations
9	<p>Entry into any contracts or agreements or other ancillary documents in relation to the Project (including any replacement Project Documents) and/or termination of or any amendment to any Project Document to which the Council is not a party where such action would:</p> <ul style="list-style-type: none"> • adversely affect the Council and/or the DfT; • be contrary to the Project Objectives or would (on the balance of probabilities) significantly reduce the ability of the Board, the DMPA Company, the Project Company or any other sub-contractor to support the Project Objectives; • breach any applicable Law; • increase the liabilities of the Council and/or the DfT during the Contract Period; • be likely (on the balance of probabilities) to require the Board (or the Council) to increase the overall level of Tolls above the amounts permitted by this Agreement; • cause the Council to be in breach of the Funding Letter and/or where the DfT has raised valid objections that such Proposed Action would lead to a breach of the Funding Letter; <p>each a "Material Consequence".</p>	Council	Red	
MROS/JWR/96801/120036/UKM/45404081 28				57

No.	Restricted Matter	Restricted Matter Parties	Matter categorisation	Restricted Matter obligations
10	Entry into any contracts or agreements or other ancillary documents in relation to the Project (including any replacement Project Documents) and/or termination of or any amendment to any Project Document to which the Council is not a party, which if implemented would not result in a Material Consequence	Council	Orange	

SCHEDULE 2: STAKEHOLDER ENGAGEMENT

1. The Project Company is responsible for a wide range of public relations and communications activities, with the Board working a support role.
2. The Board will appoint a Marketing & Communications Officer to work closely with the Project Company and their Communication Team in order to enhance the project's reputation locally, regionally and nationally
3. The previous Stakeholder Management Plan ("SMP") developed by the Council is recognised as a living document and the Council and the Board will jointly review the SMP to ensure that it is fit for purpose during the construction and operational phases.
4. The objectives of the SMP will be to document and communicate how information will be disseminated to and received from relevant stakeholders connected with Mersey Gateway Project.
5. The SMP shall identify:
 - 5.1 who the stakeholders are;
 - 5.2 the requirements of each stakeholder;
 - 5.3 the requirements of the project to receive information and/or obtain approvals from stakeholders;
 - 5.4 the means of communication with each stakeholder;
 - 5.5 the frequency and duration of communication; and
 - 5.6 the roles and responsibilities of the project team in the implementation of the SMP.
6. The SMP identifies stakeholders who are relevant to the project and classify them into groups in accordance with their needs. The main stakeholder groups are as follows:
 - 6.1 the Mersey Crossing Group (MCG);
 - 6.2 funding partners;
 - 6.3 DfT;
 - 6.4 statutory consultees;
 - 6.5 the wider public;
 - 6.6 members of the public who have expressed an interest in the scheme;
 - 6.7 landowners;
 - 6.7.1 directly affected landowners, leaseholders and tenants;

- 6.7.2 individuals who are notified of the scheme's proximity through local land searches;
- 6.7.3 small businesses;
- 6.8 national, regional and local decision makers;
- 6.9 environmental organisations;
- 6.10 other organisations, both public and private sector;
- 6.11 potential suppliers; and
- 6.12 media.

Part 1: Board Engagement

To assist the Council in developing and implementing the SMP and to provide principal contact with the Project Company in respect of all matters concerning the Project.

Part 2: Council Engagement

To assist the Board in developing the SMP and to provide support and assistance to the Board as necessary in delivering the SMP.

SCHEDULE 3: BOARD GOVERNANCE

Part 1: Definitions

1. In this Schedule 3 unless the context otherwise requires:
 - "**Appointments Committee**" shall mean the committee of the Directors appointed pursuant to paragraph 4.3 of Part 3; ;
 - "**Board of Directors**" means the board of directors from time to time of the Board;
 - "**Chair**" shall mean the chairman of the Board of Directors appointed in accordance with paragraph 17 of Part 2;
 - "**Council Non-Executive Director**" has the meaning given to it in paragraph 12.1.1 of Part 2 of this Schedule 3;
 - "**Director**" shall mean any director for time being of the Board including where applicable an alternate director.
 - "**Executive Director**" shall mean a Director appointed in accordance with paragraph 4 of Part 2 of this Schedule 3;
 - "**Independent Non-Executive Director**" has the meaning given to it in paragraph 12.1.1 of Part 2 of this Schedule 3;
 - "**Non-Executive Director**" shall mean a Director appointed in accordance with paragraph 11 of Part 2 and shall have the meaning given to it in paragraph 12 of Part 2 of this Schedule 3;
 - "**Replacement Executive Director**" has the meaning given to it in paragraph 2 of Part 2 of this Schedule 3;
 - "**Replacement Independent Non-Executive Director**" has the meaning given to it in paragraph 7 of Part 2 of this Schedule 3;
 - "**Type of Non-Executive Director**" shall mean either a Council Non-Executive Director or an Independent Non-Executive Director.
2. Words and expressions defined in or for the purposes of the Companies Act 2006 shall, where the context permits, bear the same meanings in this Schedule 3.

Part 2: Appointment/Removal of Directors and the Chair

1. The Council shall appoint the initial Executive Directors on or before the Effective Date.
2. Following the Effective Date, the Appointments Committee shall determine any replacement Executive Director ("**Replacement Executive Director**"), following the resignation or removal of an Executive Director, and the Council shall appoint such Replacement Executive Director as an Executive Director, promptly following such notification. In appointing any Replacement Executive Director the Appointments Committee shall consult with, and take into account the reasonable advice of:
 - 2.1 the Chief Executive, in respect of the appointment of any Replacement Executive Director other than the Chief Executive;
 - 2.2 the other remaining Executive Directors in respect of the appointment of a replacement Chief Executive.
3. If the Council either:
 - 3.1 removes an Executive Director in accordance with its right as shareholder of the Board, then the Council shall be responsible for and indemnify the Board against any and all claims by such Director for unfair or wrongful dismissal or other compensation arising out of such removal and against any losses, costs or expenses suffered or reasonably incurred as a result thereof; or
 - 3.2 determines not to appoint a Replacement Executive Director determined in accordance with paragraph 2, then the Council shall be responsible for and indemnify the Board against any and all losses, costs or expenses suffered or reasonably incurred as a result thereof.
4. There shall be appointed at any one time be no more than three (3) executive directors ("**Executive Director**") who shall each be:
 - 4.1 a senior member of the executive team of the Board;
 - 4.2 employed by the Board (or seconded to the Board by the Council pursuant to the requirement for Support Services);
5. The Executive Directors appointed by the Council shall at all times include the chief executive and finance officer of the Board (or where no employee has such titles, such employees as fulfil the role most closely analogous to that of chief executive and/or finance officer, as the case may be) and one other senior officer with experience that the Council may determine is most relevant to the current stage of the Project. Where any Executive Director ceases to be an employee of the Board (or a secondee from the Council to the Board) the Council shall remove such Executive Director from their role as a Director.
6. The Council shall be entitled to remove or substitute any Executive Director (and the terms of employment of such Executive Directors shall ensure that the Board is entitled to dismiss such Executive Director) following a Board Default in accordance with the provisions of Clause 0, and paragraph 5 above shall not apply for the period following such removal until the Board has appointed a replacement member or members of the executive team.
7. Subject to paragraph 12 and 14, the Council shall appoint the initial Non-Executive Directors on or before the Effective Date.

8. Following the Effective Date, the Appointments Committee shall determine any replacement Independent Non-Executive Director ("**Replacement Independent Non-Executive Director**"), following the resignation or removal of an Non-Executive Director or the expiry of their term of office, and the Council shall appoint such Replacement Non-Executive Director as a Non-Executive Director, promptly following such notification.
9. Subject to paragraph 12 and 14, the Council shall be entitled to remove or substitute Council Non-Executive Directors without referral to the Appointments Committee, and shall promptly:
 - 9.1 remove any Council Non-Executive Director who is no longer a member of the Council;
 - 9.2 notify the Appointments Committee if any Independent Non-Executive Director becomes a member of the Council or otherwise does not, to the Council's knowledge, continue to comply with the requirements set out in Part 5 (*Non-Executive Director Requirements*);
10. If the Council either:
 - 10.1 removes a Non-Executive Director in accordance with its right as shareholder of the Board, then the Council shall be responsible for and indemnify the Board against any and all claims by such Director for unfair or wrongful dismissal or other compensation arising out of such removal and against any losses, costs or expenses suffered or reasonably incurred as a result thereof; or
 - 10.2 determines not to appoint a Replacement Independent Non-Executive Director determined in accordance with paragraph 7, then the Council shall be responsible for and indemnify the Board against any and all losses, costs or expenses suffered or reasonably incurred as a result thereof.
11. The Council acknowledges that appointment of Directors in accordance with this Schedule 3 is a requirement of the Funding Letter.
12. There shall be appointed at all times no more than four (4) non-executive directors of whom:
 - 12.1.1 two (2) Directors shall be independent of the Council ("**Independent Non-Executive Director**"); and
 - 12.1.2 two (2) Directors shall be council members of the Council ("**Council Non-Executive Director**",

(together the "**Non-Executive Directors**"). Each Non-Executive Director shall be appointed for a term of three (3) years.
13. No Director shall at any time be affiliated with any contractor (which term shall be deemed to include employment by, directorship of, or material shareholding in such contractor) pursuant to the terms of the Project Documents, including the Project Company, DMPA Company, any funder, or any key sub-contractor, and where the Council becomes aware that any Director is so affiliated the Council shall remove or substitute such Director as soon as reasonably practicable in accordance with the requirements of this Schedule 3.
14. No Independent Non-Executive Director shall be appointed or removed without the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).

15. Independent Non-Executive Directors may be remunerated and, pursuant to the Local Authorities (Companies) Order 1995, Council Non-Executive Directors will only be entitled to be paid allowances.
16. Executive Directors shall not be remunerated, save pursuant to the terms of their contract of employment with the Board, or where they are seconded by the Council, their contract of employment with the Council.
17. The Council shall appoint a Chair from the Non-Executive Directors, for a period of 24 months, and the first such Chair shall be appointed for a period of 24 months commencing on the Effective Date. The first such Chair shall be a Council Non-Executive Director and the post of Chair shall then alternate between Independent Non-Executive Directors and Council Non-Executive Directors.
18. In the event that any Chair vacates his office as Chair for any reason before the expiry of the 24 month period for which he was appointed, the Council shall appoint another Director of the same Type of Non-Executive Director to replace him until the expiry of the 24 month period
19. If the Chair for the time being is unable to attend any meeting of the Board of Directors, the Council shall appoint another Non-Executive Director of the same Type of Non-Executive Directors to act as chairman in his place at such meeting.

Part 3: Board Meetings and Committees

1. The quorum for board meetings shall be one Executive Director and the Chair (or a replacement Non-Executive Director nominated appointed pursuant to paragraph 19 of Part 2 of this Schedule 3).
2. The Chair shall have a casting vote.
3. The Board of Directors shall (and the Council shall exercise its powers in respect of the Board to ensure that insofar as it is legally able during the term of this Agreement, the Board of Directors shall) meet at regular intervals of a month, or as may otherwise be required to ensure that the Board is capable of making all decisions required to comply with its legal and financial commitments, including any obligations pursuant to the Project Documents and the Board shall ensure that no less than seven (7) days written notice is given to each of the Directors, such notice to be accompanied by an agenda specifying the business to be transacted together with copies of any documents to be tabled at the meeting (or if such copies are not available, with full details of such documents).
4. Subject to the express requirements of this Agreement, the Board of Directors shall be entitled to form committees to make decisions, provided that:
 - 4.1 such committees shall have equal numbers of Executive and Non-Executive Directors, or shall be constituted such that neither Executive Directors or Non-Executive Directors can make decisions that bind the Board of Directors without the consent of at least one Non-Executive Director and one Executive Director (as the case may be);
 - 4.2 the Board of Directors shall form an audit committee ("**Audit Committee**"), which shall meet at least three (3) times per annum, and shall be authorised by the Board to investigate any activity within its terms of reference set out in Part 6 (*Audit Committee Terms of Reference*) and shall be constituted on the basis set out therein; and
 - 4.3 the Board of Directors shall form an appointments committee ("**Appointments Committee**") consisting of the Non-Executive Directors, which shall be responsible for selecting the Executive Directors and any other senior officers of the Board (which the Board of Directors deem it appropriate to be appointed by the Board of Directors and not by the Executive Directors) in accordance with this Agreement.

