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CONCESSION AGREEMENT

THIS **CONCESSION AGREEMENT** hereinafter referred to as "**this Agreement**" is made and entered into this 24th day of APRIL 2003.

BETWEEN

THE FEDERAL GOVERNMENT OF NIGERIA represented by the HONOURABLE MINISTER OF AVIATION, (hereinafter referred to as "**the FGN**", which expression shall wherever the context so admits include its successors-in-title and assigns) of the first part;

FEDERAL AIRPORTS AUTHORITY OF NIGERIA, a parastatal established by statute having its headquarters situate at Murtala Muhammed Airport, Ikeja, Lagos, (hereinafter referred to as "**FAAN**" which expression shall wherever the context so admits include its successors-in-title, nominees, appointees, agents, servants and assigns) of the second part;

AND

BI-COURTNEY LIMITED, a limited liability company duly incorporated under the Laws of the Federal Republic of Nigeria, having its registered office situate at The Rooftop, 8th – 10th Floors, 24A, Campbell Street, Lagos, hereinafter referred to as "**the Concessionaire**" which expression shall wherever the context so admits include its successors-in-title, appointees, agents and assigns) of the third part.

SAVANNI VISINONI LIMITED, a limited liability company duly incorporated under the Laws of the Federal Republic of Nigeria, having its registered office situate at Kilometre 5, Apapa-Oshodi Expressway, Adeyanju-Daniel Street, Awodi Ora, Kirikiri, Apapa, Lagos, (hereinafter referred to as "**the Sponsor**" which expression shall wherever the context so admits include its successors-in-title, appointees, agents and assigns) of the third part.

WHEREAS:

1. By virtue of section 6 of the Civil Aviation Act Cap. 51 Laws of the Federation of Nigeria 1990, the Minister of Aviation is charged with the responsibility of establishing and regulating airports in Nigeria for and on behalf of the Federal Government of Nigeria.

2. By virtue of its enabling statute (Federal Airports Authority of Nigeria Act of 1996), FAAN is responsible for the maintenance, operation and management of all airports in Nigeria, hitherto, maintained and managed by the Federal Ministry of Aviation pursuant to the provisions of the Civil Aviation Act Cap. 51 Laws of the Federation of Nigeria 1990.

3. The Federal Government of Nigeria is desirous of promoting investment and private sector participation in the development and operation of its public utilities and infrastructures.

4. In accordance with the foregoing policy, FAAN for itself and on behalf of the Federal Government of Nigeria acting through its Appointed Consultants issued information and instructions to tenderers, inviting proposals for the construction of Murtala Muhammed Domestic Airport Terminal 1 (hereinafter referred to as "the Terminal").

5. The Concessionaire, the Sponsor, the Contractor and the Operator jointly have the experience technical capabilities and expertise in the construction, management and the operation of airport facilities.

6. In response to the invitation to tender referred to in (4) above, the Concessionaire submitted to FAAN, through its Appointed Consultants, a tender for the design and construction of the Terminal on Build, Operate and Transfer terms.

7. Following the Invitation to Tender, Stabilini Visinoni Limited (the "Sponsors"), who have nationally recognized experience and expertise in the design, construction and operation of projects and other facilities have been selected by the Federal Government to undertake the Project and have established Bi-Courtney Limited as the Concessionaire in order to do so.

8. The Concessionaire is willing to design, construct and operate the Project and, at the expiry of the Concession Period, transfer the Project to FAAN and FAAN is willing to authorise the Concessionaire to do so, on the terms and conditions set out herein; and

9. Pursuant to the foregoing, the Grantor by a letter dated 23rd May 2002 awarded the Concession to the Concessionaire through the Sponsor.

NOW THEREFORE, in consideration of the mutual assurances, guarantees, covenants and undertakings herein contained, the parties hereby agree as follows:

I. THE CONCESSION

ARTICLE 1

THE CONCESSION

1.1 Definitions

In this Agreement, unless the subject or context otherwise requires, the following words or expressions shall have the following meanings:

"Access Roads" means the roads and related facilities providing access to the Site.

"Appointed Consultants" refers to the consortium of consultants led by James Cubitt Architects appointed by FAAN to monitor and oversee on its behalf, the design and construction of the Terminal in accordance with approved specifications and also to inspect and undertake testing of the facilities installed in the Terminal;

"Approvals" means all rights, permits, licenses, consents, permissions, exemptions and approvals which are required by the Concessionaire, the Construction Contractor or Sub-contractors for the successful implementation of the Project or to fulfill the Concessionaire's, the Construction Contractor or Sub-contractors' commitments herein or for the exercise of any of the rights of the Concessionaire, the Construction Contractor or Sub-contractors under this Agreement.

"Approved Design" means the outline architectural, structural, electrical, mechanical, engineering drawings and specifications for the Construction Works approved by FAAN; prepared in accordance with the standard of the specifications incorporated in the tender documents and as approved by FAAN.

"**Associated Facilities**" means the facilities reserved in the Terminal for the Users thereof and shall include all such additional developments appurtenant to the Terminal and incidental to its efficient operation and management;

"**Business Day**" means any day on which banks are generally open for business in Lagos.

"**Certificate of Final Completion**" means the certificate issued or deemed issued in accordance with Article 8.4.4 of this Agreement.

"**Certificate of Preliminary Completion**" means the certificate issued or deemed issued in accordance with Article 8.4.3 of this Agreement.

"**Concession**" means the administrative decision made by the Grantor on 23rd May 2002 pursuant to the directive of the Federal Government of Nigeria, to grant the rights and impose on the Concessionaire, the obligations specified in this Agreement;

"**Concession Period**" shall be **twelve (12)** years effective from the Start Date or such longer period as may be extended from time to time pursuant to the terms hereof;

"**Concession Rights**" means all the rights conferred and obligations imposed on the Concessionaire pursuant to this Agreement;

"**Concessionaire's Event of Default**" means an event of default specified herein which may entitle the Grantor to issue a Notice of Intention to Terminate this Agreement;

"**Construction Commencement Date**" means the 1st day of January 2003;

"**Construction Completion Date**" means the day upon which FAAN issues or is deemed to have issued the Certificate of Final Completion certifying that the construction of the Terminal has been successfully completed, tested and commissioned; and is available for use pursuant to Article 8.4.4.

"**Construction Contract**" means the agreement or agreements between the Concessionaire and the Construction Contractor and approved by the Grantor for the design, engineering, procurement, construction, completion, installation, testing and commissioning of the Terminal;

"**Construction Contractor**" means the contractor or contractors

hired by the Concessionaire and approved by the Grantor to perform the Construction Works in accordance with the Construction Contract and this Agreement and their respective successors and permitted assignees;

"Construction Facilities" means those facilities on the Site and, as the case may be, on the land which the Concessionaire requires for construction;

"Construction Period" Shall be a period of 18 months from Construction Commencement Date or such longer period as may be granted by FAAN;

"Construction Works" means the design, engineering, procurement, construction, installation, completion and commissioning of the Terminal and its facilities and equipments in accordance with Article 7 and **Annex A.**;

"Construction Work Programme" means the work programme referred to in Article 7.10.1 and contained in **Annex C;**

"Consultation Period" has the meaning set forth in Article 17.3.1.;

"Co-ordinating Committee" means the committee appointed in accordance with Article 22.1;

"Default" means a failure by a party to perform any of its obligations under this Agreement which is not excused by an act or omission of the other party in breach of this Agreement, Force Majeure or by an event as to which the other party bears the risk;

"Default Rate" means a rate of 2% per annum above the prime lending rate of Union Bank of Nigeria Plc.;

"Detailed Design" means the second phase of the design to be provided by the Concessionaire pursuant to Article 6;

"Effective Date" means the 23rd day of May 2002;

"Environmental Contamination" means any contamination or pollution of the air ground or water above under or surrounding the Terminal or any part thereof that is not permitted by or consistent with the environmental Acts Laws Regulations and Bye-Laws of any Relevant Authority;

"Equipment" means the tools, components and equipment to be used for the Construction Works, and such other appliances, gadgets, machinery, materials that will be installed by the

Concessionaire for the effective operation, management and maintenance of the Terminal;

"Facility Agent" means the financial institution designated by Lenders to represent them for the purposes of the Financing Agreements and/or the Security Agreement;

"Final Completion" means that (i) the Terminal has already reached Preliminary Completion, (ii) the Construction Works in relation to the Terminal have been fully completed in accordance with this Agreement, and (iii) a Certificate of Final Completion for the Terminal has been issued or is deemed to have been issued;

"Final Completion Date" means the date on which the Certificate of Final Completion for the Terminal is issued or is deemed to have been issued in accordance with Article 8.4.4;

"Final Maintenance Overhaul" has the meaning specified in Article 13.2;

"Financial Closing" means the execution and delivery of such Financing Agreements as may be required (including the satisfaction or waiver of each of the conditions precedent to the initial availability of funds under such Financing Agreement) to evidence the consummation of all transactions necessary for the Concessionaire to obtain debt financing for the Construction Works and Commissioning of the Terminal, together with the receipt of such equity commitments and contributions as may be required by this Agreement and the Financing Agreements;

"Financing Agreements" means any agreement entered into between the Concessionaire and any domestic and or international lender or consortium of lenders evidencing the grant and or disbursement of credit facility to the Concessionaire for the implementation of the Project;

"Force Majeure" means the events specified in Article 16.1 hereof;

"the Grantor" means the FGN and FAAN acting jointly or severally for the purposes of this Agreement;

"the Grantor's Event of Default" shall be the Grantor and or FAAN's failure and or inability to perform an obligation imposed hereunder which may cause the Concessionaire to issue a Notice of Intention to Terminate this Agreement;

"**Gross Misconduct**" means an act or omission of a party constituting either failure to pay due regard to serious consequences which a conscientious and reasonable contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission;

"**Improper Draw**" means any draw on bonds in breach of the terms and conditions of this Agreement;

"**Independent Auditor**" means a reputable firm of chartered accountants who are members of or recognized by the Institute of Chartered Accountants of Nigeria and appointed by the Grantor to audit and verify the books of accounts of the Concessionaire for the purpose of determining the Concessionaire's turnover and the Concession Fee payable therefrom;

"**Independent Engineer**" means the independent consulting engineer jointly appointed by FAAN and the Concessionaire in accordance with the provisions of Article 4.1 hereof;

"**Lender**" means any entity or institution that has granted credit facility to the Concessionaire in connection with the financing of the Project;

"**Maintenance Bond**" means the bond provided by the Concessionaire pursuant to Article 10.5;

"**Monthly Performance Certificate**" means a certificate issued by the FAAN certifying that the Concessionaire has met performance criteria in accordance with the Construction Work Programme;

"**Notice of Intention to Terminate**" means a notice issued in accordance with Article 17.3.1 hereof;

"**Notice of Termination**" means a notice issued in accordance with Article 17.3.2 hereof;

"**Operating Parameters**" means the operating parameters of the Terminal as may be agreed with FAAN;

"**Operation and Maintenance Agreement**" (O&M Agreement) means the agreement entered into between the Concessionaire and the Operator for the operation, management and maintenance of the Terminal;

"**Operation and Maintenance Contractor**" (O&M Contractor)

means the contractor hired by the Concessionaire and approved by the Grantor to manage, operate, maintain and repair the Units and the Terminal in accordance with the O&M Contract Agreement and this Agreement and its successors and permitted assignees;

"**Operation and Maintenance Costs**" shall be ten per cent (10%)_____ of the Concessionaire's estimated construction costs of =N=____ billion projected as the annual costs of effectively maintaining the Terminal;

"**Operation and Maintenance Manual**" means the manual specifying standards and procedures for the effective operation, management and maintenance of the Terminal as set out in **Annex C** hereto;

"**Panel of Experts**" means the panel of experts appointed in accordance with Article 22.2.1;

"**Performance Bond**" means the performance guarantee provided by the Concessionaire pursuant to Article 2.8 and in the form set out in **Annex B** hereto;

"**Preliminary Completion**" means that: (i) the Terminal has been tested in accordance with the approved designs, drawings and technical specifications of the Project ; (ii) no further Construction Works is required with respect to the Terminal to enable the safe operation of the Terminal; (iii) a Certificate of Preliminary Completion for the Terminal has been issued or is deemed to have been issued;

"**Preliminary Completion Date**" means the date on which the Certificate of Preliminary Completion for the Terminal is issued or is deemed to have been issued in accordance with Article 8.4.3;

"**Project**" means the financing, designing, construction, equipping, completion, testing, commissioning, operation, management and maintenance of the Terminal;

"**Project Implementation Schedule**" means the Schedule set forth in Article 7.10.1;

"**Project Scope of Works**" means the scope of the Construction Works and equipping of the Terminal specified in **Annex A** hereto;

"**Prudent Industry Practice**" means the standard of practice attained by exercising that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled and experienced contractor, operator engaged in the same type of undertaking under the same or similar circumstances. With respect to the Terminal, Prudent Industry Practice shall include, but not be limited to –

(a) compliance with the rules, regulations, guidelines, directives and standards of the International Civil Aviation Organisation (ICAO) which may be made, modified or reviewed from time to time regarding,

(b) procurement of adequate materials, resources and supplies, to meet the Terminal's needs under normal conditions and reasonably anticipated abnormal conditions,

(c) provision of sufficient, adequately experienced and trained operating personnel to operate the Terminal properly, efficiently and within the equipment manufacturers' guidelines and specifications and who are capable of responding to emergency conditions,

(d) performance of preventive routine and non-routine maintenance and repairs on a basis that ensures reliable long-term and safe operation, and carried out by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures,

(e) undertaking appropriate monitoring and testing of equipment to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and emergency conditions, and

(f) operation of equipment in a safe manner and in a manner safe to workers, the general public and the environment;

"**Relevant Authority**" means any Ministry (whether Federal or State), governmental department, agency, public authority, directorate, or body having jurisdiction in Nigeria;

"**Security Agreement**" means an agreement entered into by the Concessionaire and approved by the Grantor and granting to the Lenders in accordance with Nigerian law any pledge,

mortgage, encumbrance or other security interest in the Secured Property or in any property, ownership rights or other rights and interests granted by the Grantor to the Concessionaire pursuant to this Agreement;

"**Secured Property**" means the Concession Rights, Construction Works, the Terminal, and any other property or asset of the Concessionaire which is situated on the Site or in the Federal Republic of Nigeria and which is and can be the subject of any Security Agreement under the laws of the Federal Republic of Nigeria;

"Site" means the parcel of land the subject of the Land Use Right and measuring approximately 35,000 square metres and the appurtenances thereto situate at Ikeja, Lagos State, the dimensions and abuttal of which are specifically described and delineated on Survey/Site Plan No SAT/LG/45 dated 26 May 2001 attached hereto as **Annex E** including the rights of way, way leave and rights of passage delivered to the Concessionaire by FAAN in accordance with the provisions hereof, for the construction of the Terminal and its associated facilities;

"**Start Date**" means a date 14 days after the Construction Completion Date or 21 days after the Construction Period whichever occurs earlier;

"**Target Final Completion Date**" means the Milestone Date set forth in Article 7.10.1 representing the intended Final Completion Date for the Terminal as such date may be modified in accordance with the terms of this Agreement;

"**Technical Proposal**" means the technical proposal contained in the Concessionaire's tender for the Project submitted to the Grantor as amended and improved by agreement and other technical changes and improvements on which the Grantor and the Concessionaire have reached agreement;

"**Terminal**" means a domestic terminal building complex including the terminal building, fingers, car parks, overhead pedestrian bridge, fence, boreholes and water treatment house, fire fighting facilities, sewage treatment and pumping plant, powerhouse, communication facilities and all appurtenance thereto;

"**Transfer Committee**" means the committee established in accordance with Article 13.12;

"Transfer Date" means the Business Day following the last day of the Concession Period;

"Users" shall include airlines, departing and arriving passengers at the Terminal and persons that use associated facilities thereat;

"Utilities" shall include water, electricity, gas, sewerages, diesel, and telecommunications.

1.2 Interpretation

(1) The Recitals and the Annexes to this Agreement shall form an integral part hereof and references to Annexes shall be reference to Annexes hereto, unless otherwise indicated.

(2) Article headings are inserted herein for ease of reference only and shall not in any way affect the interpretation of this Agreement.

(3) The words "include", "includes" and "including" shall at all times be construed as if followed by the words "without limitation to" or "but not limited to".

(4) Wordings importing the Singular shall include the plural and vice versa and words importing persons shall include bodies corporate, unincorporated associations and partnerships.

(5) Reference herein to statutes, legislation and the like shall include amendments, modifications and re-enactment of such statutes or legislation.

(6) Approvals and notices required to be given hereunder shall be in writing.

(7) In the event that the provisions of this Agreement become inconsistent with the provisions of any other Agreement or any other document that pertains hereto, the provisions of this Agreement shall prevail.

ARTICLE 2

THE CONCESSION

2.1 Grant of the Concession Rights

The Grantor hereby grants to the Concessionaire a concession to design, develop, finance, construct, complete, test, commission,

operate, manage, maintain and transfer the Terminal in accordance with the Approved Design. The Concessionaire shall have all the rights and obligations herein reserved under this Agreement and shall transfer the Terminal to the Grantor at the end of the Concession Period.

22 Exclusivity of the Concession Rights

(a) Save as otherwise provided in Articles 17.4 and 20.2 the concession granted to the Concessionaire pursuant to this Agreement is exclusive. The Grantor shall ensure that no part of the concession shall be granted to any other party unless the Concessionaire is in breach of any of its obligations under this Agreement that would give rise to a right of termination by the Grantor under Article 17 or is in breach of Nigerian law in relation to this Concession.

(b) The Grantor guarantees and assures that it will not build any new domestic terminal in Lagos State and that no existing domestic terminal will be materially improved throughout the Concession Period that would compete with the Concessionaire for the same passenger tariff.

Provided that the Concessionaire shall have a right of first refusal in the event that passenger traffic during the Concession Period necessitates an expansion of the Terminal and the first right of consideration if the Grantor elects to build a new domestic terminal in Lagos State.

(c) The Grantor further guarantees and assures that all scheduled domestic flights in and out of FAAN's Airport in Lagos State shall during the Concession Period operate from the Terminal.

(d) FAAN further assures and guarantees that it shall not during the Concession Period cause or authorise the erection or development of a shopping mall or any facility(ies) within 200 meters from the perimeter of the Site capable of impeding and or threatening the Concessionaire's revenue generation.

(e) In the event that the Grantor decides to privatise or otherwise dispose of FAAN or the Terminal the Concessionaire shall have the first right of refusal to

acquire the Terminal or any other specie of ownership or right created by the privatisation process under the Public Enterprises (Privatisation and Commercialisation) Act 1999 or any other enabling statute to this effect.

2.3 Concession Period

The Concession Period shall start on the Start Date and last until the twelfth (12th) anniversary of the Start Date unless otherwise modified in accordance with this Agreement. At the end of the Concession Period, the Concessionaire shall transfer the Terminal to the Grantor (or any person designated by the Grantor) without the payment of any compensation and in accordance with the provisions of Article 13.

2.4 Extension of the Concession Period

In case of:

(a) any Default by the Grantor which results in delay in the Commencement of the Concession Period; or

(b) Force Majeure which results in unavoidable delay in the Commencement of Concession Period or which falls under the scope of Article 16.1.11;

and provided the costs, losses, damages or expenses resulting therefrom to the Concessionaire are not otherwise compensated by the Grantor or by any proceeds to which the Concessionaire is or should have been entitled had it maintained insurance in accordance with Article 15.12, then the Concession Period may be mutually extended so as to place the Concessionaire in substantially the same economic position as it was prior to the occurrence of such event.

2.5 Concession Fee

a. During the Concession Period, the Concessionaire shall pay 5% of its annual turnover to the Grantor as Concession Fee. The fee shall be payable quarterly within 30 days from the end of each quarter.

b. The Concessionaire hereby covenants that during the Concession Period, it shall promptly render quarterly and annual returns to the Grantor in respect of the Concessionaire's operations and revenues for each quarter and financial year and shall afford the Grantor, its authorised employees, agents and or

Independent Auditor access to all books of accounts as may be necessary for the verification of the amount payable herein.

2.6 Ownership and Right to Operate the Terminal during the Concession Period

2.6.1 Right to Own and Operate the Terminal

Save as otherwise provided in Article 5, the Concessionaire shall have the right to own and operate all assets, equipment and facilities constituting the Terminal during the Concession Period.

