

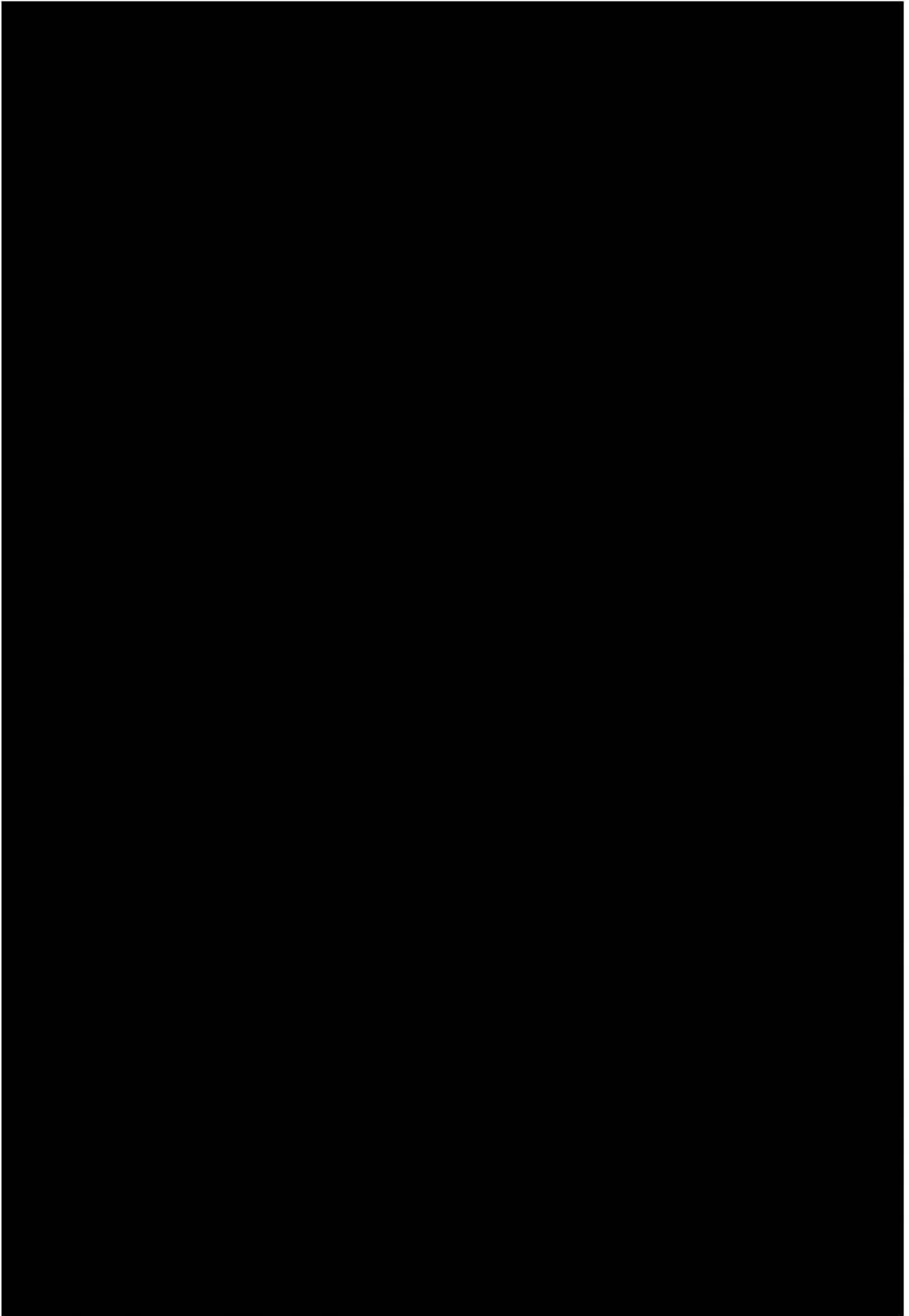


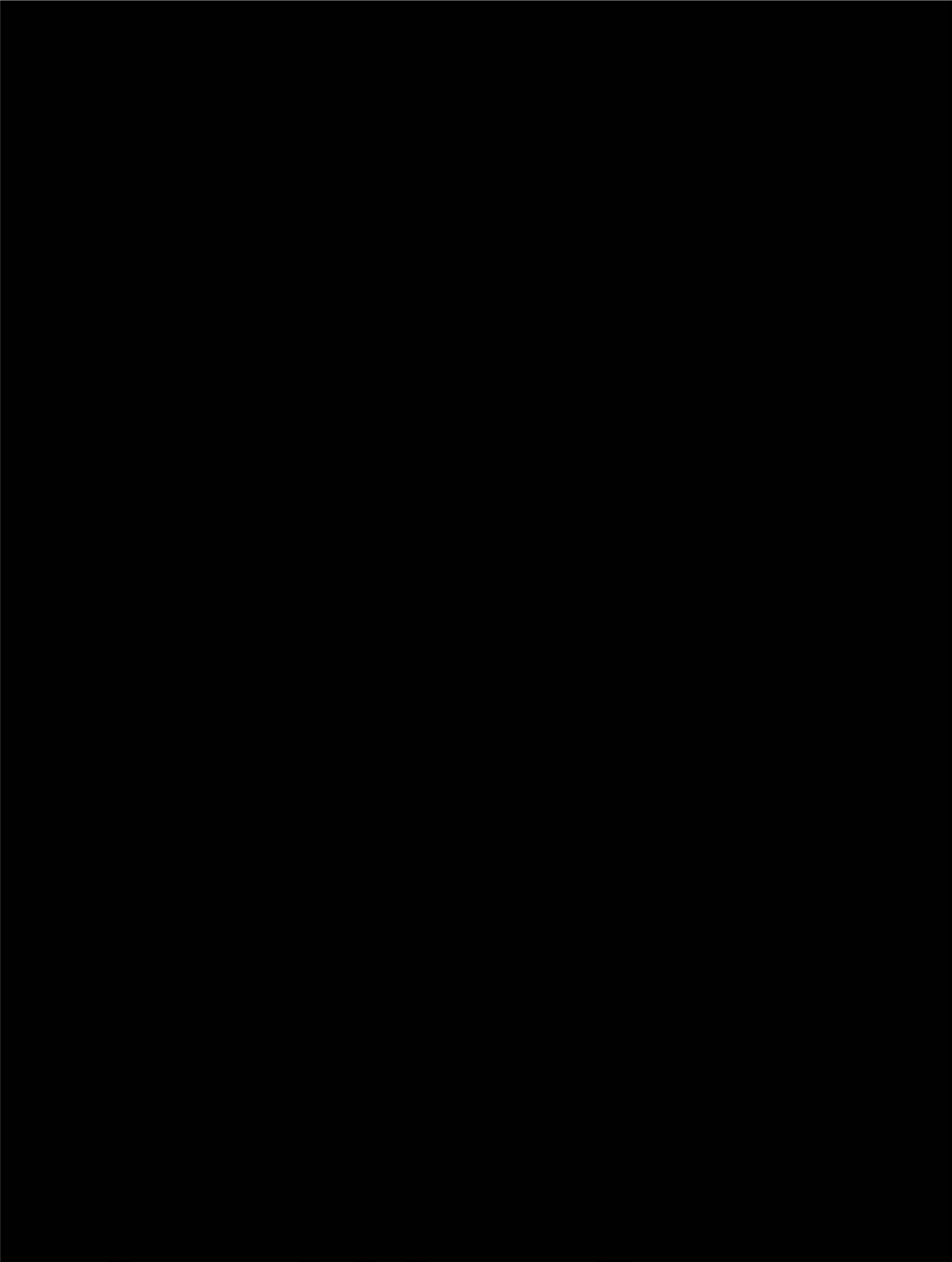
(1)The City of