Part 4: Appointment Committee

1. The Appointments Committee shall assess the role of each Executive Director:
 - 1.1 every three (3) Years following the appointment of such Director;
 - 1.2 following a decision by the majority of the Non-Executive Directors to review such role;
 - 1.3 on any date identified in a review carried out pursuant to paragraph 2 below; or
 - 1.4 following a request by the Council.
2. In assessing the role of the Executive Director, the Appointments Committee shall take into consideration:
 - 2.1 the Annual Business Plan produced by the Board;
 - 2.2 the scope and nature of the role of such Executive Director;
 - 2.3 such other information as the Appointments Committee shall deem appropriate,
 - 2.4 to determine whether the role of the Executive Director is appropriate in light of the Services to be performed in the following 3 year period.
3. Following such review, the Appointments Committee shall determine:
 - 3.1 whether to propose the extension of the role of such Executive Director, in which case, such Executive Director shall continue in their role;
 - 3.2 whether to require the Executive Director to re-apply for their position, and whether the role of such Executive Director shall be amended, following such review; or
 - 3.3 whether a further review of the role is required in a shorter period than three (3) years, in which case, the Executive Director shall be offered a fixed term contract for such term, and the Appointments Committee shall notify the Board of Directors of the proposed extension of term.
4. The Appointments Committee shall also be entitled to review the role of any other senior member of staff employed by the Board following the publication of the Annual Business Plan to determine whether the staffing of the Board is appropriate for its proposed purposes in the following Year, and may make recommendations to the Board regarding such employees.

Part 5: Non-Executive Director Requirements

1. The Non-Executive Directors shall, so far as this is consistent with their fiduciary duties as Directors of the Board, comply with Nolan Principles in carrying out their duties as directors, taking into account the nature of the Board as a wholly owned subsidiary of the Council;
2. The Nolan Principles are as follows:

Selflessness

- 2.1 Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

- 2.2 Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

- 2.3 In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

- 2.4 Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

- 2.5 Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

- 2.6 Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

- 2.7 Holders of public office should promote and support these principles by leadership and example.
3. The Council shall at the request of the Board, provide training to Directors on compliance with these principles.

Part 6: Audit Committee Terms of Reference

1. Purpose

- 1.1 The main role and responsibilities of the Audit Committee shall include:
- 1.1.1 to monitor the integrity of the financial statements of the Board and any formal announcements relating to the Board's financial performance, reviewing significant financial reporting judgements contained in them;
 - 1.1.2 to review the Board's internal financial controls and the Board's internal control and risk management systems;
 - 1.1.3 to monitor and review the effectiveness of the Board's internal audit function;
 - 1.1.4 to make recommendations to the Board, for it to put to the shareholders for their approval in general meeting, in relation to the appointment of the external auditor and to approve the remuneration and terms of engagement of the external auditor;
 - 1.1.5 to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements; and
 - 1.1.6 to report to the Board on how it has discharged its responsibilities.

2. Membership

- 2.1 Membership of the Audit Committee shall comprise:
- 2.1.1 two (2) non-executive directors (one independent and one employed and nominated by the Council) ("**Non-Executive Members**");
 - 2.1.2 the Board's Finance Director; and
 - 2.1.3 the Head of Internal Audit of the Council,
- (each a "**Member**").
- 2.2 The Chief Executive Officer of the Board may be invited to attend.
- 2.3 Other senior managers of the Board may be required to attend the Audit Committee, including:
- 2.3.1 to explain where recommendations of the Audit Committee may not have been implemented within a reasonable time; and
 - 2.3.2 to provide specialist advice and support.
- 2.4 The Board shall appoint the chair of the Audit Committee ("**Chair**").

3. Quorum

- 3.1 An Audit Committee meeting will be quorate if at least two (2) Non-Executive Members are present.

- 3.2 Should a Member not be able to attend an Audit Committee meeting, such Member must provide their apologies in advance to the Chair.

4. Attendance

Members should normally attend Audit Committee meetings, and it is expected that each Members will attend a minimum of three (3) meetings per annum. Deputising arrangements must be agreed by the Chair

5. Frequency & Notice

Audit Committee meetings shall be held not less than three (3) times per year, however, the Chair may arrange extraordinary meetings at their discretion. A schedule of pre-arranged meetings will be distributed to all Members at the start of each year.

6. Duties

Financial reporting

- 6.1 The Audit Committee shall monitor the integrity of the financial statements of the Board including its Annual Report, and reviewing significant financial reporting issues and judgements which they contain. The Audit Committee shall also review summary financial statements, significant financial returns to regulators and any financial information contained in other official documents.
- 6.2 The Audit Committee shall review and challenge where necessary:
- 6.2.1 the consistency of, and any changes to, accounting policies;
 - 6.2.2 the methods used to account for significant or unusual transactions where different approaches are possible;
 - 6.2.3 whether the Board has followed appropriate accounting standards and made appropriate estimates and judgements, taking into account the views of the external auditors;
 - 6.2.4 the clarity of disclosure in the Board's financial reports and the context in which statements are made; and
 - 6.2.5 all material information presented with the financial statements (insofar as it relates to audit, governance and risk management).
- 6.3 The Audit Committee should also ensure that the systems for financial reporting, including those of budgetary control, are subject to review as to completeness and accuracy of the information provided to the Board.

Internal controls and risk management systems

- 6.4 The Audit Committee shall review the implementation and on-going quality of governance, risk management and internal control, across the whole of the Board's activities. In particular, the Audit Committee shall:
- 6.4.1 review the effectiveness of the internal controls, board assurance framework, governance and risk management systems;

- 6.4.2 review the Board's Corporate Risk Register at each of its meetings and seek assurances from the Board's management that risks identified in the Corporate Risk Register are being effectively managed and actions are being implemented;
- 6.4.3 review the adequacy of all risk and control related disclosure statements, together with any reports from internal or external audit or other appropriate independent assurances, before making recommendations to the Board;
- 6.4.4 review the statements to be included in the Annual Report concerning internal controls and risk management;
- 6.4.5 receive the annual report of the Chief Internal Auditor and ensure that any issues arising are addressed by the Board's management;
- 6.4.6 review the underlying assurance processes, put in place by the Board's management, that indicate the degree of the achievement of corporate objectives, the effectiveness of the management of principal risks and the appropriateness of the above disclosure statements;
- 6.4.7 monitor the policies and procedures relating to counter-fraud and anti-corruption;
- 6.4.8 review the policies for ensuring compliance with relevant regulatory, legal and code of conduct requirements;
- 6.4.9 review instances where the Board's financial controls are waived and investigate those issues that present a risk to the internal control functions of the Board;
- 6.4.10 review, at least annually, the Board's register of gifts, hospitality and sponsorship, and declaration of Board members' interests and to seek assurance from the Board's management that they have adequate arrangements in place to maintain up to date registers;
- 6.4.11 review, at least annually, the Board's register of Director and Management Interests and seek assurance from the Board's management that the register is being maintained and used to ensure that there are no conflicts of interest arising.

Counter Fraud

- 6.5 The Audit Committee will have oversight of fraud investigations and the outcomes including any action taken, both criminal and/or disciplinary.
- 6.6 The Audit Committee will receive any reports arising from the investigation of any fraud explaining how the issue arose, the internal checks that identified the issue and the actions taken to ensure that there is no risk of reoccurrence.

External Audit

- 6.7 The Audit Committee shall review the work and findings of the external auditor and consider the implications and management's responses to their work.
- 6.8 The Audit Committee shall oversee the relationship with the external auditor including (but not limited to):

- 6.8.1 consideration of the appointment and performance of the external auditors and make recommendations to the Board;
- 6.8.2 discussion and agreement with the external auditor, before the audit commences, of the nature and scope of the audit as set out in the annual plan;
- 6.8.3 discussion with the external auditor of their local evaluation of audit risks and assessment of the group and associated impact on the audit fees;
- 6.8.4 review all external audit reports, including agreement of the annual audit letter reviewing appropriateness of management responses;
- 6.8.5 meet the external auditor at least once a year without management being present; to discuss their remit and any issues arising from the Board's audit; and
- 6.8.6 ensure the Board receives an effective service.

Whistle-blowing

- 6.9 The Audit Committee shall review the Board's arrangements for their employees to raise concerns, in confidence, about possible wrongdoing.
- 6.10 The Audit Committee shall ensure that these arrangements allow proportionate and independent investigation of such matters and appropriate follow up action.

7. Reporting

The minutes of Audit Committee meetings shall be formally recorded and submitted to the Board.

8. Other Matters

- 8.1 The Board shall ensure that the Audit Committee:
 - 8.1.1 is provided with sufficient resources to undertake its duties;
 - 8.1.2 has access to the services of the Board's administration services on all Audit Committee matters including: assisting the Chairman in planning the Audit Committee's work, drawing up meeting agendas, maintenance of minutes, drafting of material about its activities for the annual report, collection and distribution of information and provision of any necessary practical support;
 - 8.1.3 receives information and papers in a timely manner to enable full and proper consideration to be given to the issues; and
 - 8.1.4 has funds available to it to enable it to take independent legal, accounting or other advice when the audit committee reasonably believes it necessary to do so.

9. Reviewing Terms of Reference

The Board shall review, at least annually, the terms of reference of the Audit Committee.

SCHEDULE 4: SUPPORT SERVICES

Part 1: ICT Support

The Board will use the services of the Council's ICT Team to provide support at an operational level in respect of the ICT required to operate the Board. The Board's ICT services will be ring-fenced from those of the Council.

1. Fully Managed Desktop

1.1 The provision of the following services:

Hardware	Windows Laptop or PC, Screen, Dock, Keyboard, Mouse
Software	Windows 7, Office 2010 Professional , Adobe Reader, Tweetdeck, PlanWeb
Email	Based Upon Mersey Gateway email address
Telephony	Lync Inc. Headset - (Desktop handset additional one off cost)
Desktop Data Management	SharePoint site with 100GB of storage available to MGCB, Full back up, all laptop devices encrypted
Support	HBC ICT Service Desk

1.2 The annual costs of the provision of this service with be: ████████████████████

1.3 Additional costs: For use with the standard fully managed desktops as follows:

MS Project Professional 2013	████████████████████
MS Visio Professional 2013	████████████████████
Adobe Acrobat Professional XI	████████████████████
2 factor Secure Remote Access using virtual desktop. Allowing any access via any device including	████████████████████
Managed iPad	████████████████████
iPhone (2 Year Contract)	████████████████████ ████████████████████
MFD	£ ████████████████████
MapInfo Licensing and access	████████████████████

2. Fully Managed Data Storage

2.1 The provision of the following services:

5TB Project Archive (Additional requirement ████████████████████)	Rental of data space based upon EMC VNX cluster – To Include backup, DE duplication and replication of the data across 2 data centres
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2.2 The annual costs of the provision of this service will be: [REDACTED]

3. Agresso Software

3.1 There will be a one off cost associated with the bespoke construction of a new independent company module in Agresso accounting software at a cost of [REDACTED]

3.2 Future alterations to the Module will be charged at cost rate

4. IT Services Fees

4.1 The IT Services Fees shall be calculated on the following basis:

$$ITSF_m = \frac{FMD_a \times NU_m}{12} + \frac{FMDS_a}{12} + IAS + AAC + OFMDC$$

4.2 Where:

4.2.1 NU_m is the number of users of the full managed desktop in Month m ;

4.2.2 FMD_a is the annual cost of provision of a full managed desktop to a user as specified in paragraph 1.2;

4.2.3 $FMDS_a$ is the annual cost of Fully Managed Data Storage specified in paragraph 2.2 plus any cost of additional data above the 5TB limit, as specified in paragraph 2.1;

[REDACTED]

4.2.5 AAC is any additional cost of Agresso alterations, payable in accordance with paragraph 3.2; and

4.2.6 $OFMDC$ are any other fully managed desktop costs payable in accordance with paragraph 1.3, which shall be calculated in accordance with the rates applicable pursuant to such paragraph, or as may otherwise be agreed between the Board and the Council.