2.6.2 Transfer and Mortgage

The Concessionaire shall be allowed to mortgage or transfer the assets, facilities and equipment of the Terminal for the purpose of financing in accordance with Article 20.2 Such mortgage or transfer shall be consented to in writing by the Grantor, such consent not to be unreasonably withheld, and shall have no adverse effect on the rights or interests of the Grantor. In the case of a proposed refinancing the Grantor shall have an absolute right to grant or withhold consent.

Save as provided in Articles 17.4 and 20.2 the Concessionaire shall not mortgage or transfer the assets, facilities and equipment of the Terminal for any purpose other than the financing and refinancing of the Terminal.

2.7 Concessionaire's Principal Obligations during the Concession Period

The Concessionaire shall be responsible for the performance of the Construction Works and operation and maintenance of the Terminal during the Concession Period at the Concessionaire's own cost and risk.

2.8 Performance Bond

Within 14 days following the execution of this Agreement the Concessionaire shall provide the Grantor with a Performance Bond issued by a financial institution acceptable to the Grantor in the form of a first demand guarantee as set out in Annex B or any other form acceptable to the Grantor and in the amount of One Billion Naira (₦1,000,000,000.00) and valid from the Construction Commencement Date until released in accordance with Article 9.7 to

secure the timely performance of all the Concessionaire's obligations under this Agreement.

2.9 Failure to Provide the Performance Bond

(f) If the Concessionaire fails to provide the Performance Bond in accordance with Article 2.8, it shall be a fundamental breach of Concessionaire obligations and the Grantor shall be entitled, without having to comply with the provisions of Article 17, to immediately terminate this For the avoidance of doubt, the provisions of Article 17 shall not apply to this Article 2.9.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND CONDITIONS PRECEDENT

3.1 Concessionaire's Representations and Warranties

The Concessionaire hereby represents and warrants that:

(a) the Concessionaire has been duly established and registered under the laws of the Federal Republic of Nigeria and has the corporate power and authority to execute and carry out the terms and conditions of this Agreement.

(b) the Concessionaire has:

(i) obtained all required Approvals and documentation prior to the Construction Commencement Date; and

(ii) submitted all requisite applications, requests and documentation for obtaining any other Approval that is necessary to commence the Construction Works; and

(iii) submitted the Preliminary design to FAAN for approval in conformity with the criteria set out in Annex A

3.2 the Grantor's Representations and Warranties

the Grantor hereby represents and warrants that:

(a) it has the power to enter into this Agreement and authorised to and capable of performing its obligations hereunder; and

(b) it has the Land Use Right to the Site for the purpose of the

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concession.

(c) the Concession Rights granted under this Agrement are valid and neither it or any Relevant Authority has issued (nor are obliged to issue) to any person, any rights or privileges that are inconsistent with or conflict with or would limit or interfere with the exercise and enjoyment by the Concessionaire of the Concession Rights.

ARTICLE 4

INDEPENDENT ENGINEER

Appointment of the Independent Engineer

(1) The Independent Engineer shall be jointly appointed by the Concessionaire and the Grantor as may be requested by any of the parties.

(2) In the event that the Concessionaire and FAAN are unable to agree on the choice of the Independent Engineer, the parties shall apply to the President of the Nigerian Society of Engineers who shall appoint a reputable firm of Consulting Engineers with requisite qualifications and experience in construction project management to act as the Independent Engineer.

(3) The fees and expenses of the Independent Engineer shall be jointly borne by the Concessionaire and FAAN.

Role of the Independent Engineer

The Independent Engineer shall from time to time be required to make an independent objective and expeditious determination of any issue or dispute referred to him or arising from or in relation to the Construction Works.

The parties hereby undertake to each other that they shall grant the Independent Engineer such access to the Site, the Construction Works and any other place or information relating to the Project as he may reasonably require in carrying out his obligations and shall not at any time seek to influence his independence and objectivity. The aforesaid undertaking shall survive the termination of this Agreement.

II CONSTRUCTION OF THE PROJECT

ARTICLE 5

LAND USE RIGHT

5.1 Land Use Right Acquisition

The Grantor shall be responsible for:

(1) providing the Concessionaire with an exclusive right to the Site;

(2) procuring access to the Site through use of the Access Road; and

(3) keeping the Site free from all liens and encumbrances so that the Concessionaire has the right to the free and exclusive use thereof for the Concession Period for the purposes of the Project.

The Grantor shall grant an automatic extension of the right of the Concessionaire for the free and exclusive use of the Site and Access Road in case of extension of the Concession Period in accordance with the provisions of this Agreement.

5.2 Restrictions on Site Use

The Site is for the special use as a Terminal and shall not be used by the Concessionaire for any purpose other than the Project without the prior written consent of the Grantor.

The Concessionaire shall rent any parcel of land to be used outside the Site for the purpose of construction of the Terminal. Such land shall not be used by the Concessionaire as security under Articles 26.2 and 20.2 and shall be cleared and transferred by the Concessionaire to the Grantor within six (6) months after the Final Completion Date of the Terminal.

5.3 Fee for Land Use Right

The Concessionaire shall have no obligation to pay any amount in addition to the Concession Fee for the allocated Land Use Right.

5.3 Suitability and Conditions of Site

The Concessionaire acknowledges that it has inspected and investigated the Site prior to the Construction Commencement Date.

Except for the provisions of Article 15.4, Grantor makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Site. The Concessionaire shall accept the Site in its present condition and subject to all defects including subsurface conditions.

ARTICLE 6

DESIGN

6.1 Design Requirements

The Concessionaire shall be responsible for the preparation of the Preliminary Design in compliance with the requirements in Annex A, the Technical Proposal, and the principles agreed between the Concessionaire and the Grantor.

6.2 Review of Criteria for Preliminary Design

The Concessionaire acknowledges that it has reviewed the criteria for preliminary design and technical specifications set out in Annex A, and have clarified any errors, inconsistencies, ambiguities or omissions therein. The consequences and costs resulting from any errors, inconsistencies, ambiguities or omissions in the provisions of Annex A shall be borne by the Concessionaire.

6.3 The Grantor's Review and Approval of Preliminary Design

The Concessionaire shall from time to time submit the Preliminary Design to the Grantor for review and approval.

6.4 Concessionaire's Right to Change Preliminary Design

6.4.1 *Conditions for Change of Preliminary Design*

At any time during the Construction Works, the Concessionaire may, by notice to the Grantor, propose changes to the approved Preliminary Design, if the changes

(a) expedite the construction, or

(b) reduce the cost of construction or maintenance, or

(c) improve the quality of the Project.

6.4.2 Approval of Proposed Changes

The Concessionaire shall present to the Grantor all the necessary documents to support and justify any design changes proposed after the approval of the Preliminary Design.

Subject to the procedures set forth in Annex A the Grantor shall inform the Concessionaire not later than thirty (30) days after its receipt of the proposed changes whether the changes are approved. If the Grantor has not objected in writing to the proposed changes within the applicable time period. The Grantor shall be deemed to have approved such proposed changes. The Concessionaire shall not make any such changes without the written or deemed approval of the Grantor and shall respond to any question or request for clarification raised by the Grantor.

6.5 The Grantor's Review and Verification of Detailed Design

The Concessionaire shall prepare the Detailed Design for the Project in accordance with the Preliminary Design and the technical specifications applicable to the Project listed in Annex A The Concessionaire shall submit on or prior to the Milestone Date applicable thereto the Detailed Design to the Grantor for review and approval.

6.6 Concessionaire's Right to Change Detailed Design

At any time during the Construction Works, the Concessionaire may, by notice to the Grantor, propose changes to the Detailed Design. The Concessionaire shall present to the Grantor all the necessary documents to support and justify the proposed changes to the Detailed Design.

The Grantor shall notify the Concessionaire, within twenty (20) days following receipt by the Grantor of notice of any such proposal from the Concessionaire of its approval or rejection of the proposed changes. The proposed changes shall be deemed approved if the Grantor does not respond within the said twenty (20) day period. The Concessionaire shall not make any such changes without the written or deemed approval of the Grantor and shall respond to any question or request for clarification raised by the Grantor. Any written or deemed approval of a change in the Design shall not result in any

delay of the Construction Completion Date or extension of the Concession Period.

6.7 Responsibility of the Concessionaire

The Concessionaire shall be solely responsible for any deficiency in the design of the Project provided such deficiency does not result from a change in the Preliminary Design imposed in writing on the Concessionaire by the Grantor that is not in compliance with the criteria for Preliminary Design. The failure of the Grantor to object to any design, design drawing or specification or any change thereto shall not be construed as a waiver by the Grantor of any of its rights under this Agreement or in any way relieve the Concessionaire of its obligation thereunder. In furtherance of the foregoing, the Concessionaire:

(a) accepts that any engineering review conducted by the Grantor is solely for the Grantor's own information and that, by conducting such review the Grantor undertakes no responsibility as to the quality of engineering or construction of the Terminal or any component thereof.

(b) shall in no way represent to any third party that, as a result of any review by the Grantor, the Grantor is responsible for the engineering or construction soundness of the Terminal or any component thereof; and

(c) shall be solely responsible for the technical feasibility, operational capability, economy and reliability of the Terminal and any component thereof.

6.8 Grantor's Right to Change Detailed Design

FAAN may also propose design alteration, amendment and or modification post review and approval provided such alteration and or amendment would not delay construction completion and or increase construction costs.

FAAN agrees to reimburse the Concessionaire in full for additional costs incurred as a result of complying with its design alteration or change. It is further agreed and understood that the Construction Completion Date shall be extended, in the event that the construction completion is delayed or disrupted as a result of the Concessionaire having to comply with FAAN's notice requiring

design changes and or alterations after it has approved the Preliminary Design.

ARTICLE 7

CONSTRUCTION WORKS

Principal Obligations of Concessionaire

The Concessionaire shall be responsible for all Construction Works and shall assume all costs and all risks for the Construction Works in accordance with this Agreement. Without limiting the generality of the immediately preceding sentence, the responsibilities of the Concessionaire shall include the following:

(a) commencing the Construction Works on or prior to the applicable Milestone Date;

(b) performing the Construction Works in accordance with the Design requirements, the quality requirements set forth in Article 7.4 and in accordance with the relevant laws and regulations of the Federal Republic of Nigeria.

(c) giving priority to safety in its construction approach and activities in order to protect life, health, property and the environment;

(d) taking all reasonable measures to minimize disruption and other inconvenience to the public and area residents and businesses during construction.

(e) applying for and obtaining in a timely manner and thereafter maintaining the Approvals for the Project required to be obtained from any Relevant Authority and paying all applicable fees and costs for such Approvals.

(f) applying for and obtaining, in a timely manner, all visas and work permits for foreign personnel and recruiting local labour, including paying all applicable fees and cost relating thereto.

(g) appointing three (3) representatives to the Co-ordinating Committee in accordance with Article 22.1; and

(h) completing the Construction Works on or prior to the applicable Milestone Dates.

Principal Obligations of the Grantor

The responsibilities of the Grantor shall include the following:

(a) delivery of the Site in accordance with Article 5.1;

(b) facilitating all dealings with the appropriate Relevant Authorities during the construction period;

(c) [illegible]

(d) appointing three (3) representatives to the Co-ordinating Committee in accordance with Article 22.1.

Preparation of the Site

The Concessionaire shall at its own cost prepare the Site and the Construction Facilities in accordance with all requirements of this Agreement.

Quality of Construction Works

The Concessionaire shall ensure that the Construction Works are performed in accordance with all requirements set forth in this Agreement, including:

(a) The Preliminary Design and the Detailed Design as set out in Article 6; and

(b) The standards and technical specifications and requirements set out in **Annex A**; and

(c) When not so specified, in a proper and workmanlike manner using new and first quality materials and equipment.

Quality Assurance and Quality Control

7.5.1 *Concessionaire's Quality Assurance and Quality Control*

Prior to the Construction Commencement Date, the Concessionaire shall establish a quality assurance and quality control program, to be followed by the Concessionaire and the Construction Contractor. The Concessionaire shall make available to the Grantor on a continuing basis complete documentation of quality control results for the relevant aspects of Construction Works completed or in progress.

7.5.2 The Grantor's Right to Control Quality Requirements

Without affecting the Concessionaire's obligations hereunder, the Grantor shall have the right within working hours to attend or examine the Concessionaire's and any Construction Contractor's quality control inspections and methods to confirm that the Construction Works in question comply with the quality requirements in Article 7.4. The Concessionaire shall assist in the performance of such checks.

7.5.3 Failure to Comply with Quality and Safety Requirements

If the Construction Works or any component thereof do not conform in a material way with the quality or safety requirements of this Agreement, the Grantor may give notice to the Concessionaire of such failure. If the Concessionaire fails or refuses to correct the lack of conformity within a reasonable time after the Grantor's notice, then the Grantor shall be entitled to carry out the necessary corrective work itself or to engage a third party to do so at the risk and expense of the Concessionaire. In such case, the Concessionaire shall allow the employees, agents or contractors of the Grantor access to the Terminal and to the land used for Construction Works for such purpose. Should the Concessionaire fail to reimburse the Grantor for such costs and expenses upon request of the latter, the Grantor shall be entitled to draw upon the Performance Bond.

Construction Personnel

The Concessionaire shall provide, or ensure that the Construction Contractor provides, all necessary personnel with adequate skills and any required certificates for the performance of the Construction Works. Prior to the Construction Commencement Date, the Concessionaire shall submit to the Grantor a list of all supervisory personnel of the Concessionaire and the Construction Contractor, its quality supervisory personnel to be assigned to the Project, together with a summary of their qualifications.

Equipment and Material

The Concessionaire shall provide or cause to be provided at its own cost all equipment, materials and other items whether of temporary

permanent nature, required for the performance of the Construction Works.

Selection of Construction Contractor

7.2.1 *Selection of Construction Contractor*

In order to carry out its obligations under this Article 7, the Concessionaire has selected STABILINI VISINONI LIMITED to serve as the Construction Contractor to perform the Construction Works as approved by Grantor. The Construction Contractor shall undertake the Construction Works on the basis of the Construction Contract approved by the Grantor.

7.2.2 *Replacement of the Construction Contractor*

The Concessionaire shall have the right to terminate the Construction Contract and to replace the Construction Contractor. Replacement of the Construction Contractor and the Construction Contract shall be subject to Grantor's prior written approval in accordance with Article 21.

7.2.3 *Concessionaire's responsibility for the Construction Contractor*

(a) The appointment and approval of the Construction Contractor shall not relieve the Concessionaire of any of its obligations under this Agreement. The Concessionaire shall be fully responsible to Grantor for any acts or omissions of the Construction Contractor, its agents or any person either directly or indirectly employed by it as if such acts or omissions were the acts or omissions of the Concessionaire.

(b) The Construction Contract entered into with the Construction Contractor shall contain those articles of this Agreement which are necessary to enable the Concessionaire to fulfil its obligations under this Agreement.

7.2.4 *Concessionaire's rights in pursuance of its construction obligations*

In pursuance of its construction obligations hereunder, the Concessionaire shall have the right to –

(a) Award contracts with or without tender;

(b) Purchase equipment and machinery to be installed in the

Terminal;

(c) Enter into contracts for the supply of materials and services;

(d) Appoint, organise and direct staff to supervise and manage the Project; and

(e) Do all things that are necessary or desirable, and lawful for the completion of the Terminal.

Nothing contained in this Article shall in any way affect the obligation of the Concessionaire to obtain the approval of the Grantor or FAAN nor affect the right of the Grantor or FAAN to grant such approval as may be required in other provisions of this Agreement.

Drawings and Technical Details

Within one (1) month after the Final Completion Date of the Terminal, the Concessionaire shall furnish the Grantor with ten (10) copies and computerized version of all construction and "as built" design drawings of the Terminal and technical documents including:

(a) ten (10) copies and computerized version of all equipment plans, instructions, warranties, installation records, testing reports, quality supervision and acceptance records; and

(b) ten (10) copies and computerized version of other technical documents or information relating to the Project.

Project Implementation Schedule; Milestone Dates

Project Implementation Schedule

(a) The Concessionaire shall perform its obligations in respect of the Construction Works in accordance with the Project Implementation Schedule established by the Cocessionaire and approved by FAAN as contained in **Annex C.**

(b) Failure of the Concessionaire to meet any of the dates (the Milestone Dates) in the Project Implementation Schedule shall be a fundamental breach of this Agreement entitling the Grantor to draw on the Performance Bond on a pro-rata basis.

7.10.2 Extension of Milestone Dates

Where as a result of Force Majeure or the Default of the Grantor the Concessionaire is unable to attain a Milestone Date, the Concessionaire shall be entitled to an extension of the Milestone Date pursuant to Article 7.10.1 only if:

(a) the Concessionaire gives the Grantor a written claim for an extension of time within seven (7) days of the delay occurring which states the likely effect of the Force Majeure or Default on the relevant Milestone Date; and

(b) the Concessionaire reasonably satisfies the Grantor that:

(i) completion of the Milestone Date has actually been delayed; and

(ii) the Concessionaire has taken all reasonable steps to minimize the delay

The Grantor shall promptly after receiving the Concessionaire's claim under this Article give the Concessionaire notice of any extension of time which is granted or, if no extension is given, notice of that decision.

Progress Reports

7.11.1 Submission of Monthly Progress Reports

The Concessionaire shall submit to the Grantor a monthly report of the progress of the Construction Works which report shall describe in reasonable detail the Construction Works completed and in progress and such other matters as the Grantor may reasonably request. The progress reports are in addition to the information concerning the quality control program to be made available to the Grantor by the Concessionaire pursuant to Article 7.5.

7.11.2 Contents of Monthly Progress Reports

Without prejudice to the generality of the foregoing, each report shall include:

(a) charts and detailed description of progress, including each stage of procurement, delivery to Site, construction and erection;

(b) photographs showing the status and progress of construction on the Site;

(c) manufacturing details of plant, machinery, equipment and materials, such as the name of the manufacturer, manufacture location, and the actual or expected date of:

(i) commencement of manufacture;

(ii) Concessionaire's inspection;

(iii) tests; and

(iv) shipment and arrival at the Site.

(d) copies of quality assurance documents and tests results;

(e) safety statistics, including details of any hazardous incidents and activities relating to environmental matters; and

(f) comparison of actual and planned progress, with details of any events or circumstances, which may jeopardize construction completion, and the measures being (or to be) adopted to overcome delays.

7.11.2 *Monthly Project Meetings*

The parties and their consultants shall hold monthly meetings to review and discuss the monthly progress report for the month and resolve any question that may arise from the report and or physical inspection of the Construction Works undertaken pursuant to Article 7.12.

Monitoring and Inspection by the Grantor

7.12.1 *Monitoring and Inspection of the Construction Works*

The Grantor or any person designated by the Grantor shall be entitled to monitor the Construction Works and carry out reasonable inspection in the presence of a Concessionaire's representative. Such monitoring and inspection by the Grantor shall not interfere with the progress of construction.

7.12.2 *Cost of Monitoring and Inspection*

All costs of such monitoring and inspection shall be borne by the Grantor. However, if the results of such monitoring and

inspection reveal any material defects in the Construction Works or materials all costs of such monitoring and inspection shall be compensated by the Concessionaire.

7.12.3 Notice of Monitoring and Inspection

The Concessionaire shall be advised by reasonable prior notice of any inspection to be carried out by the Grantor. The Concessionaire shall afford and shall cause the Construction Contractor to afford such access to the Site (including temporary office facilities for representatives of the Grantor), assistance and equipment as may be reasonably required by the Grantor to permit the Grantor to carry out monitoring and testing of the Construction Works with any resulting costs to be borne as provided above.

The Concessionaire shall make available and shall cause the Construction Contractor to make available for inspection at the Site by the Grantor or its duly authorized representatives and agents copies of all plans and designs and any relevant document and information relevant to the purpose of the particular inspection. Any such inspection of confidential or proprietary information shall be subject to the confidentiality provisions of Article 16.3.

7.13 Rejection of Work, etc

At any time prior to the Final Completion Date of the Terminal, the Grantor shall be entitled to reject in writing any work, materials or equipment which is not substantially in accordance with this Agreement and to require the Concessionaire to correct the work or substitute proper materials and equipment, provided that the Grantor simultaneously provides the Concessionaire with the basis for its rejection(s). The Concessionaire shall be responsible for any increase in costs and delay resulting therefrom.

7.14 No Release

The failure of the Grantor to monitor, inspect or reject any part of the Construction Works shall not be construed as a waiver of any of the rights of the Grantor hereunder and shall not release the Concessionaire from any of its obligations under this Agreement. Notwithstanding the previous sentence the Grantor shall use its best efforts to notify the Concessionaire of any objection under Article 7.14 that it expects the Concessionaire to remedy as soon as possible after it discovers such a defect with the goal of minimizing the costs of such remedy.