Edinburgh Council

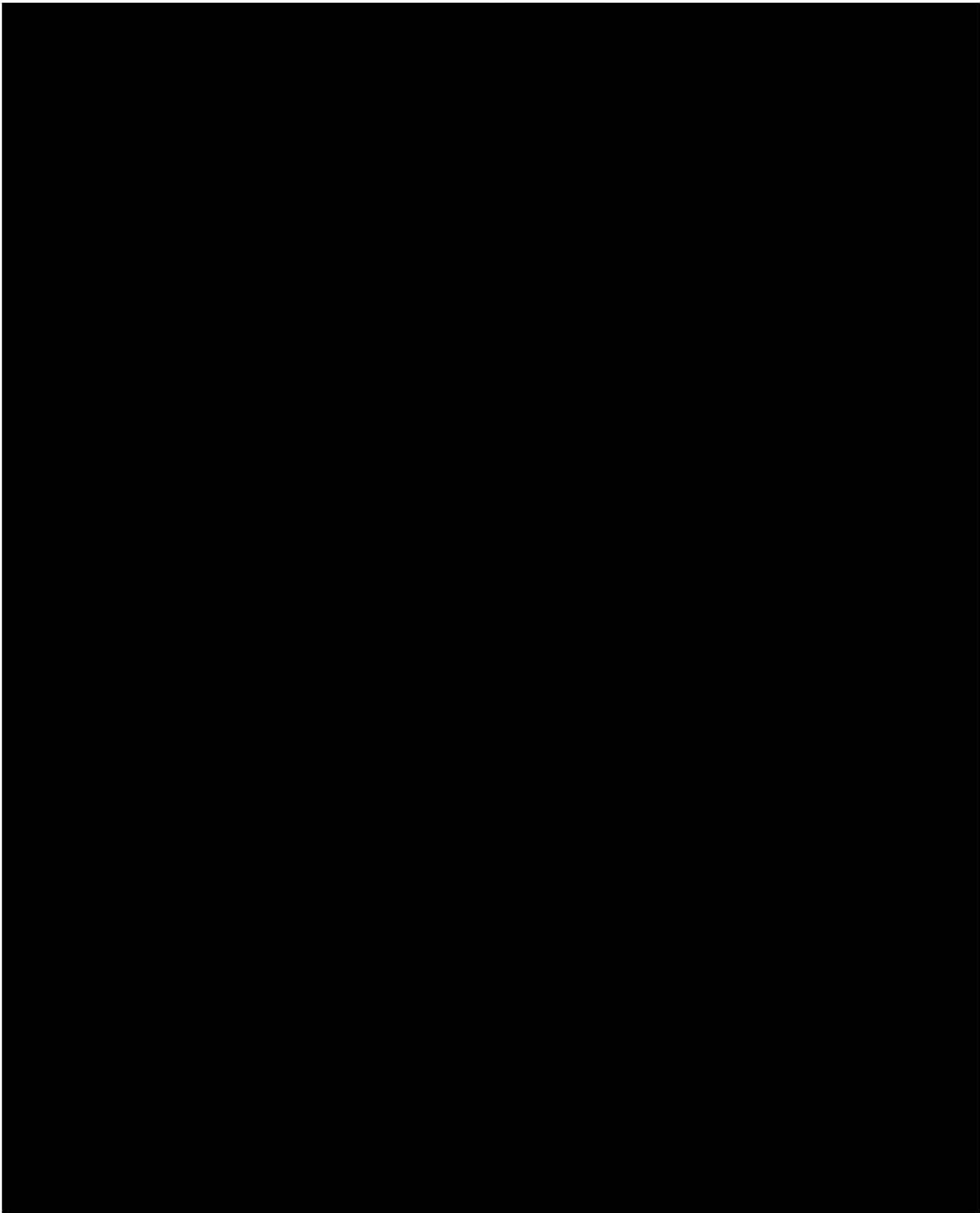


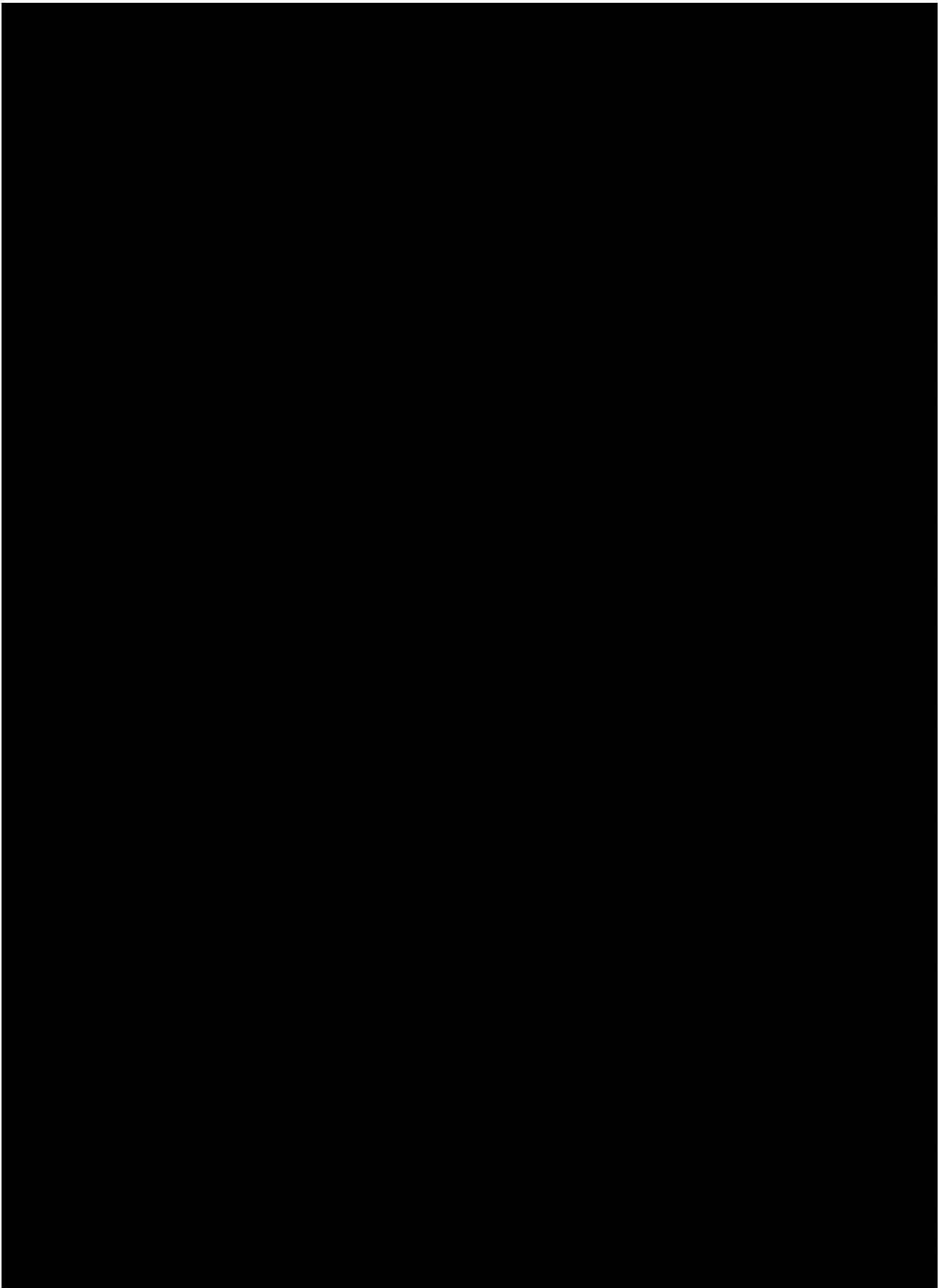