Part 2: Human Resources and Payroll

The Council's Human Resources Division specialises in people management, advice and support. They provide a timely, cost effective, practical and improvement focused service to customers.

Included in this Part of Schedule 5 are both one off costs relating to the establishment of the Board as an organisation and on-going payments for delivery of services by the Council. The Council shall provide the following services:

1. Employee Relations & Learning and Development

1.1 Provision of high quality, professional advice and support service to the Board's managers and employees on a range of employee relations issues including:

1.1.1 Advice via telephone/email and face to face support;

1.1.2 Model policies and procedures;

1.1.3 Model letters and meeting notes;

1.1.4 Updates on employment law;

1.1.5 Organisational visits;

1.1.6 Board meetings;

1.1.7 Redundancy meetings;

1.1.8 Learning and development;

1.1.9 Welfare;

1.2 The annual costs of the provision of this service will be: [REDACTED]

1.3 There are a number of "one-off" costs associated with setting up systems and obtaining licences and these will be: [REDACTED]

2. Employee Services

2.1 Provision of recruitment and contracts administration, advice and training relating to terms and conditions of employment are also included. Within this service are included:

2.1.1 Advice via telephone and email;

2.1.2 Model documentation;

2.1.3 Contract administration;

2.1.4 Pre-appointment checks;

2.1.5 Volunteers;

2.1.6 Maternity, paternity and adoption;

- 2.1.7 Job vacancies;
- 2.1.8 Induction training;
- 2.1.9 E-circular and employment law;
- 2.2 The annual costs of the provision of this service will be: [REDACTED]
- 2.3 There are a number of “one-off” costs associated with setting up systems and obtaining licences and these will be: [REDACTED]
- 2.4 Additional costs for recruitment and safer recruitment:
 - 2.4.1 Administrative support for senior manager appointments of [REDACTED], in addition to cost of advertisement.
 - 2.4.2 Administration of advertisements to appear in external media or websites only will be charged at [REDACTED]

3. Pay Services

- 3.1 Provision of a fully managed payroll service together with payroll related work including:
 - 3.1.1 Monthly payroll calculations, including associated work and liaison with statutory bodies;
 - 3.1.2 Pensions support regarding LGPS¹; and
 - 3.1.3 Year End Work services including appropriate liaison and reporting to HMRC as necessary.
- 3.2 The annual costs of the provision of this service will be: [REDACTED]
- 3.3 Additional costs:
 - 3.3.1 [REDACTED] annual pension return; and
 - 3.3.2 [REDACTED]
 - 3.3.3 at the start of the Agreement, there will be a one off fee of [REDACTED] in recognition of the work undertaken in establishing a separate payroll for the Board.

4. Calculation of Council Service Provision Fee

- 4.1 For the purposes of Schedule 6, the human resources and payroll element of the monthly Council Service Provision Fee shall be calculated as follows:

$$HRP_m = \frac{[ERLD_a \times EN] + [ES_a \times EN] + [PS_a \times EN]}{12} + EA_m + APR + IBPR + ACR + IES + IERLD$$

¹ Council to confirm position on LGPS in respect of employees of the Board.

Part 3: Financial Support

The Board shall use the services of the Council's Financial Team to provide support at an operational level in respect of financial management. Specifically the Council will:

- provide the Board with its own financial accounting software (Agresso) bespoke to the needs of the Board in accordance with Part 1: (ICT Support) of this Schedule 5;
- provide treasury management support, regarding the operating of the Board's bank accounts, payments to and from the Board's bank accounts as authorised; and
- processing and payment of approved invoices on behalf of the Board,

together with other services associated with the delivery of the above support.

1. Treasury Management & Accounting Support

1.1 To provide the Board with a treasury management function including:

- 1.1.1 Upgrading the Council's BACS software licence to enable the Council to submit payments from different entities;
- 1.1.2 Complying with the requirement for the Council to become a BACS Approved Bureau, to submit transactions through the BACS service on behalf of third party organisations;
- 1.1.3 Upgrading the Agresso Accounting Software Licence;
- 1.1.4 Financial Management – treasury management daily activity, preparation of BACS run and associated validation;
- 1.1.5 Financial Management – treasury management reconciliation of the bank accounts and reporting on a monthly basis; and
- 1.1.6 Financial Management – financial reporting and Agresso interaction reporting on a monthly basis

1.2 The cost of the provision of these Treasury Management & Accounting Support services will be: £ [REDACTED]

1.3 There are a number of "one-off" costs associated with setting up systems and obtaining licences payable as part of the first Council Service Provision Fee, which will be: [REDACTED]

2. Purchase Order and Invoice Payments

2.1 To provide the Board with a purchase order and invoice payment functions including:

- 2.1.1 Board supplier set up and maintenance;
- 2.1.2 Maintenance of Agresso authorisation rules for the Board;
- 2.1.3 Purchase ordering through Agresso;

- 2.1.4 Purchase order invoice scanning, indexing and registration;
 - 2.1.5 Non-Purchase Order payment facility;
 - 2.1.6 Duplicate invoice checking service;
 - 2.1.7 Board staff expenses reimbursement facility;
 - 2.1.8 A weekly BACS payment run for the Board;
 - 2.1.9 Issuing of remittance advices in respect of all payments;
 - 2.1.10 Access to the Council travel desk facility for rail / hotel bookings (as required).
- 2.2 The cost of the provision of these Purchase Order and Invoice Payment Services will be:
[REDACTED]
- 2.3 The Board reserves the right to review the services provided by the Council and if necessary and cost effective to source additional services as may be required in accordance with this Agreement.
- 2.4 In addition the Board accepts that the any increase in external licence fees that the Council incurs on behalf of the Board will be passed on at cost, and either the values of TMASa and POIPa will be amended accordingly or an additional charge shall be levied by the Council.

3. Financial Support Fees

- 3.1 For the purposes of Schedule 6, the financial support element of the monthly Council Service Provision Fee shall be calculated as follows:

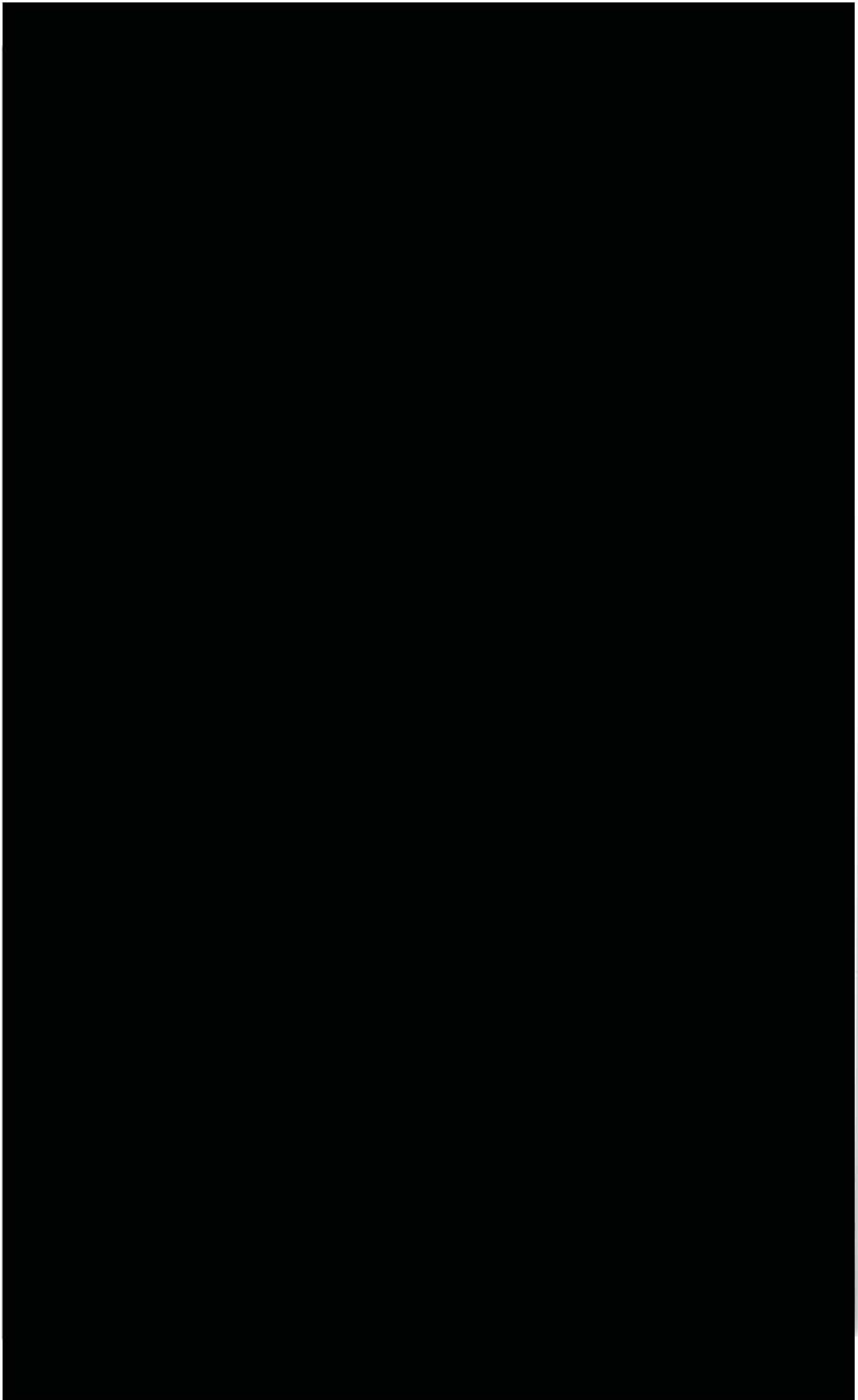
$$FSF_m = ITMAS + \frac{TMAS_a}{12} + \frac{POIP_a}{12} + OC$$

- 3.2 Where:

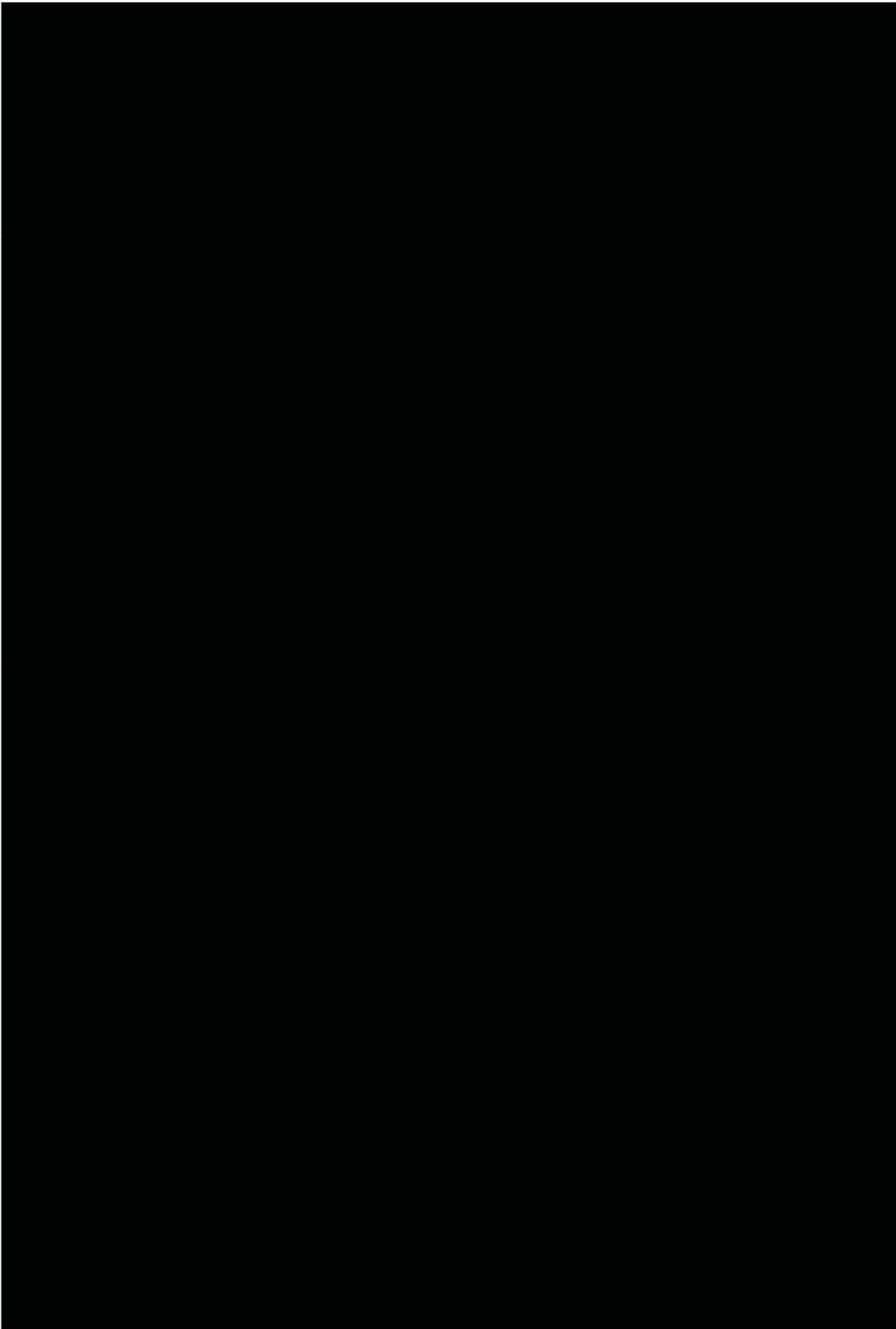
- 3.2.1 FSF_m shall be the financial support element of the Council Service Provision Fee payable in Month m.
- 3.2.2 [REDACTED]
- 3.2.3 TMAS_a shall have the value specified in paragraph 1.2 in the Year in which Month m falls, as may be varied in accordance with this Schedule.
- 3.2.4 POIP_a shall have the value specified in paragraph 2.2, for POIP in the Year in which Month m falls, as may be varied in accordance with this Schedule; and
- 3.2.5 OC, shall be any other charges payable by the Board to the Council pursuant to this Schedule or as may otherwise be agreed between the Board and the Council in respect of financial support services.

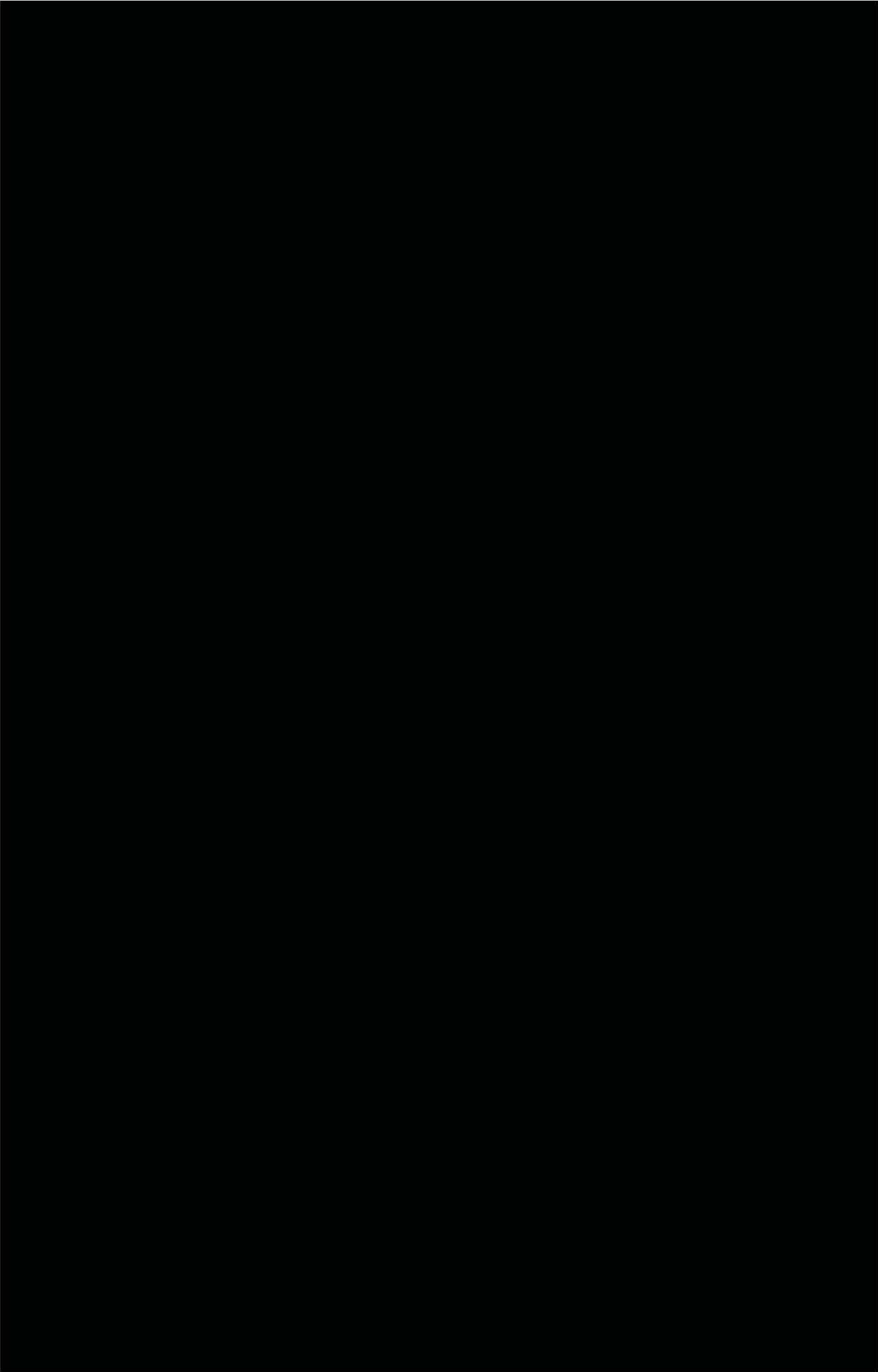
[REDACTED]

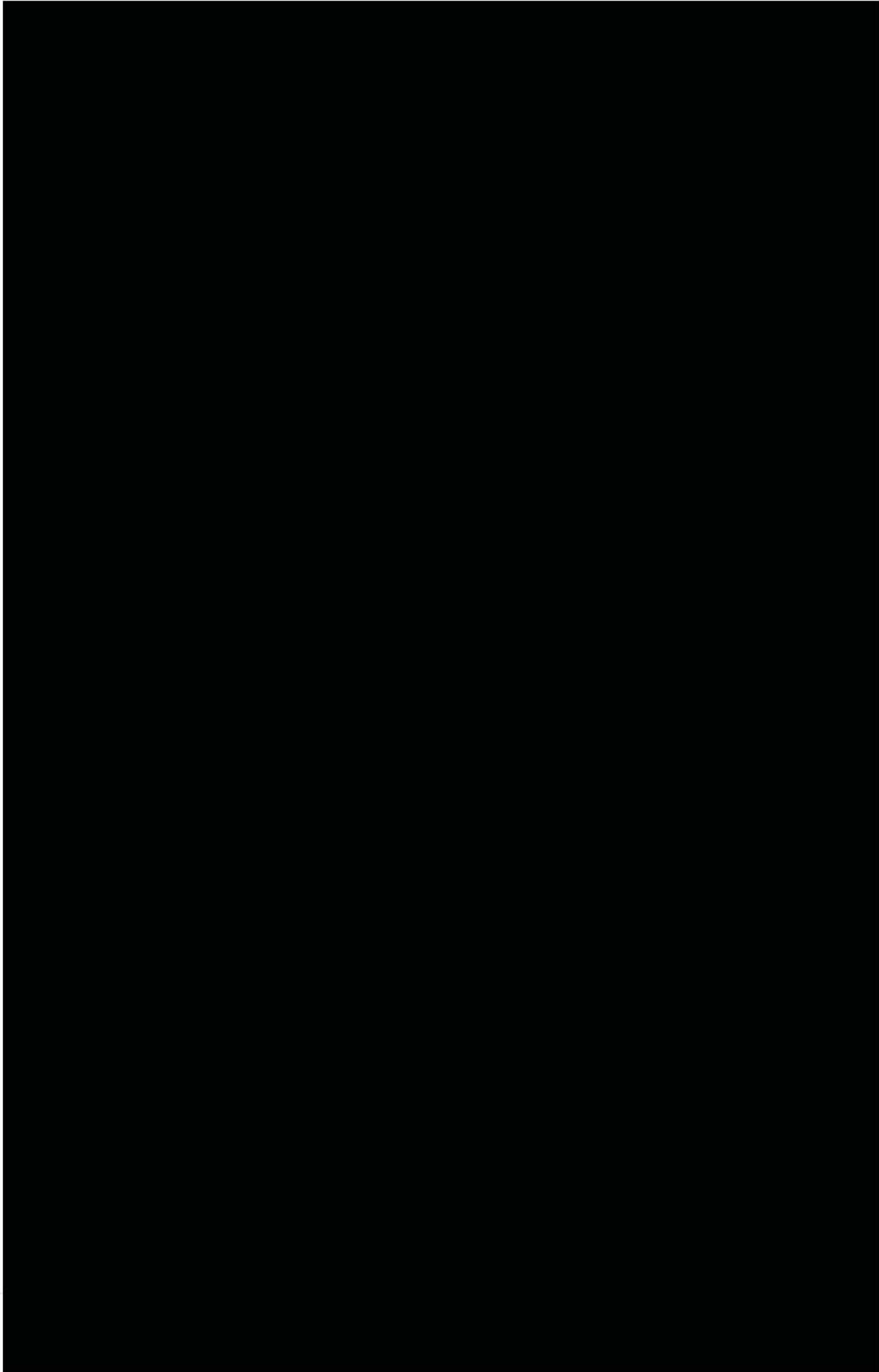
[REDACTED]