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Clearance of the Site after Completion of the Construction Works

Upon completion of Construction Works, the Concessionaire shall clear away and remove all surplus materials rubbish and temporary work so as to leave the Site in a clean and usable condition within six (6) months following the Final Completion Date of the Terminal.

ARTICLE 8

TESTING AND COMPLETION

Testing

The Concessionaire shall carry out the program of tests within the time limits and according to the requirements set forth in **Annex A** to confirm that the Terminal meets the design standards and specifications set forth in this Concession, ICAO Standards and applicable Nigerian laws and regulations.

Attendance at Testing

The Grantor shall be entitled to have its agents and experts present at any testing at the Site. Provided written notice of the testing program has been given pursuant to Article 8.3 and the Grantor has declined in writing to attend the testing or has failed to make any comments on the testing program, tests may be conducted at the notified times in the absence of representatives of the Grantor.

Notice of Testing Program

No less than twenty (20) days prior to starting the testing program, or such shorter period as the parties may agree the Concessionaire shall give the Grantor notice of the testing program and of the date it proposes to commence testing at the Site. Such testing program shall indicate the order, date and time proposed for performing testing and shall otherwise be in compliance with the requirements of **Annex A**.

The Concessionaire shall perform all tests at the time and place stated in the testing program. In the event that the Concessionaire intends to carry out any testing at the Site otherwise than as set out in the testing program the Concessionaire shall give no less than twenty (20) days, or such shorter period as the parties may agree notice to the Grantor of the items to be tested, time and place of the relevant test.

8.4 Certification of Testing and Completion

8.4.1 *Completion of Building and Erection Work*

The Concessionaire shall notify the Grantor in writing as soon as the Concessionaire considers that, with respect to the Terminal, no further Construction Works are required in accordance with this Agreement. The Concessionaire and the Grantor shall conduct within seven (7) days after receipt of such notice a joint inspection and the Grantor shall promptly thereafter confirm that no further Construction Works are required or will notify the Concessionaire in writing of works to be completed to finish the Construction Works. If the Grantor fails to conduct the inspection or to issue such notice within seven (7) days after receipt of the notice from the Concessionaire it shall be deemed, on the eighth (8) day after delivery of the notice from the Concessionaire, that no further Construction Works are required.

8.4.2 *Certificate of Testing*

Upon the completion of each test the Concessionaire shall promptly certify that the test has been completed and shall provide the Grantor with a copy of such certificate which shall set forth in reasonable detail the test procedures and the results of each test. The Grantor shall advise the Concessionaire in writing within fourteen (14) days of its comments on the results of such testing.

8.4.3 *Preliminary Completion*

Provided that the Construction Works have been completed to the extent required to enable the safe operation of the Terminal, the Concessionaire shall perform tests in accordance with the requirements of **Annex C**. Upon the delivery to the Grantor of the copy of the certificate relating to the completion of the last of such tests, the Concessionaire shall notify the Grantor in writing that the Concessionaire considers that the Terminal has reached Preliminary Completion in accordance with this Agreement but for the issue of the Certificate of Preliminary Completion.

Within seven (7) days after receipt of such notice the Grantor shall advise the Concessionaire of its comments on such notice and the result of such final test and shall issue a certificate (the "Certificate of Preliminary Completion") or give notice to the Concessionaire of the reasons why a Certificate of Preliminary Completion cannot be issued. If the Grantor fails to advise the Concessionaire of its comments on the results on such final test or fails to issue such certificate or notice within that time, the

Certificate of Preliminary Completion shall be deemed issued on the eighth (8th) day after the provision by the Concessionaire of the notice together with the copy of the final test certificate.

8.4.4 Final Completion

Within 30 days of the final test and when all the Construction Works have been fully completed in accordance with this Agreement the Concessionaire shall give notice of such fact to the Grantor and on receipt of the same the Grantor shall promptly issue a certificate that the Terminal has been finally completed (a "Certificate of Final Completion") or give notice to the Concessionaire of the reasons why a Certificate of Final Completion cannot be issued. If the Grantor fails to issue such Certificate of Final Completion or notice within seven (7) days after receipt of the Concessionaire's notice, the Certificate of Final Completion shall be deemed issued on the eighth (8th) day after receipt of such notice.

8.5 No Waiver

The Grantor's inspection and acceptance of the Construction Works and the issuance of any Certificate of Preliminary Completion or Certificate of Final Completion shall not relieve the Concessionaire of liability of any type for defects or delay in the design or construction of the Project.

ARTICLE 9

DELAY IN COMPLETION AND ABANDONMENT

9.1 Delayed Completion Due to the Grantor

If there is any delay in the Start Date due to Default of the Grantor

(a) the Milestone Dates shall be appropriately extended under Article 7.10.

(b) the Concessionaire shall be entitled to a day for day extension of the Concession Period corresponding to the delay; and

(c) the Concessionaire shall be entitled to compensation from the Grantor sufficient to cover the increase in construction costs which may have resulted from such delay.

9.2 Duty to Mitigate Consequences of Delay

The Concessionaire shall without delay take all appropriate measures to avoid, limit or recover any delay or increased costs as referred to in Article 9.1. Failure to implement such measures shall correspondingly reduce any compensation that may be to the Concessionaire under Article 9.1.

9.3 Delayed Completion Due to the Concessionaire

In addition to the obligations of the Concessionaire under Article 7.12, the Concessionaire shall pay liquidated damages to the Grantor as provided in Article 9.4 for any delay in the Preliminary Completion Date and/or Final Completion Date, provided such delay is not the result of a Default of the Grantor or of Force Majeure.

9.4 Liquidated Damages for Delayed Completion Due to the Concessionaire

9.4.1 Preliminary Completion

Subject to Article 9.3, in the event that the Concessionaire fails to bring about the Preliminary Completion Date of the Terminal by the Target Preliminary Completion Date, the Concessionaire shall pay to the Grantor liquidated damages for each day of delay occurring after the Target Preliminary Completion Date of

(a) an amount of One Hundred Thousand Naira (=N= 100,000.00) for the first thirty (30) days.

(b) an amount of One Hundred and Twenty-Five Thousand Naira (=N= 125,000.00) for the following thirty (30) day period.

(c) One Hundred and Fifty Thousand Naira (=N= 150,000.00) thereafter.

9.4.2 Final Completion

Subject to Article 9.3,, in the event that, due to the Default of the Concessionaire, the Concessionaire fails to bring about Final Completion Date of the Terminal by the Target Final Completion Date, the Concessionaire shall pay to the Grantor liquidated damages for each day of delay occurring after the Target Final Completion Date of

(a) an amount of One Hundred Thousand Naira (=N= 100,000.00) for the first thirty (30) days.

(b) an amount of One Hundred and Twenty-Five Thousand

Naira (=N= 125,000.00) for the following thirty (30) day period.

(c) One Hundred and Fifty Thousand Naira (=N= 150,000.00) thereafter.

9.4.3 Concessionaire's Limitation of Liability for Delays

To obtain payment of the liquidated damages under Articles 9.4.1 and 9.4.2, the Grantor may draw upon the Performance Bond until the Performance Bond has been fully drawn down after which, subject to Article 9.8, the Concessionaire shall have no further liability to the Grantor for delay and/or prolonged delay or abandonment in the completion of the Terminal the Grantor's entitlement to liquidated damages shall be without prejudice to the right to terminate under Article 17.

Abandonment

In the event that due to the Default of the Concessionaire, the Concessionaire abandons or is deemed to have abandoned the Construction Works as provided under Article 9.6 the Concessionaire shall pay to the Grantor by way of liquidated damages the balance of the amount covered by the Performance Bond after any amount paid or payable by the Concessionaire to the Grantor pursuant to Article 9.4 has been paid.

Deemed Abandonment

The construction of the Terminal shall be deemed to have been abandoned if the Concessionaire.

(a) notifies the Grantor in writing that it has terminated the Construction Works and does not intend to recommence construction.

(b) fails to commence Construction Works on the Site within thirty (30) days from the Milestone Date applicable to the Construction Commencement Date other than by reason of an event of Force Majeure or a Default of the Grantor.

(c) fails to resume Construction Works within fourteen (14) days after the end of any Force Majeure, other than by reason Force Majeure or a Default of the Grantor.

(d) for any other reason, the Concessionaire ceases Construction Works or withdraws either directly or

through action by the Construction Contractor, all, or substantially all personnel from the Site prior to the Final Completion Date of the Terminal other than by reason of

(i) the occurrence of Force Majeure,

(ii) the appointment of a replacement Construction Contractor within sixty (60) days from the date when the Construction Works ceased; or

(iii) a Default of the Grantor; or

(e) Due to the Default of the Concessionaire, the Concessionaire fails to bring about the Final Completion Date of the Terminal within sixty (60) days after the Target Preliminary Completion Date of the Terminal as such date may be extended in accordance with Article 7.10.2

9.7 Release of the Performance Bond

The Grantor shall release all or so much of the Performance Bond as shall remain outstanding upon the earlier of

(a) six (6) months after the Final Completion Date of the Terminal, and

(b) the date of submission by the Concessionaire of the Maintenance Bond in accordance with Article 10.5; or

(c) termination of this Agreement after deduction of any compensation due to the Grantor from the Concessionaire in respect of any liability of the Concessionaire under this Agreement arising on or prior to such termination.

9.8 Exception to the Concessionaire's Limitation of Liability

The limitation of the Concessionaire's liability for delay in completion of the Construction Works and for abandonment or deemed abandonment as specified in Articles 9.5 and 9.6 does not apply if the Concessionaire's behaviour amounts to Gross Misconduct.

III. OPERATION AND MAINTENANCE OF THE TERMINAL

ARTICLE 10

OPERATION AND MAINTENANCE

10.1 Principal Obligations of the Concessionaire

The Concessionaire shall be responsible for the management operation and maintenance of the Terminal throughout the Concession Period at its own cost and risk and in accordance with Prudent Industry Practice and the provisions of this Agreement. Without limiting the generality of the preceding sentences of this clause, the Concessionaire shall ensure that throughout the Concession Period the Terminal is at all times:

(a) suitable for use;

(b) operated in accordance with Prudent Industry Practice and the Operation and Maintenance Manual provided for in Annex C, and

(c) maintained in good operating condition and capable of providing services for Users in a safe and stable manner.

10.3 Safety and Technical Guidelines

Not later than ninety (90) days prior to the Target Preliminary Completion Date and thereafter from time to time, the Co-ordinating Committee shall specify the coordination of safety and technical guidelines required by Nigerian laws and regulations as well as ICAO regulations, standards and guidelines to be implemented in connection with the operation of the Terminal within the Operations and Maintenance Manual and the Grantor's requirements and otherwise in accordance with Prudent Industry Practice. The Concessionaire shall operate the Terminal in accordance with such safety and technical guidelines once they are established.

Manual for Inspection and Maintenance

The Concessionaire shall prepare a manual (the "Manual") for inspection and maintenance of the Terminal based on the Operating Parameters which shall include procedures and schedules for

carrying out periodical and annual inspections, routine maintenance, major repair maintenance and annual maintenance and for adjusting and improving the inspection and maintenance program. The Concessionaire shall permit the Grantor to have access to and to examine the Manual.

10.5 Maintenance Bond

10.5.1 Amount of Maintenance Bond

Before the expiry or release of the Performance Bond in accordance with Article 9.7, the Concessionaire shall provide the Maintenance Bond in the form of a first demand bank guarantee any other form acceptable to the Grantor in an amount of Two Hundred Million Naira (=N=200,000,000.00) to secure the performance of all of the Concessionaire's obligations under this Agreement including compliance with its warranty under Article 13.4.

10.5.2 Restoration of Maintenance Bond

In the event that any draw has been made on the Maintenance Bond during the Concession Period, the Concessionaire shall ensure that the amount of the Maintenance Bond is restored to Two Hundred Million Naira (=N=200,000,000.00) on the Transfer Date.

10.5.3 Validity Period

The Maintenance Bond shall remain in force until twelve (12) months after the Transfer Date.

10.5.4 Liability for Maintenance

The right of the Grantor to draw upon the Maintenance Bond may be exercised without prejudice to any other rights of the Grantor under this Agreement and shall not relieve the Concessionaire from any further liability or responsibility to the Grantor for failure to maintain the Terminal.

10.6 Failure to Maintain

10.6.1 Corrective Maintenance by the Concessionaire

If the Concessionaire is in breach of its obligations to maintain the Terminal in accordance with Article 10.1, through no Default of the Grantor, the Grantor may give notice thereof to the Concessionaire. On receipt of such notice, the Concessionaire shall either perform the necessary corrective maintenance or may notify the Grantor that it disputes the

content of the notice from the Grantor. In case of a dispute, the dispute shall be resolved in accordance with Article 22.

10.6.2 Corrective Maintenance by the Grantor

If in the course of implementing the procedure under Article 22, the Co-ordinating Committee or the Panel of Experts decides that the Concessionaire has failed to maintain the Terminal in accordance with Article 10.1 and if the Concessionaire does not remedy that failure within the time period set forth in the decision made either by the Co-ordinating Committee or the Panel of Experts, then the Grantor may itself, carry out the maintenance at the risk and expense of the Concessionaire.

In such event the Concessionaire shall allow the employees, agents or contractors of the Grantor access to the Terminal for such purpose the Grantor shall ensure that all persons carrying out such operations shall undertake their work with the least possible interference to the operation of the Terminal and in accordance with Prudent Industry Practice.

In order to pay the above-mentioned maintenance expenses, the Grantor shall be entitled to draw on the Maintenance Bond to cover such expenses provided that it has furnished the Concessionaire with a detailed record of the expenses incurred.

10.7 Public Safety

If the Project or any part thereof breaches the applicable safety standards and regulations of the Federal Republic of Nigeria, the Grantor may restrict access to the Terminal until the Grantor is satisfied in its reasonable opinion that the Terminal is safe and shall notify the Concessionaire immediately. The Grantor may direct the Concessionaire to make the Project safe within the time specified in its notice. The Concessionaire shall not be entitled to any compensation whatsoever for such restriction of access or operations.

the Grantor Access

The Grantor and its representatives shall have access to the Terminal at all times to monitor operation and maintenance provided that the Grantor shall not interfere with, delay or disturb the Concessionaire and/or the O&M Contractor in performing their

pective obligations under this Agreement and/or the O&M Contract.

O&M Contractor

10.9.1 *Selection of O&M Contractor*

In order to carry out its obligations under this Article 10, the Concessionaire shall select an operation and maintenance company (the "O&M Contractor") to be approved by the Grantor to manage, operate, maintain and repair the Terminal. The Concessionaire shall deliver to the Grantor within nine (9) months of the Construction Commencement Date an Operation and Maintenance Agreement entered into with the the "O&M Contractor"wherein the terms and conditions upon which the Terminal will be operated, managed and maintained throughout the Concession Period are specified. The O&M Contractor shall undertake the management, operation and maintenance of the Terminal on the basis of the O&M Agreement approved by the Grantor within nine (9) months of the Construction Commencement Date.

10.9.2 *Replacement of O&M Contractor*

The Concessionaire shall have the right to terminate the O&M Contract and to replace the O&M Contractor. Replacement of the O&M Contractor and the O&M Contract shall be subject to the Grantor's prior written approval in accordance with Article 21, which approval shall not be unreasonably withheld or delayed.

10.9.3 *Concessionaire's Responsibility for the O&M Contractor*

(a) The appointment and approval of the O&M Contractor shall not relieve the Concessionaire of any of its obligations under this Agreement. The Concessionaire shall be fully responsible to the Grantor for any acts or omissions of the O&M Contractor, its agent or any person either directly or indirectly employed by it, as if such acts or omissions were the acts or omissions of the Concessionaire.

(b) The O&M Contract entered into with the O&M Contractor shall contain those Articles of this Agreement which are necessary to enable the Concessionaire to

fulfill its obligations under this Agreement.

) Participation in the Operation and Maintenance by the Grantor

The participation in the operation and maintenance of the Terminal by the Grantor shall not release or reduce the responsibilities of the Concessionaire for operation and maintenance of the Terminal under this Agreement.

.11 Security and Fire Services

(a) The Concessionaire shall ensure that the Terminal is fitted with appropriate security equipment and apparatus to conform with international standards. The Concessionaire shall prior to the Start Date procure the services of well trained security personnel to provide a level of law enforcement in the Terminal.

(b) In addition to the foregoing FAAN shall provide aviation security and aviation fire service in the terminal throughout the Concession Period.

.12 Inspection and Maintenance

10.12.1 Inspection and Maintenance Manual

Prior to the Start Date, the Concessionaire shall prepare an inspection and maintenance manual. The manual shall specify the procedure and schedule for carrying out periodic and annual inspections, effecting routine maintenance, heavy repair maintenance and annual maintenance at the Terminal, and also for adjusting and improving the inspection and maintenance programme.

10.12.2 Modifications to Inspection and Maintenance Manual

A copy of the inspection and maintenance manual shall be delivered to FAAN and same shall have their respective reasonable comments and suggested modifications and amendments incorporated therein. Thereafter, the Concessionaire shall not modify the manual without FAAN's prior approval, such approval not to be unreasonably withheld.

10.12.3 Non compliance with inspection and Maintenance Manual

If upon undertaking any scheduled periodic inspection, FAAN discovers that the Terminal is not being maintained in accordance with the manual, FAAN shall notify the Concessionaire specifying:

(c) the maintenance works required; and

(d) a reasonable period of time (having regard to the nature and the extent of works required) within which the Concessionaire shall ensure that remedial maintenance work is effected.

10.13 Safety and Control Systems

The Concessionaire shall install and maintain the following safety and security control systems at the Terminal throughout the Concession Period:

(a) Flight Information Display System;
(b) Smoke Detectors;
(c) 24-Hour Radio Link to Emergency Operator(s);
(d) Sprinklers;
(e) Water Hydrants;
(f) Fire Extinguishers;
(g) Telephones;
(h) Baggage Carousels;
(i) Clocking Systems;
(j) Access Control;
(k) Passenger and Baggage Security Scans;
(l) 24-Hour Video Camera Monitoring System (internal and external);
(m) Escalators/Travellators;
(n) Lifts (including two panoramic lifts);
(o) Ticket Desks and Check-in Counters;
(p) Baggage Make-up and Break-down; and
(q) such other conventional control and safety systems.

It is hereby agreed and understood that FAAN shall properly operate any of the aforementioned machinery or equipment that may be under its exclusive control in compliance with Prudent Industry

Practice and the standards required of the Concessionaire under this Agreement.

FAAN hereby undertakes to indemnify the Concessionaire for any improper use or operation of such machinery or equipment.

10.14 Terminal Usage

Following the Construction Completion Date of the Terminal, the Concessionaire shall ensure that the Terminal is convenient, suitable and safe for use at all times. The Concessionaire shall not be considered in breach of its obligations hereunder to the extent that the Terminal is not available for use as a result of a Force Majeure, Default of the Grantor, breach of this Agreement by the Grantor, measures taken in accordance with this Agreement to ensure the safe use of the Terminal (including maintenance or compliance with a request of FAAN and or any Relevant Authority), the effect of which is to close the Terminal.

10.15 Operating Reports

Every quarter, the Concessionaire undertakes to submit to FAAN an operating report regarding the operation of the Terminal.

10.16 FAAN Bye Laws regulating use of Terminal

(a) The Concessionaire shall display in conspicuous parts of the Terminal existing bye laws made by FAAN prescribing the rules and regulations for maintaining law and order and smooth operation of the Terminal.

(b) The Concessionaire shall also make copies of the Bye Laws available to Users of the Terminal, at their request.

ARTICLE 11

REVENUE GENERATED FROM THE OPERATION AND MANAGEMENT OF THE TERMINAL

11.1 Concessionaire's Entitlement to Collect Revenue

The Concessionaire shall throughout the Concession Period be entitled to collect from Users of the Terminal and retain for its benefit, all revenue accruing from specified sources of income ceded

to the Concessionaire by FAAN.

11.2 Sources of Income

The Aeronautical and Non-Aeronautical charges and tariffs collectible by the Concessionaire from Users of the Terminal during the Concession Period will be derivable from the following sources approved by FAAN:

(a) passenger service charge collectible from departing passengers, including avio-bridge charges;

(b) VIP lounge(s) usage charge;

(c) car park charge;

(d) rents/concession franchise fees;

(e) service charge payable by concessionaires within the Terminal;

(f) advertisement royalties payable by advert concessionaires within the Terminal excluding advertisement royalties accruable from advertisements along the roads; and

(g) associated revenue derivable from the use of associated facilities in the Terminal.