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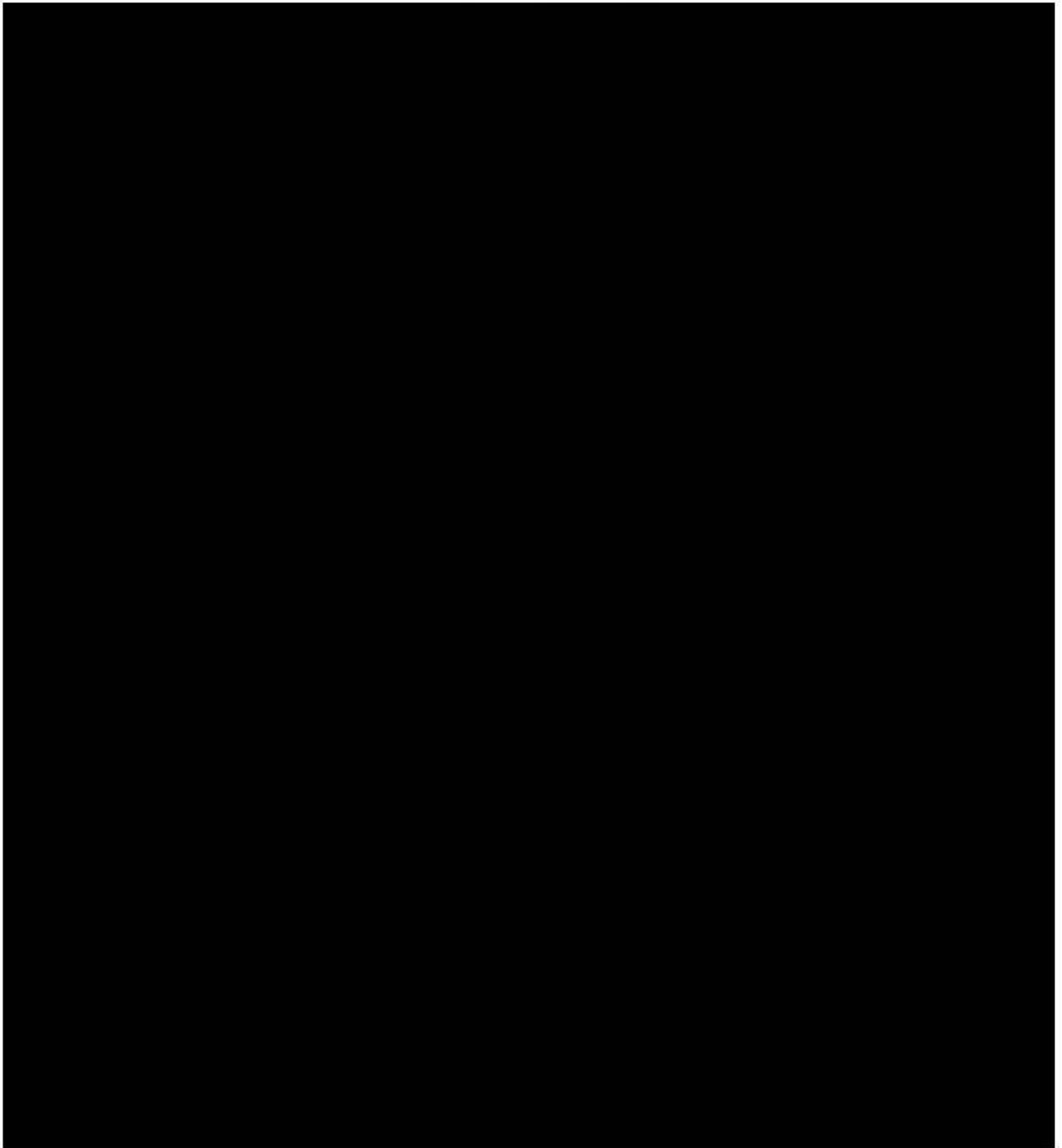