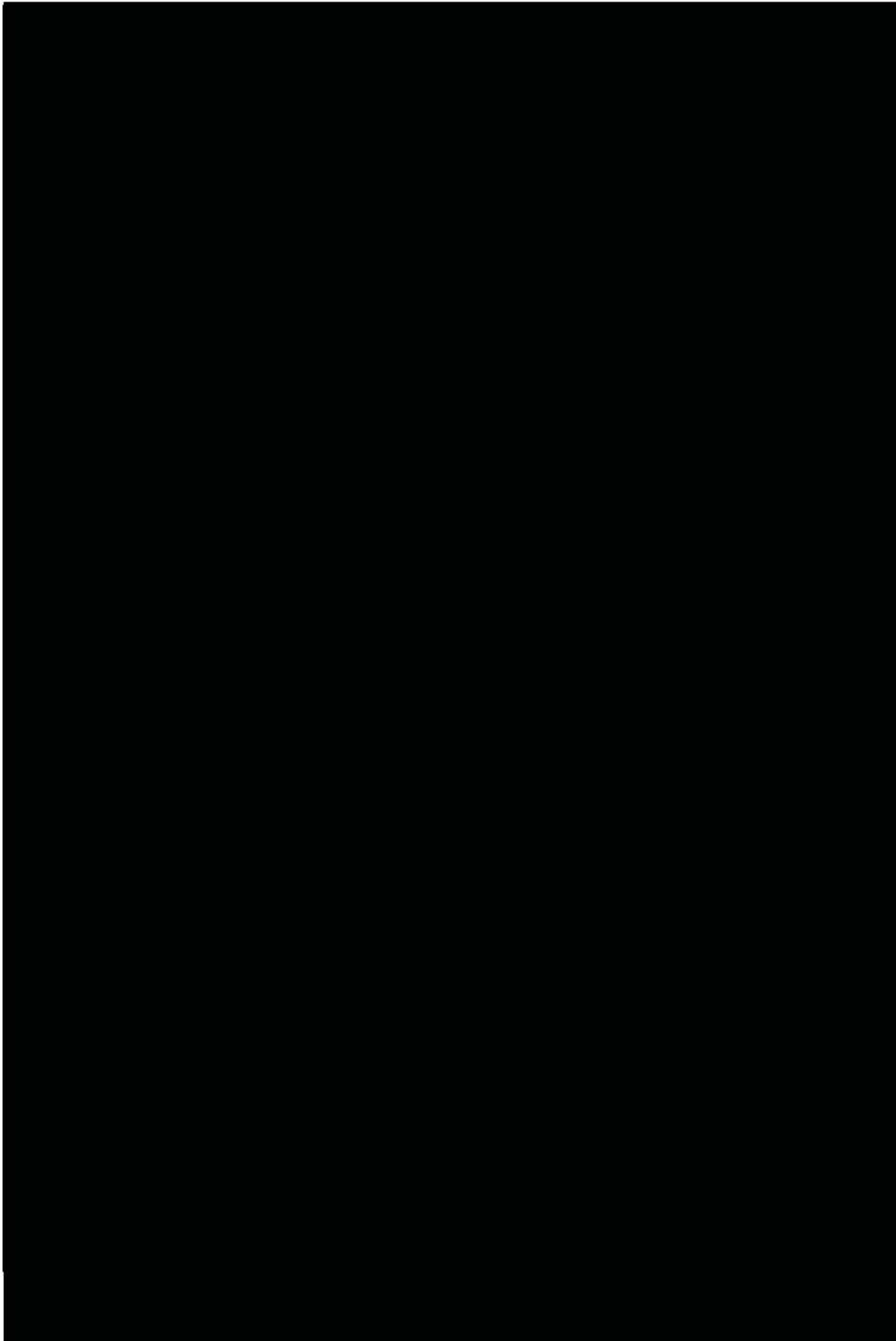


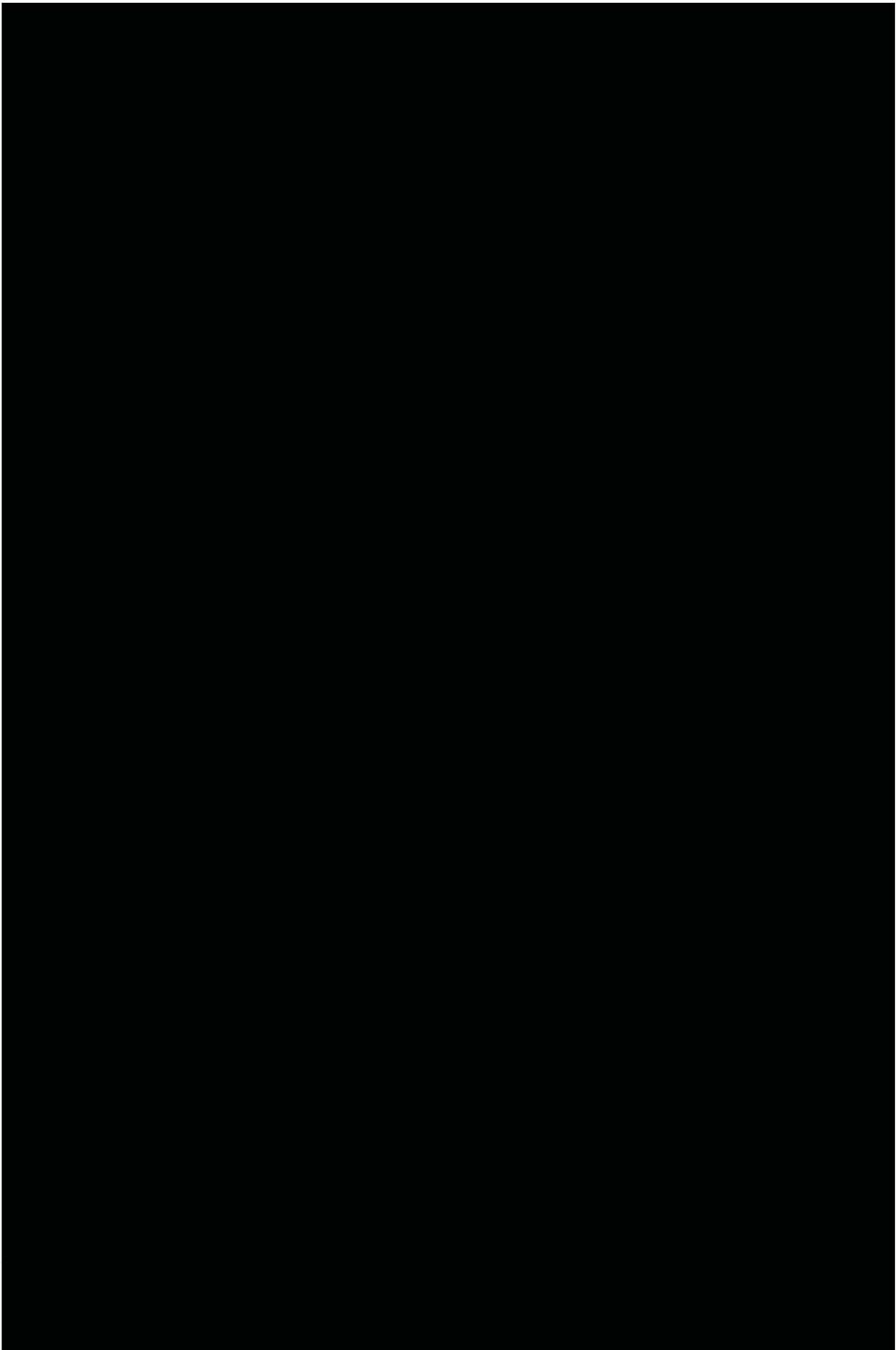


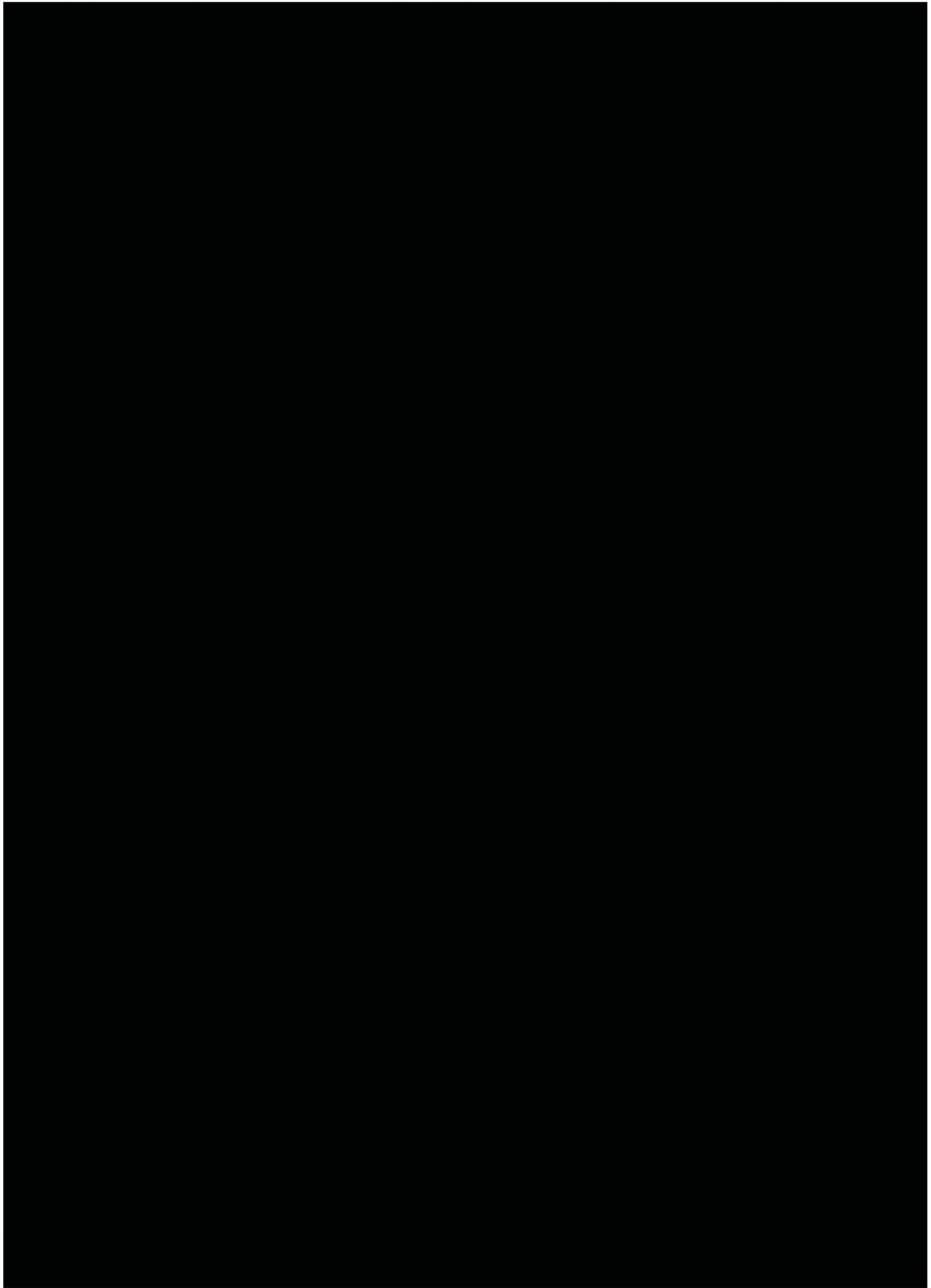


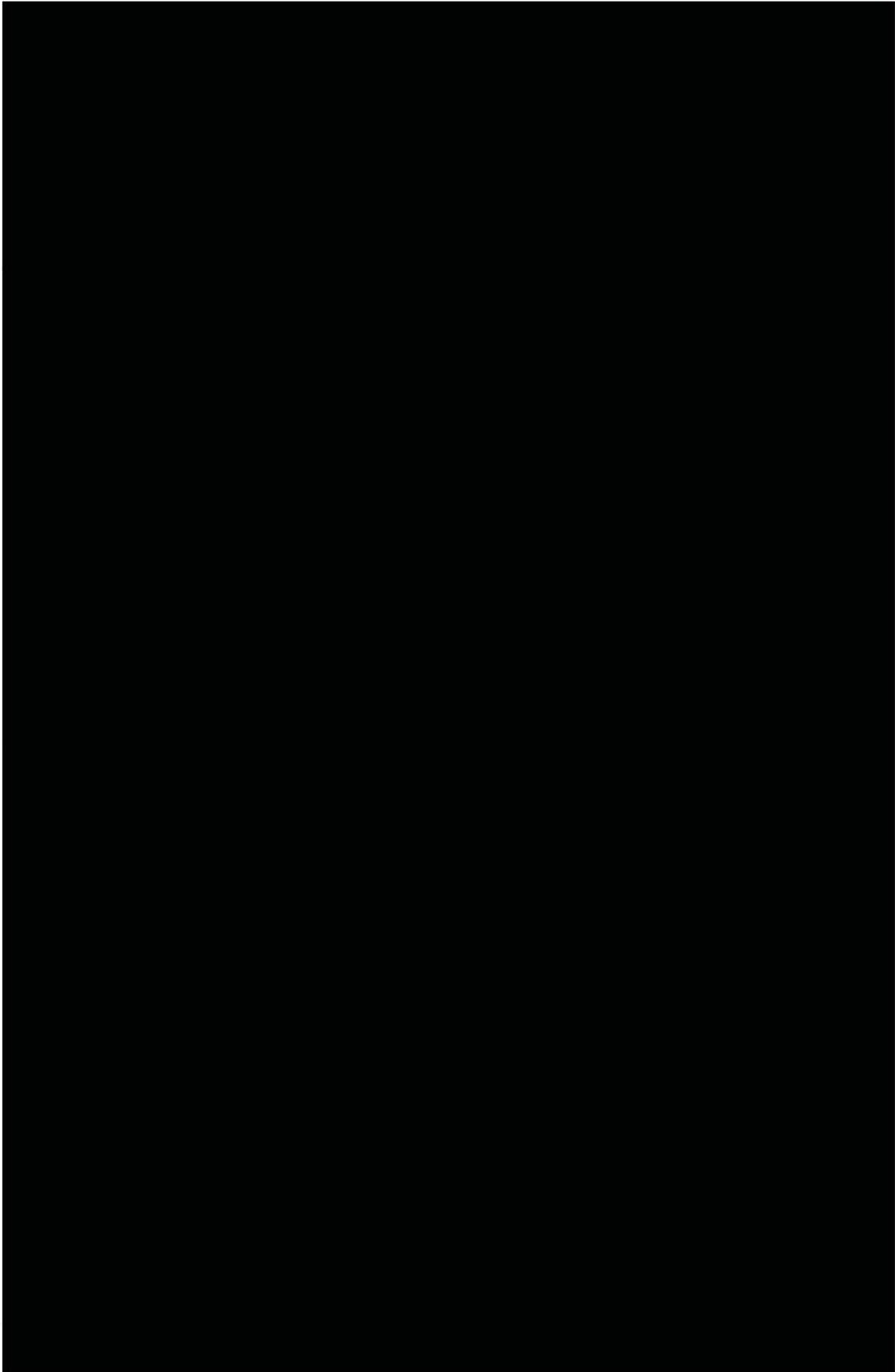


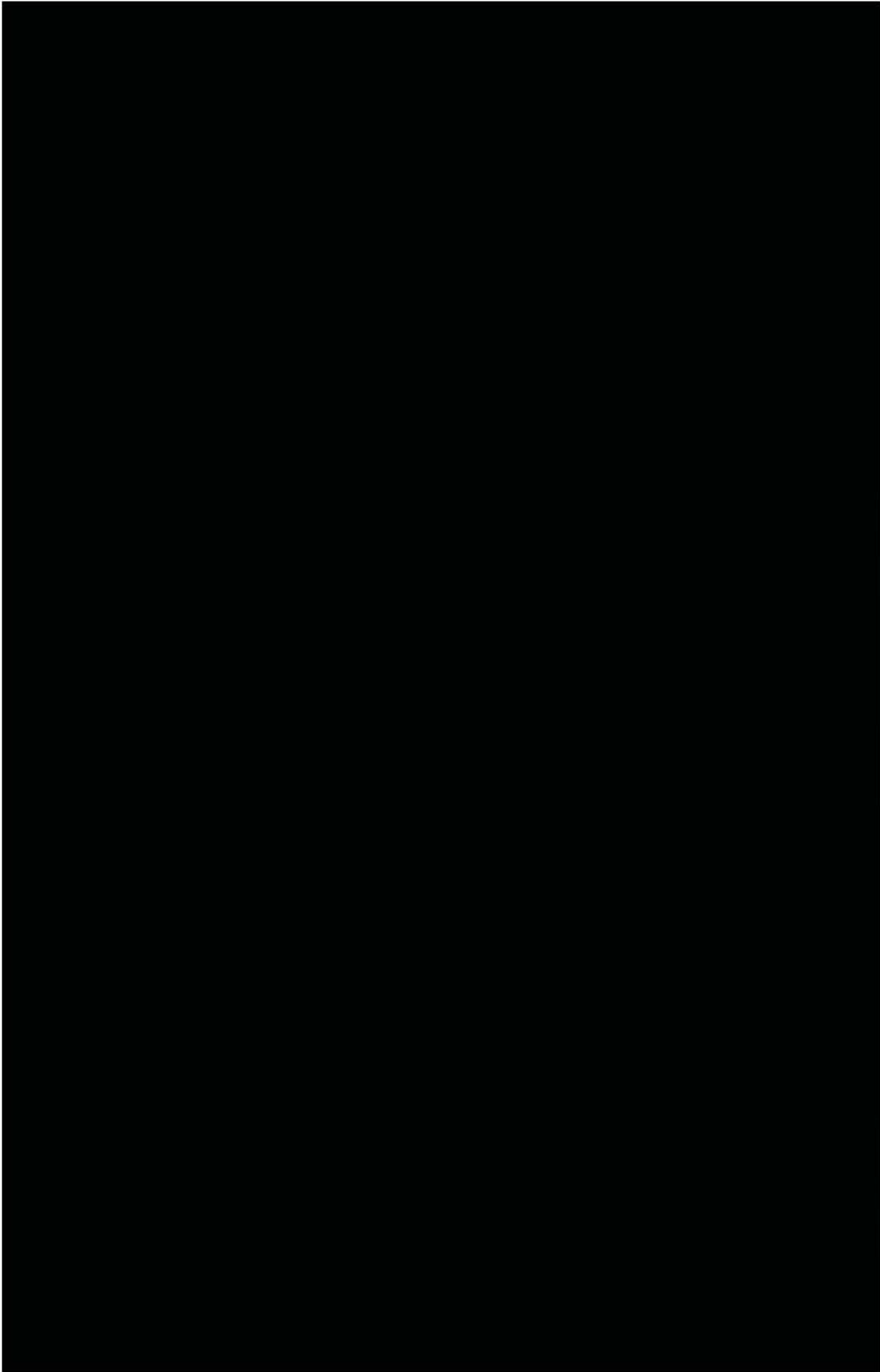


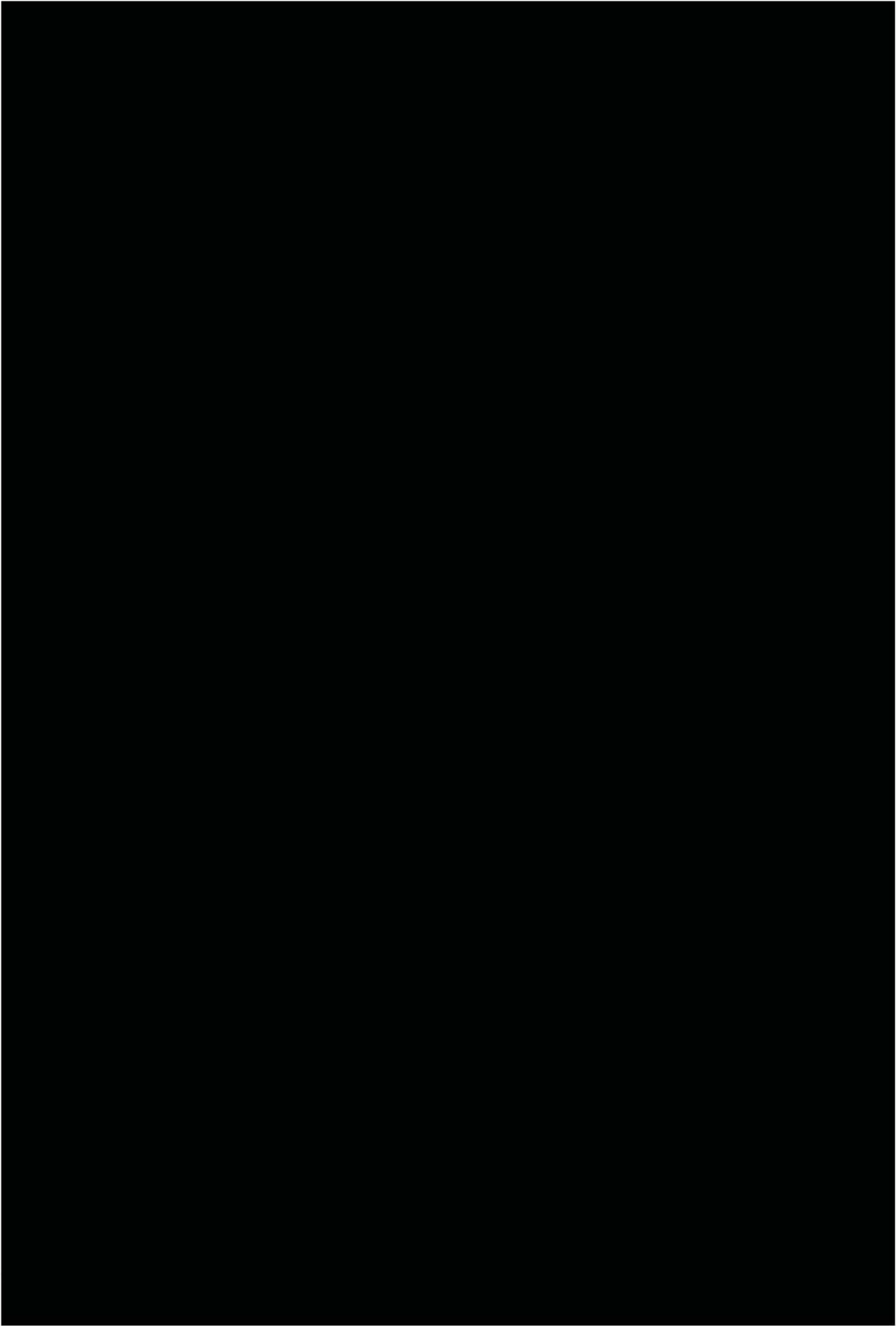


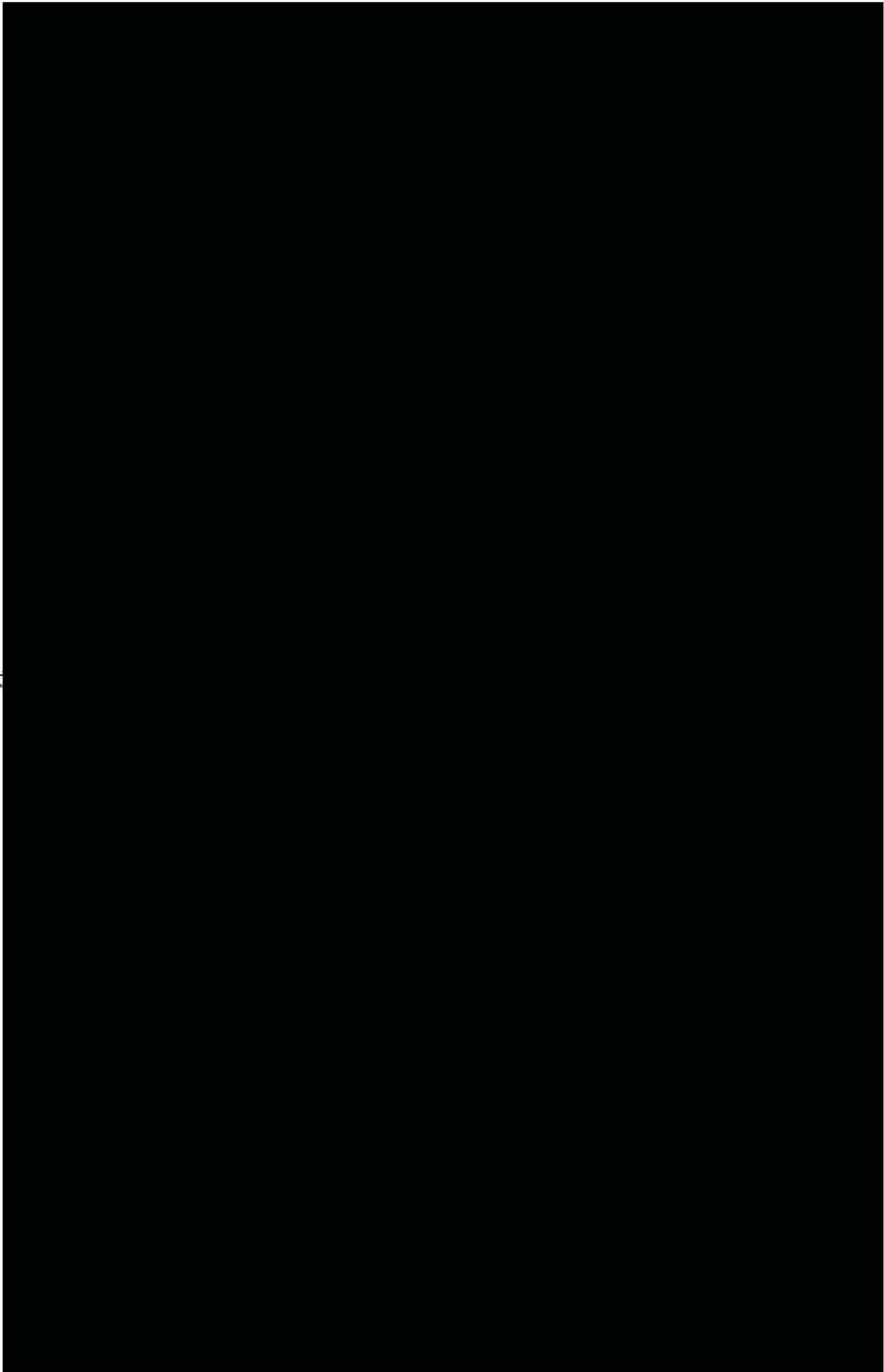


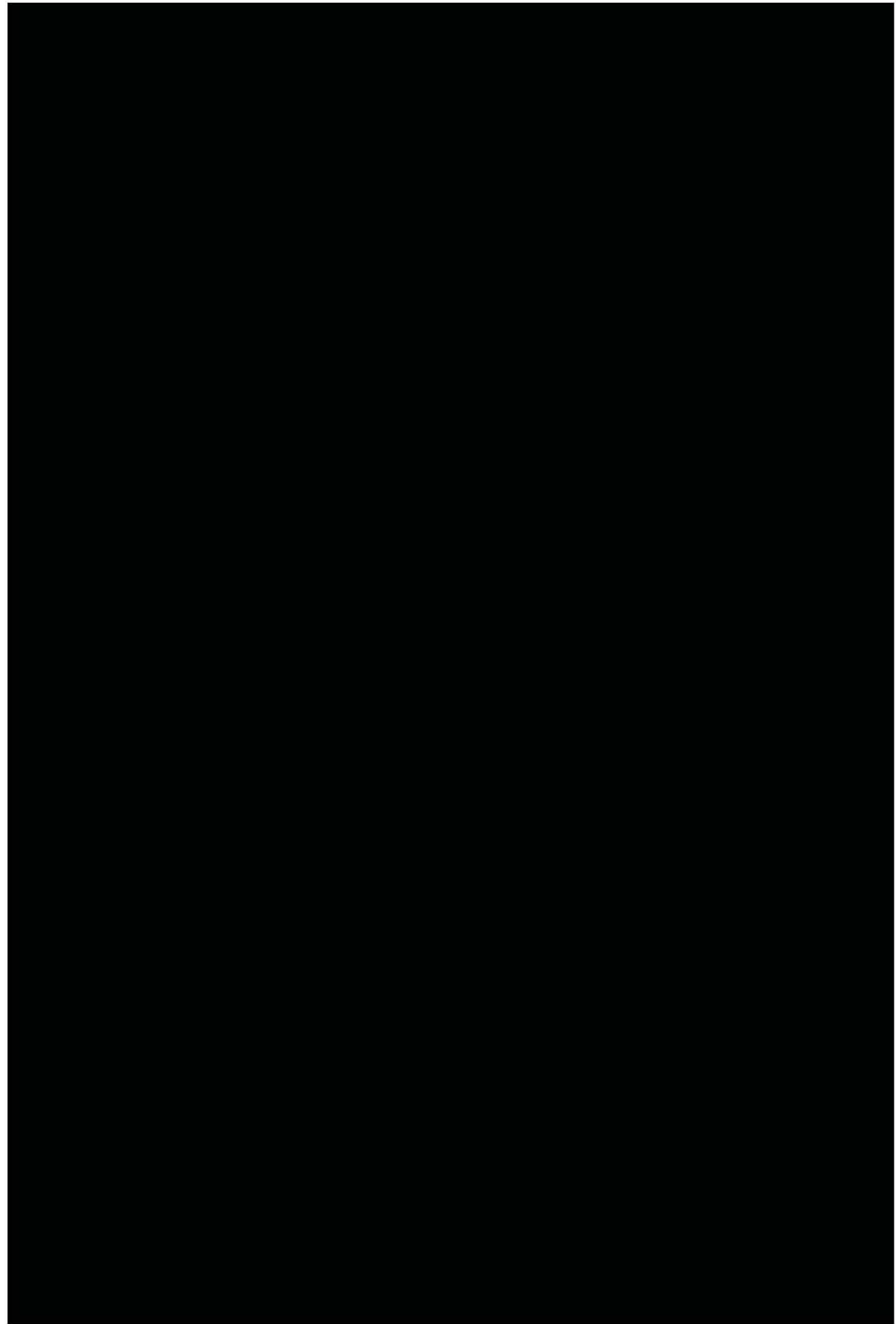






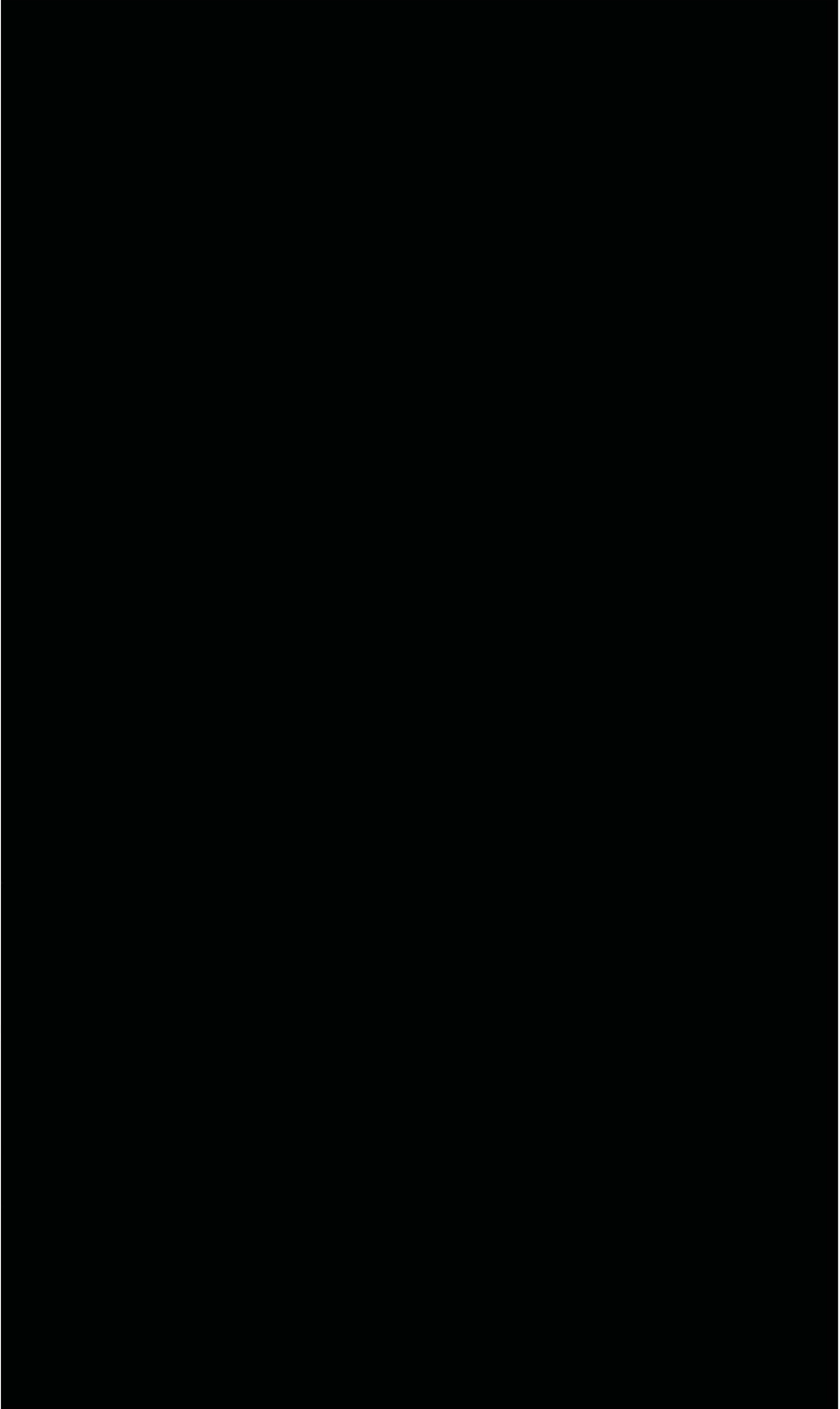












SCHEDULE 6: PAYMENT

Part 1: Council Service Provision Fee

1. The monthly Council Service Provision Fee (CSPF_m) for Month m shall be calculated on the following basis:

$$CSPF_m = ITSF_m + HRP_m + FSF_m + OSF_m$$

Where:

- 1.1 ITSF_m is the IT Services Fee payable in Month m, for performance of the IT Services detailed in SCHEDULE 4: Part 1: , as calculated in accordance with SCHEDULE 4: Part 1: ;
- 1.2 HRP_m is the Human Resources and Payroll payment payable in Month m, for performance of the Human Resources and Payroll services detailed in Part SCHEDULE 4: Part 2: , as calculated in accordance with SCHEDULE 4: Part 2: ;
- 1.3 FSF_m is the Financial Support Fees payable in Month m, for performance of the Financial Support Services detailed in SCHEDULE 4: Part 3: , as calculated in accordance with SCHEDULE 4: Part 3: ; and
- 1.4 OSF_m are the fees for any other services delivered to the Board by the Council in accordance with this Agreement, as may be determined in accordance with the terms agreed between the Board and the Council for delivery of such services.