11.3 Tariffs and Charges

The Concessionaire shall, in consultation with the Grantor and other Relevant Authority, determine the tariffs, rents, fees and other charges collectible from Users of the terminal throughout the Concession Period.

11.4 Charge/Tariff Collection

The Concessionaire may put in place a suitable tariff/charge collection mechanism or system as it may deem expedient, and may engage any person or entity to collect the said tariff/charges on its behalf.

11.5 Payment of Tariffs and Charges

The charges, fees and tariffs collectible by the Concessionaire during the Concession Period shall be in Naira.

11.6 Operational Expenditure

The Concessionaire shall bear all expenses incidental to th effective and efficient operation, maintenance and management c the Terminal, including payment of the Operator's management fees

ARTICLE 12

FINANCING OF THE PROJECT AND FINANCIAL MANAGEMENT

12.1 Concessionaire's Principal Obligations

The Concessionaire shall be solely responsible for obtaining all the finance, both equity and debt, necessary to construct, operate and maintain the Terminal for the duration of the Concession Period.

12.2 Conversion of Project Income into Foreign Currency

The Concessionaire, subject to applicable Nigerian law, shall have the right to convert income from the Project from Naira to foreign currency in order to pay for Project expenses and debt service, if any.

12.3 Financial Statements

The Concessionaire shall carry on its business and affairs with due diligence and efficiency and in accordance with sound financial and commercial standards and practices and shall fully account for all aspects of its business by preparing financial statements and delivering them to the Grantor as follows:

(a) Annual audited financial statements consisting of a balance sheet, a profit and loss account and a statement of cash flow drawn up in accordance with generally accepted international accounting principles and any applicable provisions of the corporate laws of the Federal Republic of Nigeria (as the same may from time to time be amended) and certified by a qualified Independent Auditor;

(b) A quarterly statement of the Concessionaire's cash receipts and disbursements; and

(c) Such other information on the financial position of the Concessionaire as the Grantor may from time to time

reasonably request to monitor compliance with this Agreement.

IV. TRANSFER OF THE PROJECT

ARTICLE 13

TRANSFER DATE PROCEDURE AND REQUIREMENTS

13.1 General Scope of Transfer

On the Transfer Date, the Concessionaire shall transfer to the Grantor or any person designated by the Grantor, free of charge:

(a) all of the Concessionaire's rights, title and interest in and to the Terminal including:

(i) the facilities of the Terminal;

(ii) the fittings and spare parts;

(iii) the workshops and equipment;

which shall all be well maintained and in good working order;

(b) all of its right to use the Site; and

(c) such operating manuals, operation summaries, transfer notes, design drawings and other information as may reasonably be required by the Grantor, and which have not been delivered previously by the Concessionaire in accordance with this Agreement to enable it to continue the operation of the Terminal either directly or by any person designated by the Grantor.

The Terminal and the right to use the Site shall be transferred to the Grantor free of charge and free and clear of all debts, liens, encumbrances, mortgages, security interests created by the Concessionaire, Environmental Contamination attributable to the construction, operation and Maintenance of the Terminal and caused by the Concessionaire and claims of whatever kind or nature.

reasonable period, the Grantor may do so itself at the risk and expense of the Concessionaire. The Grantor shall be entitled to draw on the Maintenance Bond to cover the costs of correcting such defects provided it has furnished the Concessionaire with a detailed record of the costs incurred.

13.3 Spare Parts

13.3.1 Spare Parts to be Transferred

At the Transfer Date, the Concessionaire shall transfer to the Grantor or any person designated by the Grantor, free of charge, a supply of consumable spare parts adequate to meet the normal needs of the Terminal for a period of twelve (12) months and spare parts for the repair of breakdowns. The consumable spare parts shall be as set out in the Technical Proposal. The spare parts for repair of breakdowns shall be supplied at the same level as the spare parts obtained by the Concessionaire on the delivery of the equipment from the manufacturer.

13.3.2 Transfer Procedure

The Transfer Committee shall meet and agree upon the detailed list of spare parts to be transferred and the detailed procedures for transfer in accordance with this Article six (6) months prior to the Transfer Date

13.3.3 Purchase of Additional Spare Parts

Prior to the Transfer Date, the Grantor may provide the Concessionaire with a list of spare parts for the Terminal which it requires in addition to those transferred under Article 13.3.1. The Concessionaire shall use its best efforts to transfer such spare parts to the Grantor in return for payment by the Grantor at the same preferential prices as offered by the manufacturers to the Concessionaire.

13.4 Warranties

13.4.1 Condition of the Terminal on the Transfer Date

On the Transfer Date, the Concessionaire shall warrant that the Terminal is:

(a) in good operational condition and well maintained

and shall be indemnified and held harmless by the Concessionaire in respect of the same. Otherwise the Concessionaire shall endeavour to assign such contracts to the Grantor or any person designated by the Grantor.

13.9 Removal of Objects Owned by the Concessionaire

The Concessionaire shall at its own cost remove all objects owned by the Concessionaire from the Site within thirty (30) days after the Transfer Date unless otherwise mutually agreed by the parties. The objects to be removed shall be limited to the personal items of the Concessionaire's employees and articles having nothing to do with the operation and maintenance of the Terminal and shall not include the equipment, tools, spare parts, design drawings and technical information of the Terminal listed in the inventories to be transferred or otherwise necessary for the operation and maintenance of the Terminal. If the Concessionaire fails to remove such objects within the said time the Grantor may remove and transport the same, after giving the Concessionaire notice of its intention, to a suitable location for safe storage. The Concessionaire shall bear the reasonable cost and the risk of such removal, transportation and storage.

13.10 Passing of Risk

Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Terminal, unless the loss or damage is due to a Default of the Grantor.

13.11 Transfer Costs and Approvals

(a) Except as provided in Article 13.5, the transfers and assignments of the Terminal and related contractor warranties, technology and supply contracts to the Grantor or any person designated by the Grantor pursuant to Articles 13.1 through 13.6 shall be without the payment of any compensation or purchase price by the Grantor to the Concessionaire.

(b) The Concessionaire and the Grantor shall each be responsible for its own costs and expenses, incurred in connection with the transfers and assignments to the Grantor or any person designated by the Grantor. The Grantor shall at its own cost obtain or effect all

Approvals and take such other action as may be necessary for such transfers and assignments and shall pay all stamp duties, taxes, charges and the like payable in respect of such transfer and assignments.

(c) If the Concessionaire fails to transfer in compliance with the required scope and contents of this Article 13, the Grantor shall be entitled to draw upon the Maintenance Bond in respect of the expenses or loss incurred thereby.

13.12 Transfer Committee and Transfer Procedure

Twelve (12) months prior to the end of the Concession Period, the Grantor and the Concessionaire shall establish a committee (the "Transfer Committee") comprising three (3) representatives of the Concessionaire and three (3) representatives of the Grantor. The Transfer Committee shall meet regularly and may meet at any time agreed by the parties and agree on detailed procedures for the transfer of the Terminal, a Final Maintenance Overhaul program, tests after the Final Maintenance Overhaul, a detailed list of the structures, equipment, facilities, items and spare parts to be transferred and measures to be taken to publicize the transfer to third parties. At the time of such meeting, the Concessionaire shall submit the names of its representatives in charge of the transfer, and the Grantor shall inform the Concessionaire of the names of its representatives in charge of the transfer. The Transfer Committee shall meet in the third (3rd) month prior to transfer in order to prepare the transfer ceremony.

13.13 Effect of Transfer on this Agreement

From the Transfer Date the obligations and the rights of the Concessionaire under this Agreement shall terminate, except as otherwise provided in this Agreement, and the Grantor or any person designated by the Grantor shall take over the operation of the Project and any other rights or obligations arising out of the terms of this Agreement which either expressly or implicitly survive termination of this Agreement.

13.14 Release of the Maintenance Bond

The Grantor shall release all or so much of the Maintenance Bond as shall remain outstanding within seven (7) days after twelve (12)

months from the Transfer Date.

V. GENERAL OBLIGATIONS OF THE PARTIES

ARTICLE 14

GENERAL OBLIGATIONS OF THE GRANTOR

14.1 Compliance with Laws and Regulations

The Grantor shall at all times observe and comply with the provisions of all relevant laws and regulations published by any Relevant Authority.

14.2 Tax Preference

The Grantor shall assist the Concessionaire obtain and enjoy tax preferences it may be entitled to in accordance with the laws and regulations of the Federal Republic of Nigeria or any component thereof The Grantor shall assist the Concessionaire to obtain permissions for other tax preferences in relation to the performance of this Agreement to the extent permitted at any time by Nigerian tax laws, regulations and by the relevant Nigerian taxation authority.

14.3 Obtaining and Maintaining Approvals

14.3.1 Assistance with Approvals

The Grantor, upon proper and timely request from the Concessionaire shall use its best endeavours to assist the Concessionaire in obtaining, maintaining and renewing all Approvals from Relevant Authorities.

14.3.2 Approvals to be Obtained from the Grantor

Provided that the Concessionaire has properly submitted the relevant applications, requests and documentation for obtaining and maintaining Approval(s) from the Grantor in a timely manner and the relevant conditions and requirements for obtaining such Approval(s) are complied with, the Grantor shall, at no extra cost to the Concessionaire offer reasonable assistance to the Concessionaire in obtaining and/or renewing all requisite approvals and permits, the Concessionaire may require in connection with the project.

14.5 The Grantor's Responsibility

The Grantor shall be responsible for the acts, commissions and omissions of the officials and employees under their control or supervision.

14.6 Utilities

The Grantor shall ensure that all Utilities, such as electricity and water, necessary for the construction, operation and maintenance of the Terminal are made available to the Concessionaire in a timely manner and at fair rates on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving service substantially equivalent to that being provided to the Concessionaire. Except as otherwise provided herein, the Grantor shall at its own cost connect and extend such Utilities to the boundary of the Terminal.

14.7 Non-Interference

, The Grantor shall not intervene in the construction, operation and maintenance of the Terminal save as may be necessary to protect public health and safety and for the discharge of its statutory duties. At the request of the Concessionaire, the Grantor shall use its best efforts to alleviate any interference with the Project by third parties which may arise.

14.8 No Interruption by the Grantor

(a) Subject to the provisions of this Agreement, the Grantor undertakes not to do, and to ensure that no other Relevant Authority does any act which would prevent or adversely affect the Construction Works, the operation and management of the Terminal or the Concessionaire or its nominee's collection of approved charges from Users of the Terminal, save as may be necessary on grounds of national security or public safety.

(b) If any operation or action is to be carried out at the Terminal by any Relevant Authority on the ground of national security or public safety, which said action will prevent or adversely affect the Construction Works or the operation and management of the Terminal or impede the Concessionaire and or its nominee's collection of approved charges from Users of the

Terminal, FAAN shall give the Concessionaire reasonable written notice to enable the Concessionaire to discuss and agree with the particular Relevant Authority the methods for carrying out such operation or action with the least possible disruption to the Construction Works, operation and management of the Terminal.

(c) Provided that the obligation to give notice to the Concessionaire by FAAN is predicated on FAAN having prior knowledge or notice of such operation or action.

(d) If any operation, action or interruption by the Grantor, FAAN and or any Relevant Authority delays completion of the Construction Works, or impedes the Concessionaire's operation of the Terminal the Independent Engineer shall determine the appropriate time period by which the Construction Completion and or the Concession Period shall be extended and the quantum of compensation payable to the Concessionaire for costs it may incur and or damages it may suffer in relation thereto.

14.8 Improper Draws against Bonds

In the event that the Grantor draws against the Performance Bond or the Maintenance Bond provided by the Concessionaire pursuant to the Articles 2.8 and 10.5 of this Agreement respectively and it is subsequently determined that the Grantor was not entitled to do so, then the Grantor shall repay such amount promptly to the Concessionaire together with all costs and expenses incurred by the Concessionaire in connection with such drawing plus interest thereon from the date of the draw to the date of repayment at the Default Rate.

ARTICLE 15

GENERAL OBLIGATIONS OF THE CONCESSIONAIRE

15.1 Change of Ownership; Restrictions on Transfer of Shares

15.1.1 Restriction on Transfer of Shares

Attached as Annex F is a list of the initial shareholders in the Concessionaire showing their respective percentage interests.

Subject to the following provisions, the Concessionaire shall not change those percentage interests and the shareholders in the Concessionaire shall not transfer any shares or interests in the Concessionaire's registered capital without the prior written approval of both the Grantor which shall not be unreasonably withheld and the Relevant Authority by whom such transfer is required to be approved.

15.1.2 Exception to Restrictions on Transfer of Shares

No shareholder in the Concessionaire shall transfer any shares or interests owned by it in the Concessionaire's registered capital for a period of five (5) years after the Final Completion Date of the Terminal, except for:

(a) a transfer required by the laws of the Federal Republic of Nigeria or by order of court, tribunal or Relevant Authority with appropriate jurisdiction;

(b) a transfer resulting from the creation or enforcement of a security interest in or over any shares or interests in accordance with the Financing Agreements; or

(c) a transfer to which the Grantor has given its prior written approval.

15.1.3 Required Provisions in Articles of Association

The Concessionaire shall make appropriate provisions in its Articles of Association to ensure that appropriate legends appear on all share or interest certificates of the Concessionaire to put prospective purchasers on notice of the restrictions on the transferability of such shares or interests and shall not register or give effect to any transfer of shares or interests that are not in compliance with such restriction.

15.2 Compliance with Law and Regulations

The Concessionaire shall at all times in the performance of its obligations under this Agreement observe and comply with the provisions of all relevant laws, regulations and guidelines published by Relevant Authorities. The Concessionaire shall obtain on a current basis published and publicly available law, regulations and guidelines applicable to the Project and shall be deemed at all times to have full knowledge thereof.

15.3 Safety Standards

(a) The Concessionaire shall observe and comply with health and safety standards set forth in this Agreement and laws, regulations and guidelines published by any Relevant Authority.

(b) The Concessionaire shall be deemed at all time to have full knowledge of such safety standards and practice.

15.4 Environmental Protection

15.4.1 Concessionaire's responsibility

The Concessionaire shall keep the Site (including the soil, ground or surface water and air) and the surrounding environment free and clear of Environmental Contamination attributable to the construction, operation and maintenance of the Terminal in compliance with the environmental requirements set forth in –

(a) this Agreement; and

(b) current laws, regulations and guidelines published by any Relevant Authority.

The Concessionaire shall be deemed at all times to have a full knowledge of such environmental standards.

15.4.2 Exceptions to the Concessionaire's Responsibility

(a) The Concessionaire shall not be responsible for any contamination or pollution of the air, ground or water (above, under or surrounding the Site):

(i) existing on or prior to the Effective Date;

(ii) attributable to any Default of FAAN.

(b) The Grantor agrees to indemnify the Concessionaire for any damage caused to the Concessionaire or any claims arising out of such pre-existing conditions or attributable to such Default.

15.5 Approvals

Subject to the provisions of Article 14.3, the Concessionaire shall at its own cost obtain and maintain all Approvals as may be necessary for the construction, operation and maintenance of the Terminal and which are required to be or can be obtained in the name of the Concessionaire.

15.6 Protection of Archaeological and Historical Objects

The Concessionaire shall take effective measures to protect archaeological relics, fossils, antique tombs and sites, historical pieces of art and any other objects of archaeological, geological and historical interest discovered during the construction, operation and maintenance of the Terminal. The Concessionaire shall, promptly following any such discovery, give notice to the Grantor of the discovery and the protective measures taken or proposed. Upon receipt of such notice, the Grantor shall within seven (7) days approve the protective measures taken or proposed by the Concessionaire or give written instructions of further measures requested. The Concessionaire shall implement such requested measures with all due diligence.

All costs arising from such protective measures shall be borne by the Grantor including the costs of any unavoidable delay to the Construction Works. Any delaying effects on the Project Implementation Schedule caused by such measures shall be compensated by an appropriate extension of the Construction Period or the Concession Period or both.

15.7 Nigerian Services and Goods

15.7.1 Use

The Concessionaire shall use Nigerian services and goods whenever they are competitive in terms of quality, warranty, service, relevant expertise, procurement, delivery schedule and price and shall ensure that its contractors and sub-contractors observe this provision.

15.7.2 Competitive Bidding

The Concessionaire shall include Nigerian contractors in invitations for competitive bidding for contracts if they produce services and goods of the kind and quality required and shall require their contractors to do the same with respect to sub-contracts. When evaluating bids for contracts generally, the Concessionaire shall take into account the extent to which the bidders use Nigerian services and goods. The Concessionaire shall be responsible for the observance of these provisions by its contractors and their subcontractors.

15.7.3 Future Concessions

When evaluating bids from the Concessionaire or any affiliate

of the Concessionaire for future concessions, the Grantor may take into account the extent to which the Concessionaire has complied with the provisions of this Article 15.7 in developing, constructing and operating the Terminal.

15.8 Use of Nigerian Labour

Except to the extent not locally available, the Concessionaire shall employ competent Nigerian labour for the construction, operation and maintenance of the Terminal. The Concessionaire shall be responsible for compliance with this provision by its contractors and their sub-contractors.

15.9 Worker's Rights

The Concessionaire shall comply with the labour laws and regulations of the Federal Republic of Nigeria and respect the rights of the workers guaranteed therein, including the payment of social security insurance contributions for employees.

15.10 Co-ordination of Project Documents

The Concessionaire shall ensure that the Financing Agreements, any agreement among the shareholders of the Concessionaire, the Concessionaire's Articles of Association, the insurance policies related to the Project and any other agreements entered into by the Concessionaire in relation to the Project are consistent with the provisions of this Agreement.

15.11 Taxation, Customs Duty and Charges

The Concessionaire shall pay all taxes, customs duties and charges in accordance with the applicable laws and regulations of the Federal Republic of Nigeria and any Relevant Authority.

15.12 Insurance

15.12.1 Obtaining and Maintenance of Insurance Policies

The Concessionaire, at its sole cost and expense, shall throughout the duration of this Agreement obtain and maintain with an insurance company(ies) to be approved by the Grantor the policies of insurance in the amounts set forth herein and during the periods mentioned herein; provided, however, that such amounts may be changed from time to time with the prior

written consent of the Grantor.

15.12.2 Insurance during Construction

From the Construction Commencement Date until the Construction Completion Date, the Concessionaire shall at its own expense, procure and maintain in force the following insurances:

(a) Marine Insurance in respect of Equipment to be imported into Nigeria in connection with the Construction Works;

(b) Contractor's All Risks' Insurance to cover the entire Construction Works from any and all kinds of damages arising out of any cause whatsoever;

(c) Third Party Liability insurance to cover injury to or death of persons or damage to property caused by the Construction Works or by the Concessionaire's Equipment or personnel including its subcontractors; and

(d) Workmens' Compensation insurance as required under Nigerian Law.

15.12.3 Insurance during Concession Period

From the Start Date until the Transfer Date, the Concessionaire shall at its own expense keep the Terminal insured to the full value thereof against accidental damage from all normal risks and to a level normal for prudent operators of facilities similar to the Terminal.

15.12.4 Market Practice

The Concessionaire shall maintain the aforementioned insurance with reputable insurers of adequate financial strength and experience to the extent that the insurance policies can be subscribed on reasonable economic terms and rates.

15.12.5 Certificate of Insurance

The Concessionaire shall cause its insurers or agents to provide the Grantor with certificates of insurance evidencing the policies and endorsements obtained pursuant to Articles 15.12.1 and 15.12.2. Failure by the Concessionaire to obtain the insurance coverage or certificates of insurance required by Articles 15.12.1 and 15.12.2 shall not in any way relieve or

limit the Concessionaire's obligations and liabilities under any provision of this Agreement. If the Concessionaire shall fail to procure or maintain any insurance required pursuant to this Articles 15.12, then the Grantor shall have the right to procure such insurance and shall be entitled to offset the premium paid for such insurance by drawing on the Maintenance Bond.

15.12.6 Application of Insurance Monies

The Concessionaire and the Grantor shall be joint beneficiaries of the proceeds of insurance taken out pursuant to Article 15.12.2(b) and 15.12.3 hereof. It is further agreed that the proceeds of the insurance policies taken out under Article 15.12.2(b) and 15.12.3 shall be applied to the reinstatement or restoration of the Terminal.