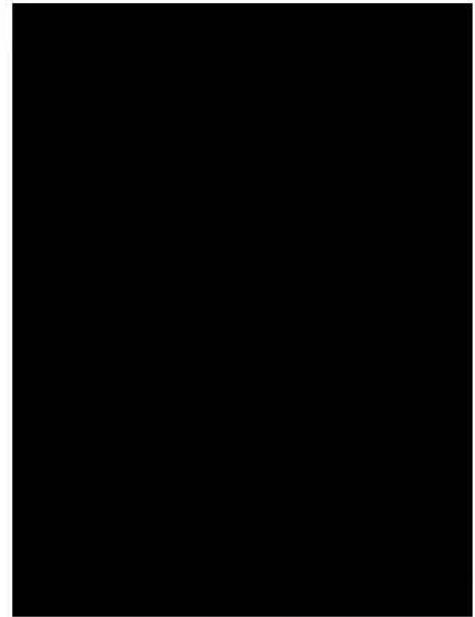






**Part 6**  
**Draft Lease**





LEASE

between

THE CITY OF EDINBURGH COUNCIL

and

[ ]

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LEASE OF FORMER ROYAL HIGH SCHOOL REGENT ROAD EDINBURGH

Date of Entry: [ ]

Period: 125 years:

Rent: £1 per annum

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Pinsent Masons LLP

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**THIS LEASE** is entered into between

- (1) **THE CITY OF ENDINBURGH COUNCIL** as local authority for the said City in terms of the Local Government etc (Scotland) act 1994 and having its principal office at City Chambers, High Street, Edinburgh, heritable proprietor of the Property hereinafter defined (the "**Landlord**") and
- (2) **[take in name and registered address of the Tenant under the Missives]** (the "**Tenant**")

## 22 DEFINITIONS AND INTERPRETATION

### 22.1 Definitions

In this Lease unless the context requires otherwise:

**"Buildings"** means at any time the buildings which are listed under the Planning Acts as being of historic or architectural importance and as existing on the Site at that time;

**"Commencement Date"** means *[Insert Commencement Date in accordance with the Missives]*

**"Completion Date"** means the date on which there is issued in respect of the Proposed Development by a verifier of a notice of acceptance of a completion certificate under and in accordance with the Building (Scotland) Act 2003;