Part 2: Board Service Fee

1. The monthly Board Service Fee (BSF_m) shall be calculated on the following basis:

$$BSF_m = BIC_m + CSPF_m$$

where:

- 1.1 BIC_m means the Board's costs relating to the provision of the Services in Month m as set out in the Board Cost Model;
- 1.2 $CSPF_m$ means the Council Service Provision Fee for Month m , as calculated in accordance with Part 1 above;

SCHEDULE 7: MARKET TESTING AND BENCHMARKING OF SUPPORT SERVICES

Part 1: Market testing

Section 1: Separation of functions

1. The Council shall ensure that, where the Council, or any subsidiary of the Council, tenders for any of the market tested Support Services ("**Support Services Tender**"), that an information barrier is maintained between those representatives of the Council participating in this Market Testing procedure, and those representatives of the Council who are engaged in the Support Services Tender.

Section 2: Review

1. At least 12 weeks before the proposed market testing date, the Board shall:
 - 1.1.1 consider any changes required to the relevant services; and
 - 1.1.2 determine the appropriate manner of advertising the services required and the means of identifying prospective tenderers;
 - 1.1.3 determine the tender requirements which must include:
 - 1.1.3.1 a statement of the tender validity period;
 - 1.1.3.2 details of the tender evaluation criteria;
 - 1.1.3.3 the terms and conditions under which the relevant Support Services will be contracted;
 - 1.1.3.4 information relating to employees and their conditions of employment;
 - 1.1.3.5 the information that tenderers are required to provide;
 - 1.1.3.6 how many tenders are required for the market testing to be valid;

Section 3: Grouping of Services

1. Unless the Board can demonstrate to the Council that best value for money is likely to be achieved for the Board if market tested services are tendered separately or in particular groupings, or if any market tested service is divided into separate parts, the grouping of any market tested services shall be left to the discretion of tenderers on the basis that the tender requirements shall specify that:
 - 1.1.1 tenderers may submit tenders for all or any of the market tested services; and
 - 1.1.2 if a tenderer submits a tender for a group or groups of market tested services, then it may be required to provide all or any of the services in such group or groups.
2. The Board shall be responsible for compiling the list of tenderers and for selecting the tenderers from the list of prospective tenderers on the basis of their:
 - 2.1.1 financial standing;
 - 2.1.2 technical and managerial experience and ability (taking into account any relevant references).
3. The Council shall have a right to prevent the selection of any person as a prospective tenderer if it reasonably believes that such person does not (or could not reasonably, be considered to) comply with any of the criteria referred to in paragraph 2 of this part 1.
4. The Council shall, in its absolute discretion, have the right to prevent the selection of any person as a tenderer on the grounds that the prospective tenderer has committed a Prohibited Act (as defined under the Project Agreement or as defined under the DMPA).
5. The Council shall have a right to review the list of prospective tenderers. The Board shall provide the Council with an explanation of the reasons behind the non-inclusion on the list of prospective tenderers of any person identified as suitable by the Council, if so requested by the Council.
6. The Board shall provide any prospective tenderer which is unsuccessful in being selected with an explanation of the reasons behind its non-selection, if so requested by the person in question.
7. The Board shall determine which compliant tender in respect of any market tested service represents the best value for money.
8. On making this determination, the Board shall supply to the Council a copy of its tender evaluation, together with sufficient supporting information concerning the tender evaluation to enable the Council to analyse and understand the basis for the Board's determination.
9. If the Council does not agree with the Board's determination, the Authority may, within 15 Working Days of being provided with the tender evaluation, dispute such determination and, if the parties do not resolve such dispute within a further 15 Working Days, the dispute shall be dealt with in accordance with Clause 19 (*Disputes Resolution Procedure*).

Part 2: Benchmarking

1. Where the Board is entitled to benchmark any Support Services this Part 2 shall apply. The Board shall be entitled to benchmark any Support Service, or any combination of Support Services either:
 - 1.1 where the Board determines that such Support Services are not being provided on a value for money basis, in which case the Board shall carry out the Benchmarking exercise at its own cost; or
 - 1.2 where the Council notifies the Board that it believes one or more Support Services is not being provided on a value for money basis, in which case the Council shall pay the costs of the Board in carrying out such exercise.
2. Any benchmarking exercise ("**Benchmarking**") shall be carried out sufficiently in advance of the date by which a replacement service provider would be required to commence provision of the relevant Support Services ("**Benchmarking Date**") to reasonably enable the Board to comply with all of the obligations in respect of Benchmarking set out in paragraph 4 below in advance of such Benchmarking Date.
3. The Board shall ensure that all contracts entered into for the provision of Support Services (including the terms of any arrangement with the Council pursuant to Clause 8.1) shall entitle the Board to carry out a Benchmarking exercise on reasonable notice, and allow for an adjustment of any fees payable under such contracts to reflect the outcome of such Benchmarking.
4. A Benchmarking of any Support Service shall be carried out as follows:
 - 4.1 The intent of such Benchmarking shall be to determine the amount of the Performance Cost in respect of such Support Service for the period from the Benchmarking Date.
 - 4.2 The Benchmarking shall consist of an exercise undertaken by the Board on the basis of an objective comparison to determine whether the Board is paying a fair market price for the provision of the relevant Support Service and, if not, what the price should be from the Benchmarking Date. Such exercise shall be carried out by comparing the standards, service level specifications, method statements, scope and prices of the Support Service in question with the standards, specifications, scope and prices of similar services provided within the preceding 12 month period by comparable reputable organisations possessing similar degrees of skill and experience as the current service provider and assuming the imposition on such organisations of obligations and liabilities not materially more or less onerous than those imposed on the current provider of the relevant Support Services.
 - 4.3 The parties agree that any Benchmarking shall be carried out in good faith and on an "open book" basis.
 - 4.4 The manner and timing of any Benchmarking and nature of the comparative material to be researched (including the way in which such research is obtained) ("**the Benchmarking Exercise**") shall be determined by the Board, acting reasonably, given the nature of the Support Services to be benchmarked.
 - 4.5 The result of the Benchmarking (or determination pursuant to a referral under paragraph 4.4) shall become final and binding on the parties and any adjustments shall be made to the Board Service Fee from the Benchmarking Date to reflect the extent to which the Board is not paying a fair market price for the provision of the relevant Support Services. For the

avoidance of doubt, if the Benchmarking determines that the Board is paying a fair market price pursuant to paragraph 4.1 or, as the case may be, paragraph 4.2, this Agreement shall continue without adjustment to the existing Board Service Fee.

- 4.6 Should the Board seek the appointment of a new entity to provide a Support Service which has been Benchmarked pursuant to this paragraph 4 from the Benchmarking Date, the Council shall not unreasonably withhold or delay its consent to such new service provider.

SCHEDULE 8: BOARD PROJECT DOCUMENTS

1. the Project Agreement;
2. the DMPA;
3. a collateral warranty to be entered into between (1) the Project Company, (2) the Council, (3) the Board and (4) FCC Construccion S.A., Samsung C&T ECUK Limited and Kier Infrastructure and Overseas Limited (together, the "CJV") in respect of the top tier design and construction contract ("**D&C Contract**");
4. a collateral warranty to be entered into between (1) the Project Company, (2) the Council, (3) the Board and (4) the designer in respect of the D&C Contract;
5. a collateral warranty to be entered into between (1) the Project Company, (2) the Council, (3) the Board and (4) Lafarge Tarmac Trading Limited in respect of the operation and maintenance contract;
6. a collateral warranty to be entered into between (1) the Project Company, (2) the Council, (3) Sanef ITS France, (4) the Board and (5) CJV in respect of the tolling sub-contract;
7. a number of collateral warranties in favour of the Board from a number of key specialists to be entered into by (1) the Project Company, (2) the Council, (3) the Board and (4) the CJV and (5) relevant key specialist;
8. an independent certifier appointment to be entered into between (1) the Project Company, (2) the Council, (3) the Board and (4) the independent certifier and (5) the security trustee for the funders of the Project;
9. a funder's direct agreement to be entered into between (1) the Project Company, (2) the Council, (3) the Board and (4) the agent for the funders of the Project and (5) the security trustee for the funders of the Project;
10. a tolling direct agreement to be entered into between (1) the Project Company, (2) the Council, (3) the Board, (4) CJV and (5) Sanef ITS France, (6) DMPA Company and (7) Sanef SA;
11. a joint insurance account agreement between (1) the Project Company, (2) the Council, (3) the account bank and (4) the security trustee for the funders of the Project; and
12. any other documents as may be required for the purposes of and ancillary to the Project.

SCHEDULE 9: DISPUTES RESOLUTION PROCEDURE

1. Where a Dispute arises, a party with a claim ("**the Claiming Party**") may propose in writing ("**Dispute Notice**") to the other party ("**the Responding Party**") that this Dispute Resolution Procedure is used to attempt to resolve the claim. The Responding Party shall respond to such Dispute Notice within 3 Working Days of service of the Dispute Notice ("**the Objection Deadline**") if the Responding Party wishes to dispute that such Dispute should be classed as a Dispute.

The Escalation Procedure

2. Where the Dispute Resolution Procedure applies, the parties shall first attempt to resolve the Dispute pursuant to paragraphs 2 and 3 (the "**Escalation Procedure**") first informally by either party referring the matter in dispute to the other party's representative as soon as reasonably practicable, and the representatives shall seek to resolve the Dispute, as soon as reasonably practicable. In the event that parties' representatives are unable to resolve the Dispute within three Working Days of reference to them (or such longer period as the parties, acting reasonably, may agree as appropriate for the scale and nature of the Dispute) then either party shall be entitled to refer the dispute to the other party's Chief Executive (or other senior representative nominated by that Party for the purpose of this Escalation Procedure) ("**Senior Representative**") for resolution between the parties' Senior Representatives.
3. Both parties shall be entitled to make oral and/or written representations prior to any of the meetings taking place at either escalation level referred to above.

Mediation

4. If the parties are unable to resolve the Dispute within the Escalation Procedure, then if both parties agree the Dispute shall be referred to mediation. Any reference to mediation shall be made in accordance with the procedures of the Centre for Effective Dispute Resolution ("**CEDR**").
5. The mediation shall be conducted by a single mediator appointed by the parties or, if the parties are unable to agree on the identity of the mediator within 14 days after the parties have agreed to proceed with a mediation, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by CEDR on the application of either party.
6. The mediation shall be conducted in English and if the parties cannot agree on the location for the mediation then it shall take place at the offices of CEDR.
7. Mediation is without prejudice to the rights of the parties in any future proceedings.
8. If the parties are unable to resolve the dispute following the Escalation Process, either party may submit the matter to the Courts of England and Wales for final determination.

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