15.12.7 Insurance Reports

The Concessionaire shall provide the Grantor with copies of any underwriters' reports or other reports received by Concessionaire from any insurer, provided that the Grantor shall not disclose such reports to any other person except as necessary in connection with administration and enforcement of this Agreement; or as may be required by any Relevant Authority and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.

15.13 Responsibility for Contractors and their Employees and Agents

15.13.1 Concessionaire's Contractors

The Concessionaire's employment of contractors including but not limited to Construction Contractor, equipment suppliers and O&M Contractor shall not relieve the Concessionaire from any of its obligations under this Agreement and the Concessionaire shall be fully responsible to the Grantor for any acts or omissions of the contractors, their agents or any person either directly or indirectly employed by them as if such acts or omissions were the acts or omissions of the Concessionaire.

15.13.2 Contracts with Contractors

Any contract entered into with contractors shall contain those Articles of this Agreement which are necessary to enable the Concessionaire to fulfill its obligations under this Agreement.

15.14 Provision in Financing Agreements

The Concessionaire shall use its best effort to include the following provisions in the Financing Agreements:

(a) a binding commitment from the Lenders to the Grantor in a manner legally enforceable by the Grantor that, so long as this Agreement is in effect and so long as the Grantor shall not have committed an Event of Default which is continuing, the Lenders will take no action (except pursuant to rights granted to the Concessionaire under this Agreement) to disturb, affect or impair the rights of the Grantor under this Agreement, including its rights to have the Project constructed, operated and maintained and

(b) a binding commitment by the Lenders:

(i) to give notice to the Grantor of any Default by the Concessionaire under the Financing Agreements;

(ii) to afford the Grantor the right to cure any such Default within ninety (90) days after it receives notice of such Default;

(iii) to forbear from exercising any right or remedy available to the Lenders in respect of such Default during such cure period; and

(iv) not to withhold unreasonably any consent or approval required to be obtained from the Lenders or the Facility Agent pursuant to this Agreement.

15.15 Negative Covenant

The Concessionaire shall not grant any pledge, mortgage, encumbrance or other security interest in any of its property, ownership rights or other rights and interest under this Agreement to any person other than the Lenders save as expressly approved by the Grantor.

ARTICLE 16

OBLIGATIONS AND RIGHTS COMMON TO THE GRANTOR AND THE CONCESSIONAIRE

16.1 Force Majeure

16.1.1 Force Majeure Events

Force Majeure shall mean any event or circumstance which is beyond the control of the party seeking to rely on such Force Majeure, which shall include:

(a) lightning, drought, earthquake, volcanic eruption, landslide, flood, storm, typhoon or tornado;

(b) act of war, invasion, armed conflict or act of foreign enemy, blockade, riot, terrorism or exercise of military power;

(c) national, regional or industry-wide strike; or

(d) the expropriation, requisition or nationalization of the Terminal by the Grantor or any other Relevant Authority;

and other events, which could not reasonably have been foreseen by that party at the date of this Agreement, the consequences of which could not reasonably have been avoided by that party, and which prevents that party from performing any of its obligations under this Agreement.

16.1.2 Exceptions Applicable to the Concessionaire

The Concessionaire shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement.

(a) any delay:

(i) in performance by any contractor or subcontractor of the Concessionaire, including the Construction Contractor and the Operation and Maintenance Contractor or any direct or indirect subcontractor to either of them; or

(ii) in the delivery of equipment and machinery for the Terminal;

except and to the extent that such delay is itself caused by an event which satisfies the criteria set out in Article 16.1.1 in relation to both the Concessionaire and the relevant contractor or subcontractor;

(b) any patent or latent defects in any materials, equipment, machinery and spare parts for the Terminal; or

(c) breakdown or ordinary wear and tear of materials, equipment, machinery or parts of the Terminal.

16.1.3 Exceptions Applicable to the Grantor

The Grantor shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performanceof its obligations under this Agreement:

(a) the expropriation, requisition or nationalization of the Terminal by any Relevant Authority.

(b) act of war, invasion, armed conflict or act of foreign enemy, riot, terrorism or exercise of military power that occurs inside the Federal Republic of Nigeria, or

16.1.4 Notice of Force Majeure

The party claiming to be affected by Force Majeure shall promptly, when it becomes aware of the Force Majeure give notice and describe in detail the Force Majeure occurrence and effect of such Force Majeure to the other party in writing, including the dates of commencement and estimated cessation of such Force Majeure and its effects on the party's obligations under this Agreements. The party claiming Force Majeure shall also provide such evidence as the other party may reasonable request.

16.1.5 Suspension of Performance Due to Force Majeure and Costs

Either party shall be entitled to suspend performance of all or part of its obligations under this Agreement (except for payment obligations) to the extent that such party is impeded, wholly or in part, in carrying out its obligations under this Agreement by Force Majeure, being an event:

(i) which it could not reasonably have foreseen at the time of entering into this Agreement, and

(ii) which event and its consequences cannot be overcome and cannot be avoided by the party claiming Force Majeure

16.1.6 Extension Due to Force Majeure

In the event that the Construction Completion Date is delayed due to an event of Force Majeure, and or the Concessionaire is unable to perform its obligations during the Concession Period, the Grantor agrees to extend the Construction Completion Date and or the Concession Period by such period that the Force Majeure subsists.

16.1.7 Costs

In case of Force Majeure, each party shall cover its own costs resulting from the Force Majeure.

16.1.8 Duty to Mitigate and Resume

The parties in consultation with each other shall use reasonable efforts to mitigate the effects of any Force Majeure event. The party claiming Force Majeure shall resume the performance of its obligations under this Agreement as soon as practicable after the Force Majeure no longer exists.

16.1.9 Continuing Force Majeure

If any event of Force Majeure continues for longer than 3 months, the Concessionaire and the Grantor shall enter into discussions in order to agree on a mutually satisfactory solution. If the Concessionaire and the Grantor fail to reach a mutually satisfactory solution within 30 days of the commencement of such discussions, the provisions of Article 22.3 shall apply prior to either party issuing a Notice of Intention to Terminate this Agreement.

In the event that this Agreement is terminated as a result of the Concessionaire's inability to perform its obligations hereunder due to a continuing Force Majeure, and or the Independent Engineer or the Panel of Experts, as the case may be, certifies that restoration is not feasible, or the Concessionaire and the Grantor are unable to agree on terms on which to continue this Agreement, the Grantor shall pay the Concessionaire such sums of money that aggregate the Concessionaire's investment in the Project and subject to any claims of the Grantor or tha of Lenders determinable by the Independent Engineer or the Panel of Experts within 30 days

from the date the Notice of Termination is issued, depending on the nature of the Force Majeure and the length of time that it continues unabated.

16.1.10 Force Majeure and Insurance

To the extent that the consequences of an event of Force Majeure relied upon by the Concessionaire fall within the terms of the insurance cover required by Article 15.12 the Concessionaire shall forthwith make the appropriate claims thereunder and shall apply the proceeds as required by Article 15.12.6.

16.1.11 Damage to the Terminal

If an event of Force Majeure causes material damage to the Construction Works or the Terminal and such damage is either not within the terms of the insurance cover required by Article 15.12 or the insurance proceeds available are less than 50 percent of the total costs of repairing such damage, the Concessionaire shall not be obliged to complete or cause to be completed, the construction or repair of the Terminal unless the Independent Engineer certifies that the repair is feasible and the parties agree on a solution that will allow the Concessionaire to recover the costs of the additional Works necessary together with a reasonable return on its investment over the remainder of the Concession Period.

16.1.12 Force Majeure and the Independent Engineer

Upon the occurrence of such Force Majeure, the parties shall promptly obtain the opinion of the Independent Engineer as to whether such repair is feasible and shall enter into discussions to reach a mutually satisfactory agreement. If the Concessionaire and the Grantor fail to reach a mutually satisfactory solution within 30 days of the commencement of such discussions, the provisions of Article 22 shall apply, prior to either party issuing a Notice of Intention to Terminate this Agreement.

16.2 Rights to Documents

16.2.1 The Grantor's Documents

Documents and computer programs provided by the Grantor (or representatives and agents of the Grantor) to the Concessionaire, or which are developed mainly on the basis

of such documents and computer programs, shall be the property of the Grantor. The same shall apply to all copies of such documents and computer programs. Such documents, computer programs or copies thereof shall not be used by the Concessionaire other than for the purposes of the Project. Such documents, computer programs or copies thereof shall be returned to the Grantor at the expiry of the Concession Period, unless otherwise agreed upon between the Grantor and the Concessionaire.

16.2.2 Concessionaire's Documents

Documents and computer programs provided by the Concessionaire, or which are developed mainly on the basis of such documents and computer programs, shall be the property of the Concessionaire. The same shall apply to all copies of such documents and computer programs. Such documents and computer programs or copies thereof shall not be used by the Grantor other than for the purposes of the Project. The Grantor or any person designated by the Grantor shall be entitled to copies of, and a fully paid, royalty-free license to use, such documents, computer program and copies only in connection with the operation and maintenance of the Terminal after transfer of the Terminal to the Grantor or such person designated by the Grantor in accordance with the provisions of Article 13.6.

16.2.3 Compliance

The parties shall ensure that all those who have access to such documents, computer programs and copies thereof shall comply with the provisions of this Article 16.2 and with the confidentiality provisions of Article 16.3.

16.3 Confidentiality

All information and documents (whether financial, technical or otherwise) obtained by either party or its employees, contractors, consultants or agents which are not published or otherwise publicly available shall be kept confidential and not disclosed to third parties or the public for a period of five (5) years from the last day of the Concession Period without the prior written approval of the other party except as required by law of the Federal Republic of Nigeria. This prohibition shall not prevent either party, with the consent of the other, from issuing press releases containing non-sensitive

information in relation to the progress of the Project. This covenant shall survive termination of this Agreement.

16.4 Obligation to Co-operate

The parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement. Whenever a consent or approval is required by one party from the other party, such consent or approval shall not be unreasonably withheld or delayed.

16.5 Declaration Against Improper Payments

16.5.1 Declaration of the Concessionaire

The Concessionaire represents, warrants, covenants and declares that:

(a) neither it nor its representatives have offered any government official or official or employee of the Grantor or any other Relevant Authority any unlawful consideration or commission (in the form of a bribe or kick-back) for this Agreement nor has it or its representatives exerted or utilised any unlawful influence to secure or solicit this Agreement;

(b) it shall not contract, or allow any of its contractors to subcontract, any portion of the work for the Project to any person known by it to be an official or employee of the Grantor or any other Relevant Authority or a member of the immediate family (spouse, parent, child or sibling) of any such official or employee who is directly or indirectly involved in contract awards or supervision of the Project or to any company or enterprise in which any or such persons is an executive or officer or substantial owner without the prior written consent of the Grantor after full disclosure of the relevant facts; and

(c) if any commission has been or will be paid by the Concessionaire or any of its shareholders directly to any person, company or enterprise, whether resident in Nigeria or outside Nigeria, in connection with soliciting or securing this Agreement; the Concessionaire shall disclose to the Grantor the identity of the payee, the amount paid, and the nature of the services rendered.

16.5.2 Declaration of the Grantor

The Grantor represents, warrants, covenants and declares that:

(a) neither it nor its representatives have solicited or received nor will solicit or receive any unlawful consideration or commission (in the form of a bribe or kick-back) nor has it or its representatives exerted or utilised any unlawful influence in connection with awarding this Agreement to the Concessionaire, and

(b) it shall not knowingly permit, solicit or procure any work related to the Project to be contracted to any of its officials or employees, or any member of the immediate family (spouse, parent, child or sibling) of any such official or employee, who is directly or indirectly involved in contract awards or supervision of the Project or to any company or enterprise in which any of such persons is an executive officer or substantial owner without the prior written consent of the Grantor after full disclosure of the relevant facts.

VI REMEDIES FOR BREACH OF CONTRACT

ARTICLE 17

TERMINATION

17.1 Termination by the Grantor

Each of the following, to the extent that it is not caused by a Default of the Grantor or by Force Majeure, shall, if not cured within the time period permitted (if any), be a Concessionaire Event of Default and shall entitle the Grantor to issue a Notice of Intention to Terminate immediately:

(a) the Concessionaire fails to pay the Concession Fee as required under Article 2.5.

(b) the Concessionaire abandons or is deemed to have abandoned the construction of the Terminal as provided in Articles 9.5 and 9.6

(c) the Concessionaire or the O&M Contractor abandons the operation of the Terminal for a period of seven

consecutive (7) days without the prior written consent of the Grantor.

(d) the Concessionaire fails to provide the Maintenance Bond as required under Article 10.5.

(e) the sums payable as liquidated damages by the Concessionaire under Articles 9.5 and/or 9.6 has reached the maximum amount of the Performance Bond.

(f) the Concessionaire goes into liquidation or becomes insolvent under the laws of the Federal Republic of Nigeria.

(g) the Lenders declare a default under any Financing Agreements and commence the exercise of their remedies thereunder.

(h) any representation and warranty made by the Concessionaire in Article 3 proves to have been materially incorrect when made such that the Concessionaire's ability to perform its obligations under this Agreement is materially adversely affected.

(i) any failure of the Concessionaire to manage, operate and maintain the Terminal in accordance with this Agreement which substantially adversely affects the service provided by the Grantor, directly or through FAAN, to Users of the Terminal, or

(j) failure of the Concessionaire to perform any other of its obligations under this Agreement amounting to a material breach of this Agreement and the Concessionaire fails to remedy such breach within thirty (30) days of receipt of written notice from the Grantor specifying such breach and requiring the Concessionaire to remedy the same.

17.2 Termination by the Concessionaire

Each of the following, to the extent it is not caused by a Default of the Concessionaire or Force Majeure, shall, if not cured within the time period permitted (if any), be a Grantor Event of Default and shall entitle the Concessionaire to issue a Notice of Intention to Terminate immediately:

(a) any representation and warranty made by the Grantor in Article 3 proves to have been materially incorrect when

made such that the Grantor's ability to perform its obligations under this Agreement is materially adversely affected; or

(b) the failure of the Grantor to perform any other of its obligations under this Agreement which amounts to a material breach of this Agreement and the Grantor fails to remedy such material breach within thirty (30) days of receipt of written notice from the Concessionaire specifying such breach and requiring the Grantor to remedy the same.

17.3 Notice of Intention to Terminate and Notice of Termination

17.3.1 Notice of Intention to Terminate

Any notice of intention to terminate shall specify, in reasonable detail, the Concessionaire Event of Default or the Grantor Event of Default (as the case may be) giving rise to such notice (each a "Notice of Intention to Terminate"). The party issuing a Notice of Intention to Terminate to the other party shall at the same time deliver a copy to the Facility Agent. Following the issuing of a Notice of Intention to Terminate the parties shall consult for a period (the "Consultation Period") of.

(a) in the case of the Concessionaire's failure to bring about the Final Completion Date of the Terminal within sixty (60) days of the Target Preliminary Completion Date (as such date may be extended in accordance with Article 7.10.2), twenty-one (21) days provided that, during this period, the Concessionaire continues to use all reasonable efforts to procure Final Completion of the Terminal as promptly as possible; and

(b) in all other cases, seven (7) days, or such longer period as the parties may agree in writing.

as to what steps shall be taken with a view to preventing termination of this Agreement. If the Concessionaire and the Grantor do agree on such steps to be taken and/or the Concessionaire or the Grantor (as the case may be) remedies the Event of Default within the relevant Consultation Period or such longer period as may be agreed by the parties, then the Notice of Intention to Terminate shall immediately and automatically cease to have any effect.

17.3.2 Notice of Termination

Subject to Article 17.4, upon expiration of the Consultation Period and unless

(a) the parties shall have agreed otherwise; or

(b) the failure giving rise to the Notice of Intention to Terminate has been remedied,

the party having given the Notice of Intention to Terminate may terminate this Agreement by delivering a notice to this effect to the other party and the Facility Agent (a "Notice of Termination"), whereupon this Agreement shall immediately terminate.

17.4 Rights of Lenders

17.4.1 Restriction on Termination

Notwithstanding any provision in this Agreement to the contrary, from and after Financial Closing and for so long as the Financing Agreements remain in effect, the Grantor shall not be entitled to issue a Notice of Termination for a Concessionaire Event of Default unless the Grantor has first issued a Notice of Intention to Terminate in accordance with Article 17.3.1 and

(a) a period commencing on the date of receipt by the Facility Agent of the Notice of Intention to Terminate and expiring twenty-one (21) days after expiry of the Consultation Period under Article 17.3.1 (the "Suspension Period") shall have expired and the Facility Agent has not given a Step-in Notice or a Substitution Notice to the Grantor; or

(b) the Facility Agent has issued a Step-in Notice during the Suspension Period but no Step-in Undertaking has entered into effect on or prior to the Step-in Date specified in the Step-in Notice; or

(c) the Grantor is entitled to terminate this Agreement in accordance with Article 17.4.3(c); or

(d) The Facility Agent has issued a Substitution Notice but no Substitution Effective Date has occurred within sixty (60) days of the date of the Substitution Notice; or

(e) the Grantor is entitled to terminate this Agreement in

accordance with Article 17.4.5(g); or

(f) The Step-in Period ends and no Substitution Effective Date has occurred; or

(g) the Grantor purchases the Terminal for the amount determined pursuant to Article 17.5.2

17.4.2 Step-in Rights

(a) At any time during the Suspension Period, the Facility Agent may on behalf of the Lenders give notice (a "Step-in Notice") to the Grantor stating that it intends that an Additional Obligor shall issue an undertaking in the terms set out in Article 17.4.3 (a "Step-in Undertaking") and specifying a date (the "Step-in Date"), being not later than ninety (90) days after the expiry of the Consultation Period under Article 17.3.1 on which such Step-in Undertaking is proposed to become effective:

(b) For the purposes of this Article 17.4.2 the "Additional *Obligor" shall be*

(i) *the Facility Agent; or*

(ii) a "Bank's Entity", being a company that is wholly owned by the Facility Agent on behalf of the Lenders or by one or more of the Lenders.

(c) The issue of a Step-in Notice shall not impose any legal obligation on the Additional Obligor, the Facility Agent or any Lender, to issue (or procure the issue of) a Step-in Undertaking pursuant to Article 17.4.3.

(d) Within twenty-one (21) days of a Step-in Notice, the Grantor shall give notice to the Facility Agent of any sums which it is aware are then due and payable to the Grantor by the Concessionaire under this Agreement as at the date of the Step-in Notice and any accrued liabilities pursuant hereto, including any outstanding performance obligations of the Concessionaire as at the date of the Step-in Notice of which it is aware, and shall provide the Facility Agent with such additional information as the Facility Agent may reasonably request from time to time.

(e) the Grantor shall not be entitled to make any claim against the Facility Agent or the Lenders in respect of any liability of the Concessionaire which has resulted in the Grantor incurring loss or damage before the date of the notice given by the Grantor under Article 17.4.2(d) and which is not mentioned in such notice.

(f) the Grantor shall inform the Facility Agent of any liabilities of the Concessionaire to the Grantor arising or resulting in the Grantor incurring loss or damage after the date of the notice given by Grantor under Article 17.4.2(d).

17.4.3 Step-in Undertaking

(a) Prior to the Step-in Date, which may be extended at the request of the Facility Agent and with the consent of the Grantor, the Facility Agent may on behalf of the Lenders deliver to the Grantor a Step-in Undertaking, which shall take effect in accordance with its terms.

(b) The Additional Obligor shall agree on behalf of the Lenders in the Step-in Undertaking with effect from Step-in Date and until the Step-out Date (the "Step-in Period"):

(i) to pay to the Grantor on the Step-in Date any sums notified by the Grantor under Article 17.4.2(d);

(ii) to procure the performance of any outstanding performance obligations of the Concessionaire under this Agreement which have arisen prior to the Step-in Date;

(iii) to pay, within fourteen (14) days of the demand by the Grantor any sum due and payable pursuant to Article 17.4.2(f);but unpaid by the Concessionaire to the Grantor under this Agreement prior to the Step-in Date;

(iv) to pay promptly to the Grantor any sum becoming due and payable by the Concessionaire to the Grantor under this Agreement on or after the Step-in Date;

(v) to procure the proper and timely performance of any and all obligations and liabilities expressed to

be owed by the Concessionaire to the Grantor under this Agreement which arise on or after the Step-in Date.

The Step-in Undertaking shall provide for interest to accrue on late payments by the Additional Obligor at the Default Rate, save that there will not be double counting of default interest accruing on amounts owed by the Additional Obligor as well as by the Concessionaire.