**"CDM Regulations"** means the Construction (Design and Management) Regulations 2007;

**"Creditor"** means (a) prior to the Completion Date the provider of debt finance to the Tenant to meet or refinance (in whole or in part) the Lease Premium, the costs of obtaining the Planning Permission and the construction costs and fees of the Proposed Development and whose interest is notified to the Landlord, in writing and (b) after the Completion Date any creditor in any standard security over this Lease whose interest therein has been notified to the Landlord, in writing;

**"Date of Entry"** means *[insert date of entry in accordance with Missives]*;

**"EPC"** means a valid energy performance certificate in terms of The Energy Performance of Buildings (Scotland) Regulations 2008;

**"Group Company"** means a company which is either the holding company or a subsidiary of the Tenant or a subsidiary of such holding company as the terms "holding company" and "subsidiary" are defined by Section 1159 of the Companies Act 2006;

**"Hotel Operation"** means at any time the hotel operation being run from the Property or any part thereof which is being carried out at or in respect of that time;

**"Insolvency Date"** means either the date of appointment of the Insolvency Practitioner or the date of calling up by a Creditor;

**"Insolvency Practitioner"** means any receiver, administrator or liquidator or other insolvency practitioner appointed to or in respect of the Tenant;

**"Insured Risks"** means fire, explosion, lightning, earthquake, storm, flood, bursting or overflowing of water tanks, apparatus or pipes, impact by aircraft and articles dropped from





them, impact by vehicles, riot, civil commotion and any other normal commercial risks including terrorism which the Tenant decides to insure against from time to time subject to the provisions of Clause 40 and including in respect of the period prior to the Completion Date, such risks under a normal contractor's all risks insurance as are required to be insured against /under the building contract for the Proposed Development and **"Insured Risk"** means any one of the Insured Risks;

**"Insurers"** means such reputable insurance office or underwriters carrying on a commercial insurance business in the UK as may be selected by the Tenant;

**"Interested Persons"** has the meaning given to it in Clause 20.1.1;

**"Landlord"** means the party designed as the Landlord in this Lease or in substitution its successors to the Landlord's interest under this Lease;

**"Lease Premium"** means the sum of [REDACTED]

**"Licence to Occupy"** has the meaning given to it in Clause 11.4;

**"Material Monetary Breach"** means at any time the failure by the Tenant to make payment of any costs due and payable to the Landlord under Clause 6.2.3 and all VAT payable on the foregoing;

**"Material Non-monetary Breach"** means any material failure by the Tenant to perform any of its obligations under this Lease (other than a failure which is a Material Monetary Breach) and where as a consequence of such failure there is material detriment to the Landlord having regard to its interest under this Lease;

**"New Build Additions"** means any buildings and structures which are (a) constructed after the Date of Entry on the Property pursuant to the Proposed Development or otherwise under this Lease and (b) are not themselves listed under the Planning Acts as being of historic or architectural importance;

**"Operator"** has the meaning given to it in Clause 11.1.2;

**"Permitted Sub-Lease"** has the meaning given to it in Clause 11.1.2;

**"Permitted Delay Events"** means in relation to the Proposed Development, but subject to the proviso below, any of the following events or circumstances:

Force majeure, damage or destruction by an Insured Risk, insolvency of the contractor for the Proposed Development or the Operator or any other event or circumstance which is not within the control of the Tenant due to which the works to carry out the Proposed Development are being delayed or suspended; Provided Always that (a) any delay or failure in the making of payments properly due and payable for such works shall not itself constitute a Permitted Delay Event; and (b) the Tenant shall use all reasonable endeavours to minimise the extent of any such delay;

**"Permitted Use"** has the meaning given to it in Clause 2.6;

**"Plan"** means the plan reproduced in Part 4 of the Schedule;



**"Planning Acts"** means the Local Government and Planning (Scotland) Act 1982, Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997, the Planning (Consequential Provisions) (Scotland) Act 1997 and the Planning etc (Scotland) Act 2006, and any future legislation of a similar nature;

**"Planning Agreement"** means the agreement dated [*here take in the dates of execution of the relevant Agreement*] which has been entered into by and between the Landlord and the local planning authority under and in terms of Section 75 of the Town & Country Planning (Scotland) Act 1977;

**"Planning Permission"** means a full planning permission and listed building consent for the Proposed Development

**"Prescribed Rate"** means the rate of interest which is from time to time 4% above the base rate for the time being of The Bank of England or in event of such rate ceasing to apply, interest at 4% above such other rate equivalent thereto which may be substituted therefor by the Landlord acting reasonably;

**"Property"** means the whole subjects let by this Lease being the Site, together with all Buildings and other structures on the Site from time to time, and all alterations and additions made to the same, by the carrying out of the Proposed Development, and otherwise under this Lease;

**"Proposed Development"** has the meaning given to it in Clause 2.6.1;

**"Reservations"** means the reservations specified in Part 2 of the Schedule;

**"Site"** means the area of ground lying to the north of Regent Road, Edinburgh more particularly described in Part 1 of the Schedule, and as shown outlined in red on the Plan;

**"Schedule"** means the schedule annexed and signed as relative to this Lease;

**"Service Media"** means all sewers and foul water drains, surface water drains, main water supply pipes, communication, gas and electric main supply cables, necessary from time to time to service the Property;

**"Shared Service Media"** has the meaning given to it in Part 2 of the Schedule;

**"Sub-Station Lease"** means the lease between the Secretary of State for the Environment and the South of Scotland Electricity Board dated 23 October 21979 and subsequent dates and recorded in the Division of the General Register of Sasines for the County of Midlothian on 6 December 1979 and which will be interposed with this Lease.