(c) Following the entry into effect of a Step-in Undertaking, the Grantor shall be entitled to terminate this Agreement by issuing a Notice of Termination immediately if:

(i) the Additional Obligor is in breach of the terms of the Step-in Undertaking, or

(ii) any Concessionaire Event of Default occurring prior to the Step-in Date continues for a period of more than:

(A) thirty (30) days in respect of an outstanding payment obligation; or

(B) such period as may be reasonably necessary to effect a remedy using due diligence, in respect of an outstanding performance obligation;

(iii) a further Concessionaire Event of Default occurs on or after the Step-in Date which is not remedied within the time period, if any, permitted under Article 17.1 or, in the case of a further Concessionaire Event of Default under Article 17.1(e), within thirty (30) days of notice from the Grantor to the Additional Obligor specifying such Concessionaire Event of Default and requiring the Additional Obligor to remedy the same, in which case the Facility Agent shall not be entitled to issue any further Step-in Notice or Substitution Notice (and nor shall the Lenders).

(d) Following the entry into effect of a Step-in Undertaking, the Additional Obligor shall have the right, amongst others, but (subject to Article 17.4.3(b) shall not be obliged, to take possession of the Terminal and prior to

the Commencement of the Concession Period, complete construction of the Terminal and operate the same and, after the Commencement of the Concession Period, operate the Terminal provided that the Additional Obligor obtains, at its own cost, all necessary Approvals required by Nigerian law. The Grantor shall use its best efforts to assist the Additional Obligor in obtaining such Approvals.

17.4.4 ***Step-Out***

(a) The Step-in Period shall expire on the (the "Step-Out Date) being the earliest of :

(i) the date twenty four (24) months from the Step-in Date; or

(ii) when the Additional Obligor gives the Grantor not less than thirty (30) days prior written notice of termination of the Step-in Period, on expiry of such notice, or

(iii) the date when the Grantor issues a Notice of Termination in accordance with Article 17.4.1.

(b) With effect from the Step-out Date, provided that all sums due under the Step-in Undertaking have been paid and all other obligations and liabilities under the Step-in Undertaking have been performed and discharged (provided that those obligations are reasonably capable of performance in the circumstances), the Facility Agent, each Lender and any additional Obligor shall be released from all obligations, liabilities and duties under the Step-in Undertaking.

17.4.5 ***Substitution***

(a) At any time during the Suspension Period or during the Step-in Period and subject to the performance by the Additional Obligor of its obligations under the Step-in Undertaking (if any), the Facility Agent shall be entitled to give notice (a "Substitution Notice") to the Grantor on behalf of the Lenders that it wishes to substitute a Concessionaire (the "Nominated Concessionaire") for the Concessionaire under this Agreement in accordance with this Article 17.4.5. The Substitution Notice shall specify a date, which shall not be later than thirty (30)

days after the date of the Substitution Notice, on which the substitution of the Nominated Concessionaire is to become effective (which, if such substitution shall become effective, shall be known as the "Substitution Effective Date").

(b) A substitution under this Article 17.4.5 may only become effective if the Grantor consents to such substitution in writing (subject to Article 17.4.5(d)). The Facility Agent shall indicate in the Substitution Notice the name and registered address of the Nominated Concessionaire, as well as details of its shareholders and the share capital held by each of them, and give details of its technical qualifications and experience and financial capacity (or the technical qualifications and experience of any of its key designated subcontractors). The Facility Agent shall further provide such other information about the Nominated Concessionaire as the Grantor may reasonably request.

(c) The issue of a Substitution Notice shall not impose any legal obligation on the Facility Agent or any Lender (including, without limitation any obligation to procure the transfer of this Agreement to the Nominated Concessionaire or any other entity).

(d) The Grantor shall

(i) not withhold consent to the substitution of the Nominated Concessionaire if the Nominated Concessionaire:

(A) has the technical competence and financial standing, and the available technical and financial resources, sufficient to perform the obligations of the Concessionaire under this Agreement and is a suitably experienced Terminal operator or has agreed to engage the services of a person who is an experienced Terminal operator and/or constructor,

(B) shall have paid all amounts, if any, then due and payable to the Grantor under this Agreement;

(C) shall have expressly assumed in writing for

the benefit of the Grantor the obligations of the Concessionaire under this Agreement; and

(D) subject to obtaining the necessary Approvals, has the legal capacity, power and authority to become a party to and perform the obligations of the Concessionaire under this Agreement and either is duly organized, operated and registered as a wholly foreign owned enterprise or has taken all appropriate steps to become so established and registered in accordance with Nigerian law for this purpose; or

(ii) notify the Facility Agent within thirty (30) days of the later of receipt of the Substitution Notice and receipt of all information required under Article 17.4.5(b) whether or not it consents to the substitution of the Nominated Concessionaire;

(iii) be deemed to have given its approval if it does not provide any written notice of its decision within such thirty (30) days from the later of receipt of the Substitution Notice and receipt of all information required under Article 17.4.5(b);

(iv) upon request of the Nominated Concessionaire, use its best efforts to assist the Nominated Concessionaire in obtaining, at the Nominated Concessionaire's own cost, all necessary Approvals if the Grantor consents or is deemed to consent to the substitution of the Nominated Concessionaire.

(e) If the Grantor notifies the Facility Agent under Article 17.4.5(d)(ii) that it does not consent to the substitution of the Nominated Concessionaire, this shall not prejudice the right of the Facility Agent to give one or more subsequent Substitution Notices in accordance with Article 17.4.5(a) containing changed particulars relating to the same Nominated Concessionaire or particulars relating to another Nominated Concessionaire which the Facility Agent, on behalf of

the Lenders, has good cause to believe would be acceptable to the Grantor, provided that only one Substitution Notice may be outstanding at any one time. For the avoidance of doubt, if a Substitution Notice is served during the Step-in Period, the decision by the Grantor not to consent to the substitution of a Nominated Concessionaire shall not itself terminate the Step-in Period.

(f) If the Grantor consents or is deemed to consent to the substitution of the Nominated Concessionaire, then on the Substitution Effective Date:

(i) the Nominated Concessionaire shall become a party to this Agreement in place of the Concessionaire and thereafter shall be treated as if it was named a party hereto in place of the Concessionaire:

(ii) the Grantor, the Concessionaire and the Nominated Concessionaire shall execute transfers of the Concession Agreement and all other documentation required to effect the transfer, on terms mutually acceptable to the Facility Agent and the Grantor of all the rights and obligations of the Concessionaire under the Project Documents and in connection with the Project to the Nominated Concessionaire (whether actual, accrued, contingent or otherwise and whether arising on, before or after the Substitution Effective Date), provided that the Grantor shall not be in breach of any of its obligations hereunder if the Nominated Concessionaire or the Concessionaire fails to execute such transfers or other documentation;

(iii) the Grantor shall owe its obligations under this Agreement arising on and after the Substitution Effective Date to the Nominated Concessionaire and the receipt, acknowledgment or acquiescence of the Nominated Concessionaire shall be an effective discharge.

(g) After the occurrence of a Substitution Effective Date, the Grantor shall be entitled to terminate this Agreement by

issuing a Notice of Termination immediately, if

(i) any Concessionaire Event of Default occurring prior to the Substitution Effective Date continues for a period after the Substitution Effective Date of more than.

(A) thirty (30) days in respect of an outstanding payment obligation; or

(B) such period as may be reasonably necessary to effect a remedy using due diligence, in respect of an outstanding performance obligation;

(ii) a further Concessionaire Event of Default occurs on or after the Substitution Effective Date which is not remedied by the Concessionaire within the time period, if any, permitted under Article 17.1, or in the case of a further Concessionaire Event of Default under Article 17.1(e), within thirty (30) days of notice from the Grantor to the Nominated Concessionaire specifying such Concessionaire Event of Default and requiring the Nominated Concessionaire to remedy the same.

in which case the Facility Agent shall not be entitled to issue any further Step-in Notice or substitution Notice (and nor shall the Lenders).

17.5 Rights of the Grantor

17.5.1 the Grantor's (or any person designated by the Grantor's) Right to Operate the Terminal

Subject to the rights of the Lenders under Articles 17.4.1 to 17.4.5 –

(a) upon the occurrence and continuance of a Concessionaire Event of Default which materially adversely affects the Concessionaire's ability to operate and maintain the Terminal in accordance with this Agreement, after the issue by the Grantor of a Notice of Intention to Terminate and unless and until either

(i) the construction and/or operation and maintenance of the Terminal is assumed by an

Additional Obligor or the Nominated Concessionaire, or

(ii) a Notice of Termination is issued,

the Grantor or any person designated by the Grantor shall have the right, but under no circumstance the obligation, to take over the operation of the Terminal in place of the Concessionaire in order to continue the operation of the Terminal or complete any necessary repairs so as to assure uninterrupted availability of the Terminal for the use of the public. In such case, the Concessionaire shall undertake to cooperate with the Grantor or any person designated by the Grantor and shall cause the Lenders to give an undertaking to the same effect in the Financing Agreements;

(b) in no event shall the Grantor's election to operate the Terminal be deemed to be a transfer of title or a transfer of the Concessionaire's obligations as owner thereof;

(c) during any period when the Grantor or any person designated by the Grantor is operating the Terminal, the Concessionaire shall not be liable to pay for the operating costs incurred by the Grantor or any person designated by the Grantor after the date when the Grantor or any person designated by the Grantor took over the operation of the Terminal. The Grantor shall not be liable to make any payment to the Concessionaire or the Additional Obligor or the Nominated Concessionaire after the occurrence of a Concessionaire Event of Default until the same is remedied by the Concessionaire, the Additional Obligor or the Nominated Concessionaire as the case may be and the Concessionaire, the Additional Obligor or the Nominated Concessionaire has resumed or assumed the operation of the Terminal; and

(d) the Grantor shall have the right at any time to withdraw from the operation of the Terminal in which case the Concessionaire shall resume full operational responsibility therefore until either party issues a Notice of Termination, subject to the provisions of Articles 17.4.1 to 17.4.5.

17.5.2 The Grantor's Right at Any Time

The Grantor may, at any time after the issue by it of a Notice of Intention to Terminate following a Concessionaire Event of Default, terminate this Agreement by issuing a Notice of Termination, provided that it purchases the Terminal for the amount to be mutually agreed by the parties being an amount equivalent to the market value of the Terminal discounted by any part of the Concession Period already spent and the Concessionaire's reasonable profit.

17.6 Consequences of Termination in General

17.6.1 End of Rights and Obligations

Upon termination of this Agreement, the parties shall have no further obligations hereunder subject to any rights and obligations which accrued prior to the termination and those which expressly survive termination or relate to dispute resolution.

17.6.2 Transfer of Rights and Assets

Forthwith on termination of this Agreement –

(a) the Concessionaire shall relinquish any right to use, possess or have access to the Site or the rights of way, except the parts thereof over which it might have a subsisting leasehold interest;

(b) if termination occurs prior to Construction Completion, Date the Concessionaire shall transfer to the Grantor such parts of the Construction Works that have been completed and such materials on the Site necessary for the purposes of completing the Construction Works at a value to be mutually agreed by the parties discounted by the cost of awarding a new Contract.

(c) if the Grantor so elects, Grantor may purchase from the Concessionaire at its book value, assets, materials, plant, machinery, equipment, vehicles, spare parts and other movable property procured by the Concessionaire in connection with the Construction Works or the operation of the Terminal; and

(d) the Concessionaire shall deliver to the Grantor all as-built drawings, operation and maintenance manuals and quality assurance manuals relating to the Terminal.

17.6.3 Compensation Payments

(a) Any compensation amount payable by the Grantor to the Concessionaire shall be payable at least 30 days after the date of termination of this Agreement, or after the amount of the compensation has been agreed or determined, where this Agreement is continuing.

(b) Any compensation payment due pursuant to the preceding paragraph (a) shall be paid directly to the Lender(s), if any, and as may have been notified to the Grantor under any Financing Agreement(s).

17.7 Liability and Indemnification

The parties hereto undertake and agree to hold harmless and indemnify each other in full from and against all liabilities, damages, losses and expenses incurred as a consequence of third party claims, to the extent that a third party claim is not caused by the negligence, default or omission of a party hereto in the performance of its obligations under this Agreement.

17.8 Use of Certain Insurance Proceeds

Whenever this Agreement is terminated pursuant to Article 16.1.11 following a Force Majeure, and the Grantor is obligated to pay compensation to the Concessionaire pursuant to Article 17.6.3 and insurance proceeds are available in connection with the insurance policies to which the Concessionaire is entitled or should be entitled pursuant to this Agreement with respect to the Terminal, such proceeds shall, if not used to effect a restoration or make repairs to the Terminal, be used to pay the following items in the following order of priority:

(a) to the payment of all indebtedness secured by the Lenders;

(b) to reduce the compensation amount, if any, payable by the Grantor to the Concessionaire.

(c) to the Concessionaire

17.9 Other Remedies

The right of a party to terminate this Agreement, as provided herein, does not preclude that party from exercising other remedies that are provided herein or are available at law. Remedies are cumulative,

and the exercise of, or failure to exercise, one or more remedies by a party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by that party.

17.10 Survival

The provisions of this Article 17 shall survive the termination of this Agreement.

ARTILCE 18

COMPENSATION FOR BREACH OF THIS AGREEMENT

18.1 Compensation

Subject to the other provisions of this Agreement, each party shall be entitled to compensation, payable by the party breaching this Agreement, for any loss, costs and expenses which a party has suffered as a result of this Agreement not being observed in whole or in part by the party breaching this Agreement.

18.2 Exemptions

A party shall not be liable for a failure to perform any of its obligations if it proves that the failure was due to Force Majeure in accordance with Article 16 or to any other event as to which the aggrieved party bears the risk.

18.3 Measures to Mitigate the Loss

A party suffering or threatened with loss as a result of a breach of this Agreement by the other party shall take such actions as are reasonable to mitigate or minimize the loss resulting from the breach. If a party fails to take such measures, the party in breach may claim a reduction in the compensation in the amount by which such loss should have been mitigated or minimized.

The aggrieved party shall be entitled to recover any expenses reasonably incurred in attempting to mitigate or minimize such loss from the other party.

18.4 Loss Due in Part to the Aggrieved Party

Where the loss is due in part to an act or omission of the aggrieved party or to another event as to which the aggrieved party bears the

risk, the amount of compensation shall be reduced to the extent that these factors have contributed to the loss.

18.5 No Consequential Damages

Unless otherwise provided in this Agreement, neither party shall be liable to the other party for any indirect, special, incidental, consequential or punitive damages with respect to any claim arising out of, under or in connection with this Agreement, whether based upon contract, tort including negligence, strict liability or otherwise unless a party's behaviour amounts to Gross Misconduct.

ARTICLE 19

LIABILITY AND INDEMNIFICATION

19.1 Cross Indemnity

Each party shall indemnify, defend and hold harmless the other party from and against all liabilities, damages, losses, expenses and claims of any nature whatsoever for death, personal injury and for damage to or loss of any property arising out of in any way connected with the indemnifying party's Default in the performance of this Agreement except to the extent that such death, personal injury, damage or loss is attributable to a negligent or intentional act or omission of the party seeking to be indemnified.

19.2 Environmental Contamination

The Concessionaire shall be liable for, and shall defend, indemnify and hold the Grantor harmless from and against, all liabilities, damages, losses, expenses and claims from Environmental Contamination caused by the construction, operation and maintenance of the Project, except when such liabilities, damages, losses, expenses or claims are solely attributable to the Default of the Grantor.

19.3 Survival of Obligations

The obligations of the parties under Articles 19.1 and 19.2 shall survive the expiration or termination of this Agreement in respect of any act, omission, deed, matter or thing happening before such expiration or termination.

Responsibility

pt as otherwise provided in this Agreement, in the event that oss or damage referred to in Article 19.1 and 19.2 is caused in part by the Default of the Grantor and in part by the Default of Concessionaire, each party shall; be liable to the other only in rtion to its relative degree of responcibility.

nce of Claims

party entitled to indemnification in respect of any claim brought st it shall promptly give notice to the other party that such claim een brought. The indemnifying party may give notice to the party accepting liability to indemnify and giving reasonable ctions as to how and by which party the claim is to be ded. Until receipt of such notice the indemnified party may take sonable steps in defence of the claim. Upon receipt of such if any, the indemnified party shall follow the instructions given indemnifying party.

SIGNMENT AND APPROVAL OF CONTRACTS

ARTICLE 20

ASSIGNMENT OF THE AGREEMENT

ment by the Grantor

ntor shall not assign or transfer all or any part of its rights or rs under this Agreement without the prior written consent of ssionaire and the Facility Agent.

eby declared that this Article 20.1 shall not prevent the rom merging or consolidating with any other governmental parastatal, department, authority or agency of the Federal of Nigeria or any administrative subdivision of the Federal of Nigeria provided that the surviving entity –

is demonstrably of equal financial strength; and

has the capability and authority to assume all rights, obligations and responsibilities assumed by the Grantor; and

assumes and becomes fully liable to perform the Grantor's obligations under this Agreement.

20.2 Assignment by the Concessionaire

(a) The Concessionaire shall not, without the prior written consent of the Grantor, transfer all, or any of its obligations under this Agreement.

(b) It is hereby declared that for the purpose of arranging financing for the Project, the Concessionaire shall have the right to assign to the Lenders its rights and interests under or pursuant to this Agreement and any other agreement pertaining to or in respect of the Project and to create a security interest for the benefit of the Lenders in such rights and interests and to create a security interest in favour of the Lenders in relation to the Terminal, the Site, the moveable, immovable and intellectual property of the Concessionaire, the revenues of the Concessionaire and any other rights of the Concessionaire (including rights in relation to its bank accounts).

(c) The Concessionaire shall not create or allow to be created any other security interest, lien, mortgage or encumbrance in respect of its rights and interests under this Agreement or any other Project Document or in the Terminal without the prior written consent of the Grantor.

ARTICLE 21

APPROVAL OF CONTRACTS

21.1 Approval of Contracts

The Concessionaire shall not enter into any contract or commitment whatsoever requiring payments or granting any right in relation with the Project which may produce any effect after the end of the Concession Period, without the prior written approval of the Grantor. Change and amendment to contracts approved by the Grantor shall be similarly subject to the Grantor's prior written approval.

21.2 Approval Procedure

The Concessionaire's request for approval of contracts shall include relevant information on the proposed contractors, the subject matter of the contract, the draft of the proposed contract, the method

applied for selecting the proposed contractor and the use of Nigerian labour, service and goods in accordance with Articles 15.8 and 15.9. The Grantor shall notify the Concessionaire of its decision within, thirty (30) days after its receipt of the Concessionaire's request. If the Grantor fails to act within such thirty (30) day period, the request shall be deemed to be approved.

21.3 Effect of Contract Approval

Approval by the Grantor of a contract shall not relieve the Concessionaire from any obligation or liability under this Agreement.

VIII. DISPUTE RESOLUTION

ARTICLE 22

DISPUTE RESOLUTION

22.1 Co-ordinating Committee

22.1.1 Composition and Tenure of Co-ordinating Committee

Within thirty (30) days after the Construction Commencement Date the parties shall establish a Co-ordinating Committee comprising three (3) representatives of the Concessionaire and three (3) representatives of the Grantor. Either party may remove or replace any of its Co-ordinating Committee members at any time upon giving notice to the other party. The Co-ordinating Committee shall develop procedures for the holding of meetings, the keeping of minutes of meetings and the appointment and operation of subcommittees if necessary. The first chairman of the Co-ordinating Committee shall be appointed by the Grantor. The chairman of the Committee shall then rotate every three (3) months between the parties. Decisions of the Co-ordinating Committee shall require the unanimous approval of all the members of the Co-ordinating Committee.

22.1.2 Functions of the Co-ordinating Committee

The Co-ordinating Committee shall be responsible for resolving disputes in accordance with Article 22.1 concerning, but not limited to, the construction, commissioning, operation and maintenance of the Terminal. These matters shall include:

(a) the coordination of the respective programs and procedures of the parties for the construction, commissioning and operation of the Terminal;

(b) the discussion of the steps to be taken on the occurrence of Force Majeure affecting the construction, commissioning and operation of the Terminal;

(c) safety matters affecting the Terminal by the parties or their agents;

(d) appointment of the Panel of Experts for the resolution of disputes under this Agreement.

(e) review and revision, subject to the Grantor's approval, of safety schemes; and

(f) any other matter mutually agreed to by the parties.

22.1.3 Decisions of members of Co-ordinating Committee

The parties shall instruct their representatives on the Co-ordinating Committee to act in good faith in dealing with matters considered by the Co-ordinating Committee. The Concessionaire shall use reasonable efforts to incorporate decisions of the Co-ordinating Committee in the operation and maintenance of the Terminal. Actions taken in conformance with the decision of the Co-ordinating Committee must also comply with the terms of this Agreement.

22.1.4 Best efforts of Co-ordinating Committee

The Co-ordinating Committee shall use its best efforts to resolve disputes in accordance with the procedures established in Article 22.2.

22.1.5 Cost of Co-ordinating Committee

Relevant costs of the Co-ordinating Committee (except the salaries and other allowances of the representatives of the Grantor) shall be borne by the Concessionaire.

22.1.6 Limitation on decisions of Co-ordinating Committee

The decisions of the Co-ordinating shall not release either party from any of its obligations under this Agreement or impair the rights of the parties under this Agreement

22.2 Amicable Settlement by the Co-ordinating Committee

In the event that any dispute, controversy or claim arises between

the parties out of, under or in connection with this Agreement or in the interpretation of any of its provisions, including any question regarding its existence, validity or termination, the Co-ordinating Committee shall meet promptly on the request of any member thereof, in an effort to resolve such dispute, controversy or claim by discussion. All such disputes shall be amicably settled through discussion between the representatives of the Co-ordinating Committee and the unanimous decision of the Co-ordinating Committee shall be binding upon the parties. In the event that a settlement is not reached pursuant to this Article 22.2 within thirty (30) days of the said request then the provisions of Article 22.2 shall apply.

22.3 **Mediation by Panel of Experts**

22.3.1 ***Appointment***

(a) In the event that the parties are unable to resolve a dispute, controversy or claim in accordance with Article 22.2 then either party may refer the dispute, controversy or claim to a Panel of Experts to be appointed by a unanimous decision of the Co-ordinating Committee. If, the Co-ordinating Committee has not reached a unanimous decision within fifteen (15) days of the issue of a notice of intention to refer to a Panel of Experts, the parties shall either agree on the appointment of one person to act as expert or, failing agreement, appoint one expert each and those experts shall, within seven (7) days of their appointment, designate a third person to act also as expert.

(b) In order to ease the process of appointment of expert agreeable to all parties the Coordinating Committee shall select and keep up to date at all times a list of experts who, in principle, are agreeable to both parties to act as a third expert.

22.3.2 ***Statement of Claim***

The party who initially issued the notice of intention to refer the matter to the Panel of Experts shall submit to the Panel of Experts and to the other party the following written documents --

(a) a description of he dispute;

(b) a statement of that party's position; and

(c) copies of relevant documentary evidence in support.

22.3.3 Reply

Within ten (10) days of receipt of the above documents, the other party shall submit –

(a) a description of the dispute;

(b) a statement of that party's position; and

(c) copies of relevant documentary evidence in support

22.3.4 Further Evidence

The Panel of Experts may call for such further documentary evidence and/or interview such persons as they deem necessary in order to reach their decision.

22.3.5 Decision

The Panel of Experts shall reach a majority decision and give notice to the parties of their decision within thirty (30) days of receipt of the documents provided under Article 22.2.3. The decision of he Panel of Experts shall be binding unless one party issues a notice of intention within thirty (30) days of the decision to refer the matter to arbitration in accordance with Article 22.3. In such case the Panel of Experts decision shall remain binding until final resolution by the arbitration or until an interim decision of the arbitration tribunal reversing or amending the Panel of Experts' decision.

22.3.6 Costs

The costs of engaging the Panel of Experts shall be borne equally by the parties, and each party bear its own costs of preparing the materials for and making presentations to the Panel of Experts.

Arbitration

In the event that the parties are unable to resolve any dispute, controversy, or claim in accordance with Articles 22.2 or 22.3 and in case of challenge to any decision of the Panel of Experts under Article 22.2.5, such dispute, controversy or claim shall be finally settled by arbitration under the Arbitration Rules of the Arbitration and Conciliation Act.

Multiparty Dispute Resolution – Consolidation of Arbitration Proceedings

The parties shall agree to join any dispute resolution procedure

under this Agreement with any other dispute resolution procedure pending in respect of any othe Project Document relating to substantially the same matter, subject to the terms of the arbitration provisions in respect of any dispute that has been referred to arbitration.

22.6 Performance During Dispute Resolution

Pending the submission of a dispute, controversy or claim to the Co-ordinating Committee, the Panel of Experts and/or arbitration and thereafter until the final decisions of the Panel of Experts and/or the arbitration tribunal, the parties shall continue to perform all of their obligations under this Agreement and shall benefit from all their rights without prejudice to a final adjustment in accordance with such decision.

22.7 Survival

The dispute resolution provisions contained in this Article 22 shall survive the termination of this Agreement.

IX. MISCELLANEOUS

ARTICLE 23

CONTRACT DOCUMENTS AND ENTIRE AGREEMENT

23.1 Contract Documents

This Agreement includes Annexes A to F and the Technical Designs, Drawings and Specifications, each of which shall be deemed to be incorporated herein.

23.2 Entire Agreement

This Agreement constitutes the entire understanding between the parties regarding the Project and supersedes all previous written and oral representations, agreements or arrangements regarding the Project.

23.3 Amendments and Variations

Any amendment, addition or variation to this Agreement shall be valid and binding only if in writing and only if signed by the

authorised representatives of both parties.

23.4 Separability

If any part or parts of this Agreement shall be declared invalid by any competent arbitration tribunal or court, the other parts shall remain valid and enforceable.

ARTICLE 24

MISCELLANEOUS

24.1 Several Obligations

The duties, obligations and liabilities of the parties under this Agreement are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture among the parties. Each party shall be liable individually and severally for its own obligations under this Agreement.

24.2 Notices

Unless otherwise stated, notices to be given under this Agreement shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the parties at their respective addresses set forth below:

The Grantor:

The Managing Director
Federal Airports Authority of Nigeria
Murtala Muhammed Airport
PMB 21607
Ikeja, Lagos

The Concessionaire:

The Managing Director,
Bi-Courtney Limited,
The Rooftop,
8th – 10th Floors, 24A Campbell Street,
LAGOS.

The Sponsor:

The Executive Chairman,
Stabilini Visinoni Limited,
Kilometre 5, Apapa – Oshodi Express Way,
Awodi Ora, Kirikiri,
Apapa – Lagos

Or such other address, telex number or facsimile number as may be notified by that party to the other party from time to time, and shall be deemed to have been made or delivered –

(a) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at that address and

(b) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

In case that a party changes its address and/or attention, it shall notify the other party in writing prior to adoption of the new address and/or attention.

23.3 Costs and Expenses

Unless otherwise provided in this Agreement or otherwise agreed by the parties, each party shall bear its own costs incurred in connection with the negotiation, completion and performance of this Agreement.

23.4 Non-waiver

None of the provisions of this Agreement shall be deemed waived by either party except when such waiver is given in writing. The failure by either party to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

23.5 Waiver of Sovereign Immunity

To the extent that the Grantor may claim for itself or its assets or revenues immunity from suit, execution, attachment or other legal

process, the Grantor agrees not to claim and hereby irrevocably waives such immunity.

Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Nigeria.

NESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be signed by their duly authorised representatives on the dates first above written.

D SEALED AND DELIVERED
HONOURABLE MINISTER OF AVIATION
on behalf of
DERAL GOVERNMENT OF NIGERIA

S. KEMA CHIKWE
sence of:

Muro Kubor (Dr)
Fed. Min of Aviation.
Civil Servant.

24/4/03

THE COMMON SEAL OF THE
FEDERAL AIRPORTS AUTHORITY OF NIGERIA
was hereunto affixed in the presence of:

DIRECTOR

SECRETARY

THE COMMON SEAL OF
COURTNEY LIMITED
was hereunto affixed in the presence of:

DIRECTOR

SECRETARY

THE COMMON SEAL OF
BLINI VISINONI LIMITED
was hereunto affixed in the presence of:

DIRECTOR

SECRETARY

ANNEX A

PROJECT SCOPE OF WORKS

[Separate Volume]

ANNEX B

PERFORMANCE BOND

POLICY NO. _____

Brief description of Contract: **Construction of Murtala Muhammed Domestic Airport, Ikeja, Lagos** (referred to as **"the Terminal"**).

Name and address of Beneficiary: **FEDERAL GOVERNMENT OF NIGERIA** and the **FEDERAL AIRPORTS AUTHORITY NIGERIA** (together with its successors-in-title and assigns, referred to in the Concession Agreement as "the Guarantor").

BY THIS BOND, We **BI-COURTNEY LIMITED** (Concessionaire under the Concession Agreement) as **Principal** and _____ **INSURANCE COMPANY LIMITED** whose office is at _____; as **Guarantor** are irrevocably held and firmly bound to the **Beneficiary** in the total amount of **₦1,000,000,000.00** (the "Bond Amount") for the due performance of the Principal's construction obligations under the Agreement. The Bond shall be released upon the commencement of the Concession Period under the Concession Agreement (the **"Expiry Date"**).

All or so much of the Bond as shall remain outstanding shall be released upon the earlier of

(a) six (6) months after the Final Completion Date of the Terminal, and

(b) the date of submission by the Concessionaire of the Maintenance Bond in accordance with Article 10.5; or

(c) termination of this Agreement after deduction of any compensation due to the Grantor from the Concessionaire in respect of any liability of the Concessionaire under the Concession Agreement arising on or prior to such termination.

The Bond shall become effective on the Construction Commencement Date defined in the **Concession** Agreement.

We hereby undertake to pay to you any sum or sums not exceeding in aggregate **₦1,000,000,000.00** on receipt by us on this office of your first demand on us in writing, the signature appearing thereon to be duly authenticated by your bankers, complying with all the requirements hereof, quoting our above Guarantee Number and stating:

(1) the amount payable, and

2. that the Concessionaire has failed to perform the terms of the said Concession Agreement.

However, the total liability of the Guarantor shall not exceed the Bond amount and the Bond amount shall reduce pro-rata with the quantum of construction work performed by the Principal.

The obligations and liabilities of the Guarantor shall not be discharged by any allowance of time or other indulgence whatsoever by the Beneficiary to the Principal, or by any variation or suspension of the works to be executed under the Concession Agreement, or by any amendments to the Concession Agreement or to the constitution of the Principal or the Beneficiary or by any other matter, whether with or without the knowledge or consent of the Guarantor.

Any claim under this Bond must be received by the Guarantor on or before (the "Expiry Date"), when this Bond shall expire and shall be returned to the Guarantor.

The benefit of this Bond may be assigned subject to the provisions for assignment to a lawful assignee of the Concession Agreement and subject to the receipt by the Guarantor of evidence of such assignment.

This Bond shall be governed by the laws of the Federal Republic of Nigeria.

Wherefore this Bond has been issued by the Principal and the Guarantor on January 7, 2003.

The Common Seal of the within named

ANNEX C

PROJECT IMPLEMENTATION SCHEDULE

[Separate Volume]

ANNEX D

OPERATION AND MAINTENACE MANUAL

[Separate Volume]

ANNEX E

PROJECT SURVEY/SITE PLAN

[Separate Volume]

RECEIVED
FEB 2007
Director

ANNEX F

LIST OF CONCESSIONAIRE'S SHAREHOLDERS

1. SPECTRA LIMITED – 9,000,000 million shares
2. CHIEF T.K. AKINBAMI – 500,000 shares
3. DR. OLAWALE BABALAKIN – 500,000 shares

ANNEX II

NEW MURTALA MOHAMMED AIRPORT
DOMESTIC TERMINAL
IKEJA

SUPPLEMENTAL CONCESSION AGREEMENT

PREPARED BY:

Professor Oluwole Akanle

Oluwole Akanle & Co.

Allied House [5th Floor]
155/161 Broad Street
Lagos

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT hereinafter referred to as "this Agreement" is made and entered into this 21st day of June 2024

BETWEEN

THE FEDERAL GOVERNMENT OF NIGERIA represented by THE MINISTER OF AVIATION (hereinafter referred to as "the FGN", which expression shall wherever the context so admits include its successors-in-title and assigns) of the first part;

FEDERAL AIRPORTS AUTHORITY OF NIGERIA, a parastatal established by statute having its headquarters situate at Murtala Muhammed Airport, Ikeja, Lagos, (hereinafter referred to as "FAAN" which expression shall wherever the context so admits include its successors-in-title, nominees, appointees, agents, servants and assigns) of the second part;

AND

BI-COURTNEY LIMITED, a limited liability company duly incorporated under the Laws of the Federal Republic of Nigeria and having its registered office situate at the Rooftop, 8th – 10th Floors, 24A, Campbell Street, Lagos, (hereinafter referred to as "**the Concessionaire**" which expression shall wherever the context so admits include its successors-in-title, appointees, agents and assigns) of the third part;

STABILINI VISINONI LIMITED, a limited liability company duly incorporated under the Laws of the Federal Republic of Nigeria, having its registered office situate at Kilometre 5, Apapa-Oshodi Expressway, Adeyanju-Daniel Street, Awodi Ora, Kirikiri, Apapa, Lagos, (hereinafter referred to as "**the Sponsor**" which expression shall wherever the context so admits include its successors-in-title, appointees, agents and assigns) of the fourth part.

WHEREAS:

1. The Parties herein entered into a Concession Agreement [herein "**the Concession Agreement**"] dated 24th day of April, 2003 for the design, engineering procurement, construction, completion, commissioning operation and transfer of a new domestic terminal at the Murtala Mohammed Airport, Ikeja on Build, Operate and Transfer terms;

2. The Grantor is concerned at the slow pace of work on the Project which has resulted in Construction Works being ten (10) months behind the Project Implementation Schedule;

3. The Parties have held consultations, meetings and negotiations to address all the problems and issues that have arisen and have resolved to give the Project a new boost and have therefore agreed to vary the said terms of the Concession Agreement in the manner herein set out

NOW IT IS HEREBY AGREED as follows:

ARTICLE 1 NEW CONSTRUCTION COMPLETION DATE

1.1 The Construction Period for achieving the completion of Construction Works is hereby extended to 33 months instead of the original Construction Period of 18 months from the Construction Commencement Date fixed by the Concession Agreement.

1.2 The provisions of Clause 1.1 of this Supplemental Agreement shall be effective and binding only if a Certificate of Full Compliance is issued to the Concessionaire by the Appointed Consultants certifying that the Concessionaire has fully complied with the provisions of Article 2 of this Supplemental Agreement.

1.3 The Appointed Consultants shall issue the Certificate of Full Compliance not later than seven (7) days after the delivery of the last document of compliance with the last condition prescribed in Article 2 of this Supplemental Agreement.

1.4 Where the Concessionaire fails to or is unable to achieve full compliance as stated herein the Appointed Consultants shall notify both the Concessionaire and the Grantor of the failure or inability by issuing a Certificate of Non Compliance stating the nature of the condition(s) that has not been complied with.

ARTICLE 2 CONDITIONS PRECEDENT TO THE ISSUANCE OF CERTIFICATE OF FULL COMPLIANCE

The Concessionaire shall –

2.1 not later than August 15, 2004, deliver to the Grantor copies of all duly executed and binding Financing Agreements such as loans, bank guarantees, equipment leases and, other forms of financing agreements acceptable to the Grantor and equity contributions for the full amount of the total cost of the project;

2.2 not later than May 31, 2004, submit to the Appointed Consultants the Concessionaire's programme for the completion of all Architectural, Structural Engineering and M & E Services Drawings and

Documentation:

2.3 not later than May 31, 2004 submit to the Appointed Consultants a Preliminary Design Report, Outline Specification and Construction Programme incorporating a Time Table for all M & E Services including Plant and Equipment;

2.4 not later than May 31, 2004 deliver to the Grantor a detailed description of the Project Scope of Works;

2.5 not later than May 31, 2004, submit to the Grantor all the preliminary design, architectural, structural, electrical and mechanical drawings and engineering specifications incidental to the commencement and continuation of the Modified Construction Works;

2.6 not later than October 15, 2004, deliver to the Grantor copies of all necessary and appropriate certificates of insurance as required by Clause 15.12 of the Concession Agreement;

2.7 not later than *October 15, 2004*, deliver to the Grantor a duly executed and binding Operation and Maintenance (O & M) Agreement with an O & M contractor acceptable to the Grantor as required by Clause 10.9 of the Concession Agreement;

2.8 not later than May 31, 2004, deliver to the Grantor copies of a Feasibility Studies' Report essential for costing the Project as well as determining the scope of the Project and the Concession Period to be granted;

2.9 not later than September 15, 2004 submit to the Appointed Consultants all Detailed Design and Working Drawings (Architectural, Structural Engineering, M & E Services, Engineering Specifications) Priced Bills of Quantities, Detailed Programme for Procurement and Installation of all M & E Plant and Equipment including Airport specific equipment;

ARTICLE 3 CONSEQUENCES OF NON COMPLIANCE WITH ARTICLE 2 REQUIREMENTS

3.1 If any of the requirements prescribed in Article 2 of this Supplemental Agreement is not fully complied with within the specified period the right of the Grantor to terminate the Concession Agreement and this Supplemental Agreement shall immmediately accrue on the due date and may terminate the Concession Agreement and this Supplemental Agreement immediately:

Provided that a termination under this Article arising from non-compliance with any of the requirements of Clauses 2.2 – 2.9 shall not take place unless the Grantor, acting through the Appointed Consultants, has given the Concessionaire a period of fourteen (14) days within which to fully comply with the requirement.

2 The Grantor,

(a) shall not in any way be liable to the Concessionaire for any damages or losses arising by reason of the termination of the Concession Agreement and this Supplemental Agreement pursuant to this Article, and

(b) shall be entitled to draw on the Performance Bond issued under the Concession Agreement to the extent specified therein as if this Supplemental Agreement has not been made.

For the avoidance of doubt the provisions of Clause 17.3 of the Concession Agreement shall not apply to any decision to terminate the Concession Agreement and this Supplemental Agreement pursuant to the provisions of Article 3 of this Supplemental Agreement.

Where the Grantor exercises the right to terminate this Supplemental Agreement and the Concession Agreement pursuant to Article 2 hereof, the Grantor hereby undertakes to pay to the Concessionaire an amount representing the assessed value of work done on the Project as at the date of the termination of these Agreements in accordance with the Approved Price Bills of Quantities.

The payment to the Concessionaire for the value of work done so far shall be made subject to the rights of the Grantor to be compensated for delays under this Supplemental Agreement and the Concession Agreement.

An assessment of the value of the work done and the amount payable to either Party shall be concluded not later than three (3) months from the date of termination under this Article.

Any payment due to either Party pursuant to this Article shall be made within a period of six (6) months from the date of the determination of the amount payable.

ARTICLE 4 CERTIFICATE OF COMPLIANCE

The Appointed Consultants shall immediately upon the expiration of each of the dates specified in Article 2 of this Supplemental Agreement, notify each of the Parties whether or not the Concessionaire has fully complied with the requirements specified under the relevant Clause of Article 2 of this Supplemental Agreement.

ARTICLE 5 MISCELLANEOUS

The documents and drawings referred to in Article 2 of this Supplemental Agreement shall be endorsed by the Parties and, when so endorsed, shall be deemed to be annexed to this Supplemental Agreement and shall be read as part of the Concession Agreement.

5.2 The Parties herein undertake to renegotiate Clause 2.3 of the Concession Agreement within 30 days of the Concessionaire complying with Clause 2.8 of this Supplemental Agreement.

5.3 In this Supplemental Agreement,

"Concession Agreement" means the Concession Agreement executed between the Parties herein and dated the 24th day of April 2003.

Without prejudice to the foregoing, all terms used in the Concession Agreement shall *mutatis mutandi* apply to this Supplemental Agreement.

5.4 Subject only to the variations herein contained and such other alterations (if any) as may be necessary to make the Concession Agreement consistent with the Supplemental Agreement the Concession Agreement remains in full force and effect and shall be read and construed and be enforceable as if the terms of this Supplemental Agreement were inserted therein by way of addition or substitution as the case may be.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be signed by their duly authorised representatives on the dates first above written.