**"Statutory Approvals"** has the meaning given to it in Clause 8.1.1;

**"Tenant"** means the party designed as the Tenant in this Lease and its permitted assignees in substitution for them and in the case of an individual includes his personal representatives;

**"Tenant's Rights"** means the rights specified in Part 3 of the Schedule;

**"Term"** means the period for which this Lease is granted together with any continuation of it (whether by *tacit relocation*, under an Act of Parliament or for any other reason);





**"Transaction"** means:

- (a) any permitted assignation of this Lease; or
- (b) the grant of any Permitted Sublease or under sublease permitted under and in terms of this Lease of the whole or any part of the Property; or
- (c) the grant of a Licence to Occupy under Clause 11.4; or
- (d) the grant in favour of a Creditor of any standard security or charge over this Lease or any Permitted Sublease or the transfer or discharge of any such standard security or charge; or
- (e) any other permitted dealing with the Tenant's interest in this Lease;
- (f) **"VAT"** means value added tax as provided for in the Value Added Tax Act 1994, as amended;

**"Working Day"** means any day which is not a Saturday, Sunday, bank holiday or public holiday in Edinburgh and London.

## 22.2 Interpretation

Unless the context or the express provisions of this Lease requires otherwise, in this Lease:

- (a) words importing any gender include all other genders;
- (b) words importing the singular number only include the plural number and *vice versa*;
- (c) reference to the Property is to the whole and any part of it;
- (d) subject to paragraph (e) below if at any time there are two or more persons included in the expression the **"Tenant"** obligations contained in this Lease which are expressed to be made by the Tenant are binding jointly and severally on them and their respective executors and representatives without the necessity of discussing them in their order but without implying continuing liability of an assignor following a permitted assignation of the tenant's interest under the Lease;
- (e) if at any time the Tenant is a firm or general partnership with unlimited liability:
  - (i) the obligations of the Tenant under this Lease are binding jointly and severally on all persons who are or become partners of the firm at any time during the Term and their respective executors and representatives as well as on the firm and its whole stock, funds, assets and estate without the necessity of discussing them in their order;
  - (ii) these obligations remain in force even if the firm or partnership is dissolved or any changes take place in the firm or partnership whether by the assumption of a new partner or partners or by the retiral, bankruptcy or death of any individual partner or by a change in the firm name;
  - (iii) if any person is bound to implement the Tenant's obligations, by virtue of his being a partner then when he ceases to be a partner the Landlord will release such person and his representatives, on request, from all obligations under this Lease subsequent to the date when such person ceases to be a partner (or, if later, the date of such request) provided that it is established to the Landlord's reasonable satisfaction that any



such release does not adversely affect the strength of the Tenant's financial covenant or its ability to implement its obligations under this Lease.

- (a) but for the avoidance of doubt, if and for so long as the Tenant is a Limited Partnership the liabilities of the partners thereof shall be construed according to the Limited Partnership Act, 1907;
- (f) a person includes a corporate or unincorporated body and *vice versa*;
- (g) for the avoidance of doubt, nothing herein contained or implied or done in terms of the Proposed Development shall prejudice or affect the powers, rights, duties and obligations of The City of Edinburgh Council or its statutory successors as local authority, Planning Authority, Building Control Authority, Roads Authority or similar such authority under or by virtue of any public or local Act, order, statutory instrument, regulation or byelaw or relieve the Tenant of the necessity of obtaining from The City of Edinburgh Council or its statutory successors in said capacity all consents, permissions, warrants or approvals as may be requisite under or by virtue of any such public or local Act or others
- (h) references to this Lease or to any other document are to be construed as references to this Lease or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- (i) reference to the parties is to be construed as reference to the parties to this Lease at that time;
- (j) any reference to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or Part of the Schedule of or to this Lease;
- (k) reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it;
- (l) reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, codes of practice and guidance made under them;
- (m) any phrase introduced by the words "**including**", "**include**", "**in particular**" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words;
- (n) an obligation in this Lease on the Tenant not to do something includes an obligation not to permit or suffer that thing to be done and an obligation to use reasonable endeavours to prevent that thing being done by another person.

### 22.3 Headings

The table of contents and the headings in this Lease are included for convenience only and are to be ignored in construing this Lease.

### 22.4 Schedule

The Schedule forms part of this Lease.





## 23 GRANT OF LEASE, LEASE PREMIUM AND PERMITTED USE

### 23.1 Grant

The Landlord lets the Property to the Tenant in consideration of payment by the Tenant of the Lease Premium, which shall be payable as hereinafter provided and the rent and other obligations specified in this Lease. The Lease is granted together with the Tenant's Rights but reserving to the Landlord the Reservations.

### 23.2 Acceptance of Property

The Tenant accepts the Property in its present condition notwithstanding all (if any) defects therein whether latent and/or inherent or otherwise and is held to have satisfied itself in all respects that the Property is fit for the purpose for which let.

### 23.3 Sub-Station Lease

The Tenant accepts that this Lease will be interposed above the Sub-Station Lease and that the Tenant's rights of possession and use of the Property are subject to the rights of possession and use of the tenant from time to time under the Sub-Station Lease.

### 23.4 Term

This Lease is for the period of one hundred and twenty five (125) years from and including the Date of Entry to and including **[insert the date of expiry]**.

### 23.5 Lease Premium

#### 23.5.1 The Tenant must pay to the Landlord the Lease Premium on the Date of Entry exclusive of VAT (if any) thereon

#### 23.5.2 Any VAT payable on the Lease Premium will be payable by the Tenant if the Landlord is lawfully obliged to charge VAT and then in exchange for a valid VAT invoice. For the foregoing purpose the Landlord reserves the right but subject always to giving not less than twenty eight (28) days prior notice to the Tenant to waive exemption from VAT in respect of the Landlord's interest in the Property and this Lease.

### 23.6 Permitted Use

The Tenant shall be entitled to use the Property for the following uses in respect of the following periods (each such use being herein referred to as a "**Permitted Use**")

#### 23.6.1 from the Date of Entry until the Completion Date for development of the Property by the partial demolition of the Buildings and adaption of the remaining Buildings and the construction of the New Build Additions in order to provide a high quality hotel of international standing (but not for the avoidance of doubt a budget hotel, or similar) containing *[complete with the number of bedrooms to be provided under the planning permission when granted]* bedrooms or thereby all in accordance with the Planning Permission (the "**Proposed Development**");

#### 23.6.2 from and after the Completion Date for the operation of a high quality hotel of international standing which may be licensed (but not for the avoidance of doubt a budget hotel, or similar) together with restaurant, bar and retail space, other guest space, leisure facilities, publicly accessible art exhibition space associated with that standard of hotel, and car parking and other uses ancillary to the foregoing uses or such other combination of ancillary uses consistent with the operation of a high quality hotel of international standing (but not for the avoidance of doubt a budget hotel, or similar) as are permitted under the Planning Permission or as the Landlord (who shall be bound to act reasonably) may approve, and





declaring that for the foregoing purposes the Tenant is entitled to apply for and obtain all and any liquor licenses or other statutory licenses, permissions or consents necessary for the Hotel Operation;

- 23.6.3 for any other use from time to time after the Completion Date in respect of which the Landlord has given its prior approval in writing which approval shall not be unreasonably withheld, provided that the Tenant has obtained any necessary planning permission or other statutory consents which may be required prior to any application for consent under this Clause to the Landlord being made and provided also that the Tenant is of the opinion that the operation of the Property as a high quality hotel of international standing as aforesaid will not be commercially viable;
- 23.6.4 for the purpose of Clause 2.6.3 in the event that the Tenant is of the opinion that the use of the Property as a high quality hotel of international standing as aforesaid is not or would not be commercially viable the Tenant must provide to the Landlord reasonable evidence which may be in the form of audited accounts, business plans and projections, consultants reports or other objective data to demonstrate the commercial inviability of such use;
- 23.6.5 in the event at any time after the Hotel Operation has ceased, in the circumstances contemplated by Clause 2.6.3, for any other use from time to time thereafter in respect of which any necessary planning permission has been granted and for which the Landlord has given its approval in writing, which approval shall not be unreasonably withheld.

#### 23.7 Warrandice

The Landlord grants warrandice subject always to the Sub-Station Lease.

### 24 RENT

#### 24.1 Annual Rent

The annual rent is one pound (£1) which the Tenant must pay if asked only to the Landlord in each year of the Term.

#### 25 other monetary obligations

##### 25.1 Interest

- 25.1.1 The Tenant must pay interest to the Landlord at the Prescribed Rate on any part of the Lease Premium and any VAT thereon, and on any other sum of money that is due to be paid under this Lease and that has not been paid on time.
- 25.1.2 If late payment of any sum of money results in the Landlord paying interest to HMRC for late payment of any VAT due the Tenant must reimburse the Landlord for the interest paid within five Working Days of written demand.
- 25.1.3 This Clause is without prejudice to any other right, remedy or power available to the Landlord.
- 25.2 Rates, taxes and utilities
  - 25.2.1 The Tenant must pay and discharge all present and future rates, taxes, levies, costs, duties, charges, assessments, impositions and outgoings (of whatever nature) which now are or may at any time hereafter during the Term be charged, levied assessed or imposed upon the Property or upon the owner or occupier in respect thereof and any use carried out there. The Tenant will not be liable to pay:

- (a) any taxes payable by the Landlord in connection with any dealing (actual or deemed) with its interest in this Lease; or



- (b) any taxes payable by the Landlord by reason of the receipt of the Lease Premium or any other payment received by the Landlord under this Lease.
- 25.2.2 The Tenant must pay all costs in connection with the supply, use and removal of all electricity, gas, water, telecommunications, data, sewage and other services and utilities to or from the Property.
- 25.3 VAT
  - 25.3.1 All sums payable by the Tenant are exclusive of any VAT that may be chargeable. The Tenant must pay VAT on all taxable supplies made to it in connection with this Lease on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.
  - 25.3.2 Every obligation on the Tenant under or in connection with this Lease to pay or refund any money or indemnify the Landlord or any other person against any liability also includes an obligation to pay, refund or indemnify against any VAT, or an amount equal to any VAT, chargeable on it.
  - 25.3.3 The Tenant must pay the Landlord, within ten (10) Working Days of written demand, an equitable share (as determined by the Landlord, acting reasonably) of any costs payable for the maintenance, repair, lighting, cleaning, renewal and replacement of any (if any) service media belonging to the Landlord or which the Landlord is liable to maintain, and which are used in common after the Completion Date by the Tenant and the Landlord or its other tenants benefitting from such service media.
  - 25.3.4 The Tenant must pay the Landlord, within ten (10) Working Days of written demand, an equitable contribution (as determined by the Landlord, acting reasonably) towards any charges and all payments due under any Planning Agreement, and otherwise under the title deeds enforceable at the Date of Entry, in so far as the charges and payments are properly due and payable in respect of the Property.
- 25.4 Landlord's costs

The Tenant must pay to the Landlord, within ten (10) Working Days of written demand:

  - 25.4.1 all reasonable costs, charges, expenses, disbursements and fees properly and reasonably incurred by the Landlord:
    - (a) in connection with the preparation and service of all notices properly given under and in accordance with this Lease and relating to disrepair or requiring the Tenant to remedy any breach of any of the obligations contained in this Lease whether the notice is served during or after the expiry or earlier termination of the Term;
    - (b) in connection with or procuring the remedying of any other breach of any of the Tenant's obligations under this Lease;
  - 25.4.2 all proper and reasonable costs, charges, expenses, disbursements and fees incurred by the Landlord in connection with the making of any application by the Tenant for any consent (whether or not consent is refused or the application withdrawn), and if consent is given, in connection with the preparation of any licence, consent letter or other document used to record such consent.
  - 25.4.3 the costs of registration of this Lease in the Land Register of Scotland and in the Books of Council and Session and of obtaining three Extracts (two of which will be for the Landlord's purposes).



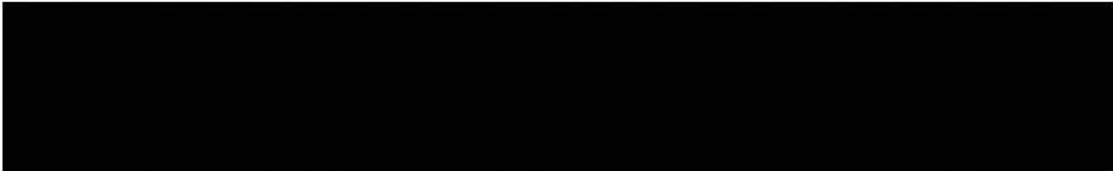


26 Use AND PROPOSED DEVELOPMENT

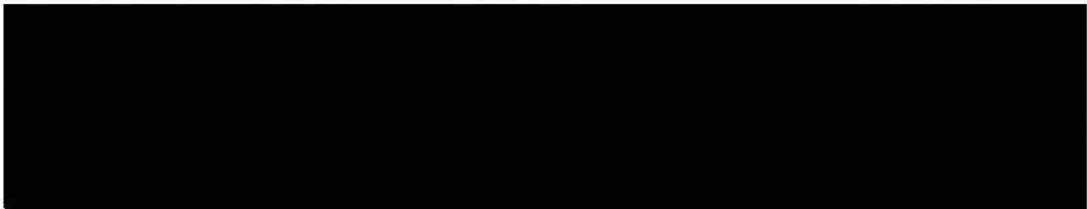
26.1 Permitted Use

The Tenant must not use the Property for any purpose other than for a Permitted Use.

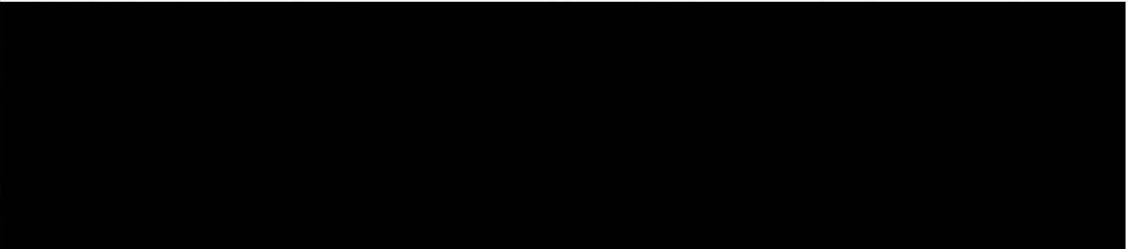
26.2 Proposed Development



26.2.1



26.2.2



26.3 No illegal use

The Tenant must not use the Property for any illegal purpose nor for any purpose that may in the Landlord's reasonable opinion cause loss, damage, injury or legal nuisance to the Landlord or any other owner or occupier of neighbouring property.

26.4 No warranty about use

The Tenant acknowledges that the Landlord does not represent or warrant that the Permitted Use or any change of use which is approved by the Landlord is, will be or will remain a permitted use under the Planning Acts or the title deeds of the Property and that notwithstanding that any such use as aforesaid is not a permitted use within such provisions as aforesaid, the Tenant shall remain fully bound and liable to the Landlord in respect of the obligations undertaken by the Tenant by virtue of this Lease without any compensation, recompense or relief of any kind whatsoever

27 Repair

27.1 Maintenance of the Property

27.1.1 The Tenant must at all times throughout the Term at the Tenant's expense repair and maintain and (where necessary for the foregoing purposes) renew, rebuild and reinstate and generally in all respects keep in good and tenable condition the Property and every part thereof and shall carry out all necessary maintenance, cleansing and where necessary for the foregoing purposes, rebuilding and renewal works (regardless of the age or state of dilapidation of the buildings for the time being comprised in the Property) and that irrespective of the cause or extent of the damage want of repair, maintenance (and where necessary for the foregoing purposes) renewal, rebuilding or others and including any which may be rendered necessary by a latent or inherent defect in the Property; Providing and declaring that there is excluded from the obligation of the Tenant under this Clause or any