SIGNED, SEALED AND DELIVERED

BY THE HONOURABLE MINISTER OF AVIATION

For and on behalf of

THE FEDERAL GOVERNMENT OF NIGERIA

15/06/04

In the presence of:

Name: THOMAS ADEPO OYELAJE

Address: MINISTRY OF AVIATION ABUJA

Occupation: CIVIL SERVANT

Signature: 15.06.04

THE COMMON SEAL OF THE
FEDERAL AIRPORTS AUTHORITY OF NIGERIA
Was hereunto affixed in the presence of:

15/06/04

DIRECTOR

SECRETARY

THE COMMON SEAL OF
BI-COURTNEY LIMITED
Was hereunto affixed in the presence of:

25/06/2004

DIRECTOR

25/6/04

SECRETARY

THE COMMON SEAL OF
STABILINI VISINONI LIMITED
Was hereunto affixed in the presence of:

DIRECTOR

SECRETARY

PREPARED BY:

Oluwole Akanle & Co.
Allied House [5th Floor]
155/161 Broad Street
Lagos

ANNEX III

Appendix 2

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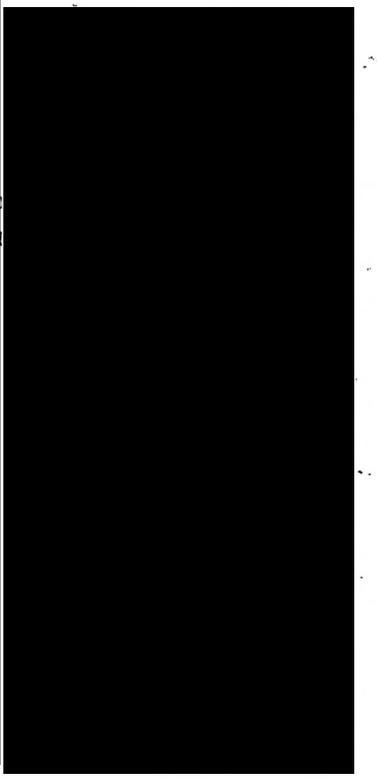

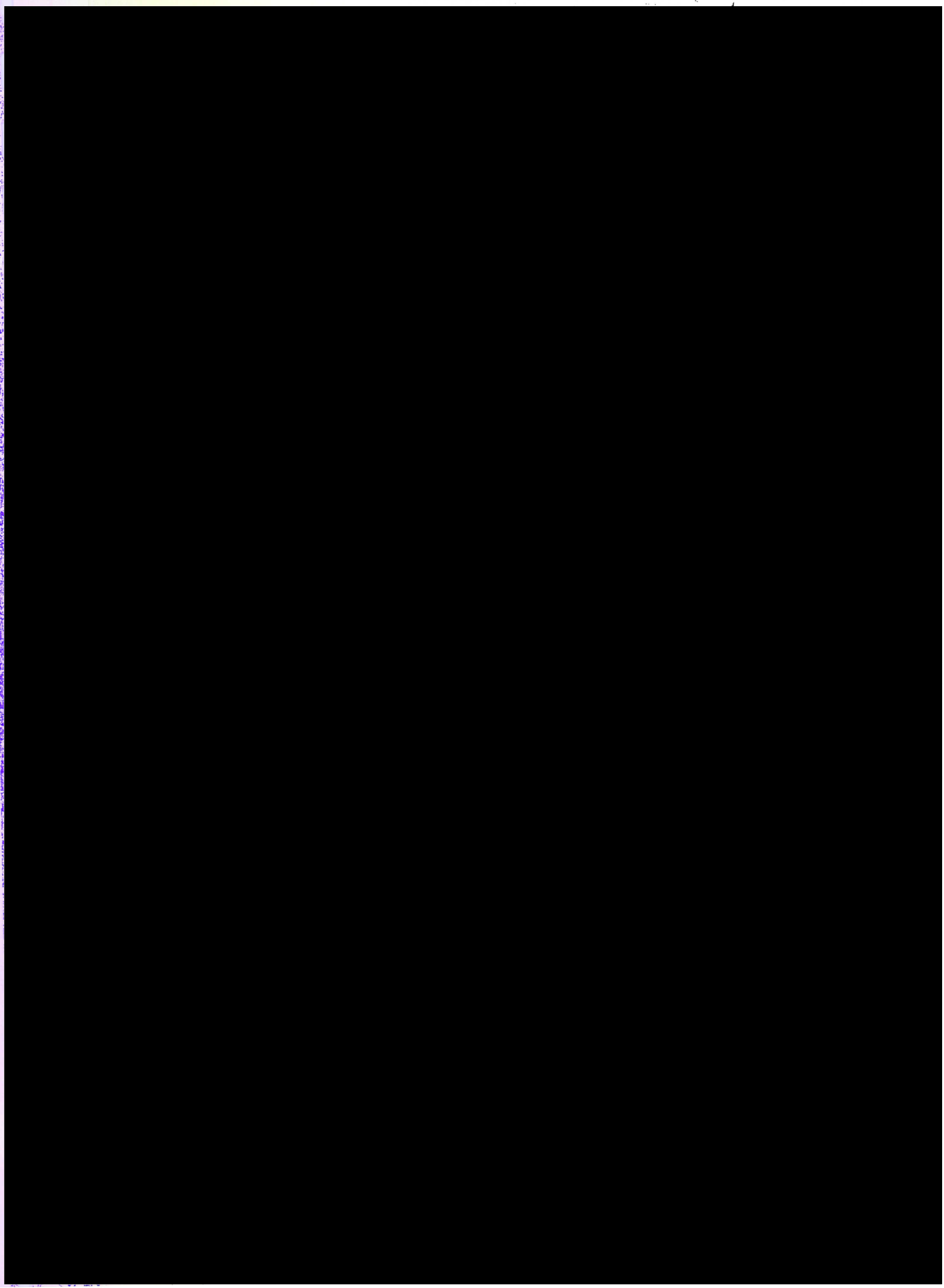

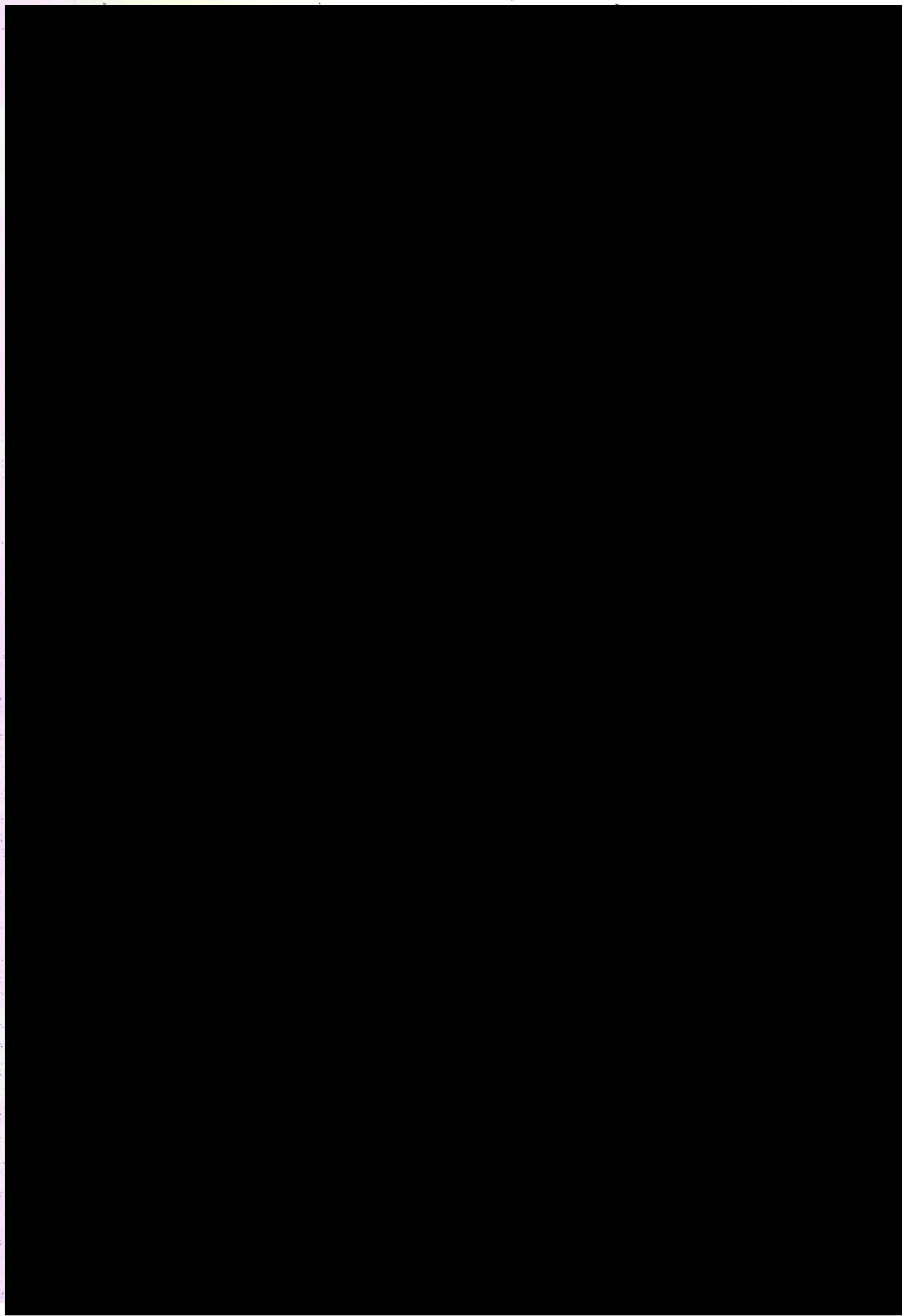

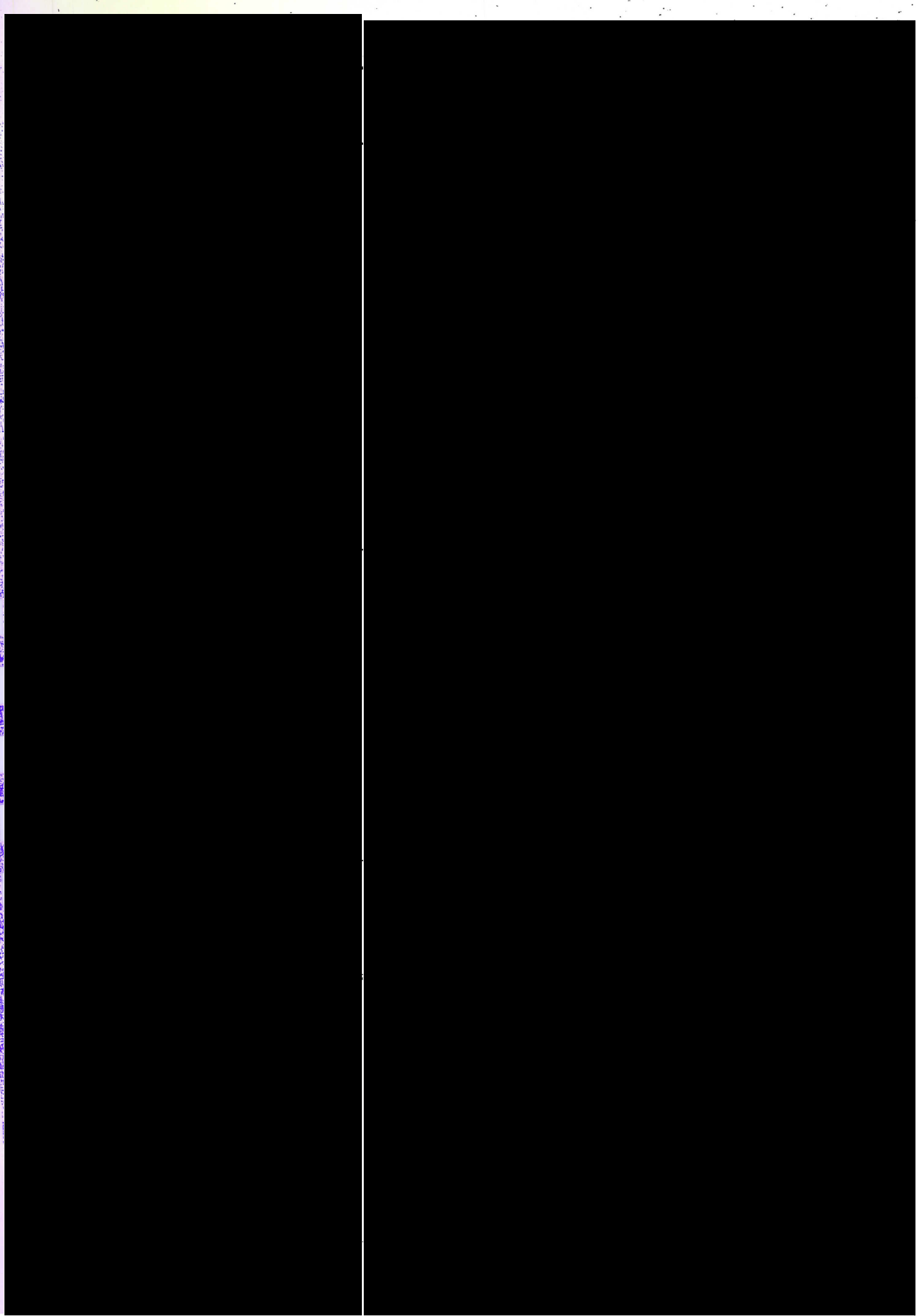

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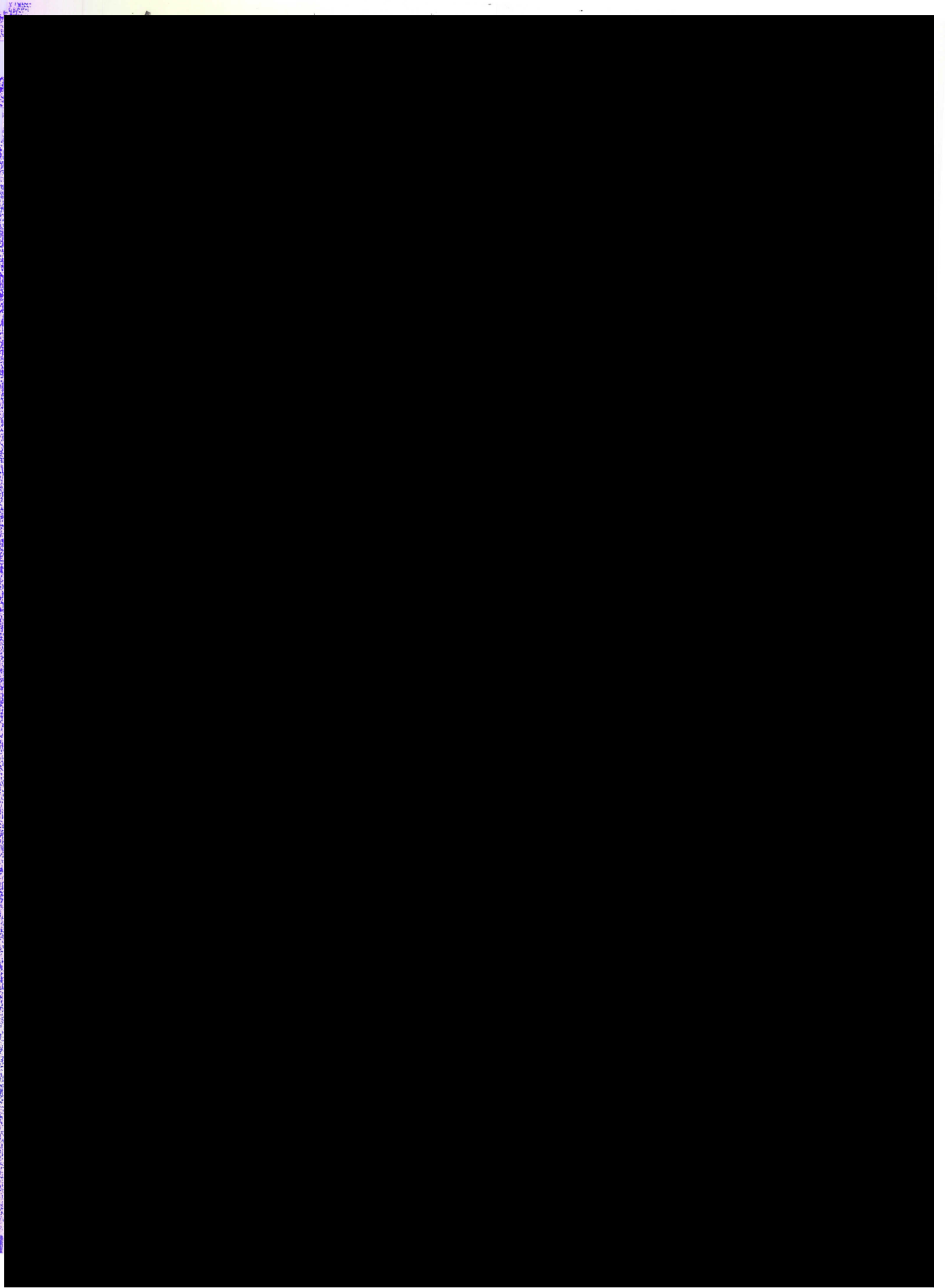

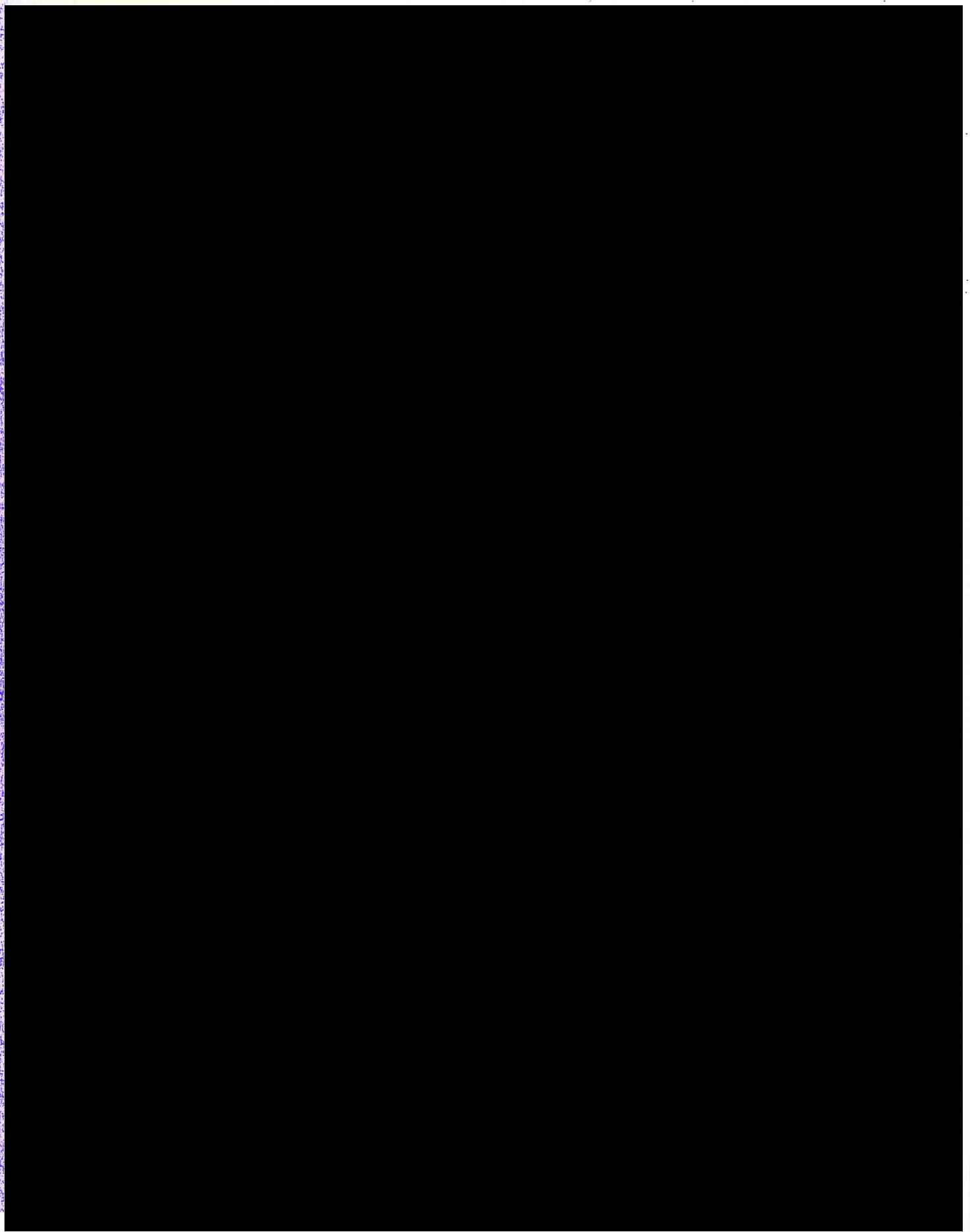

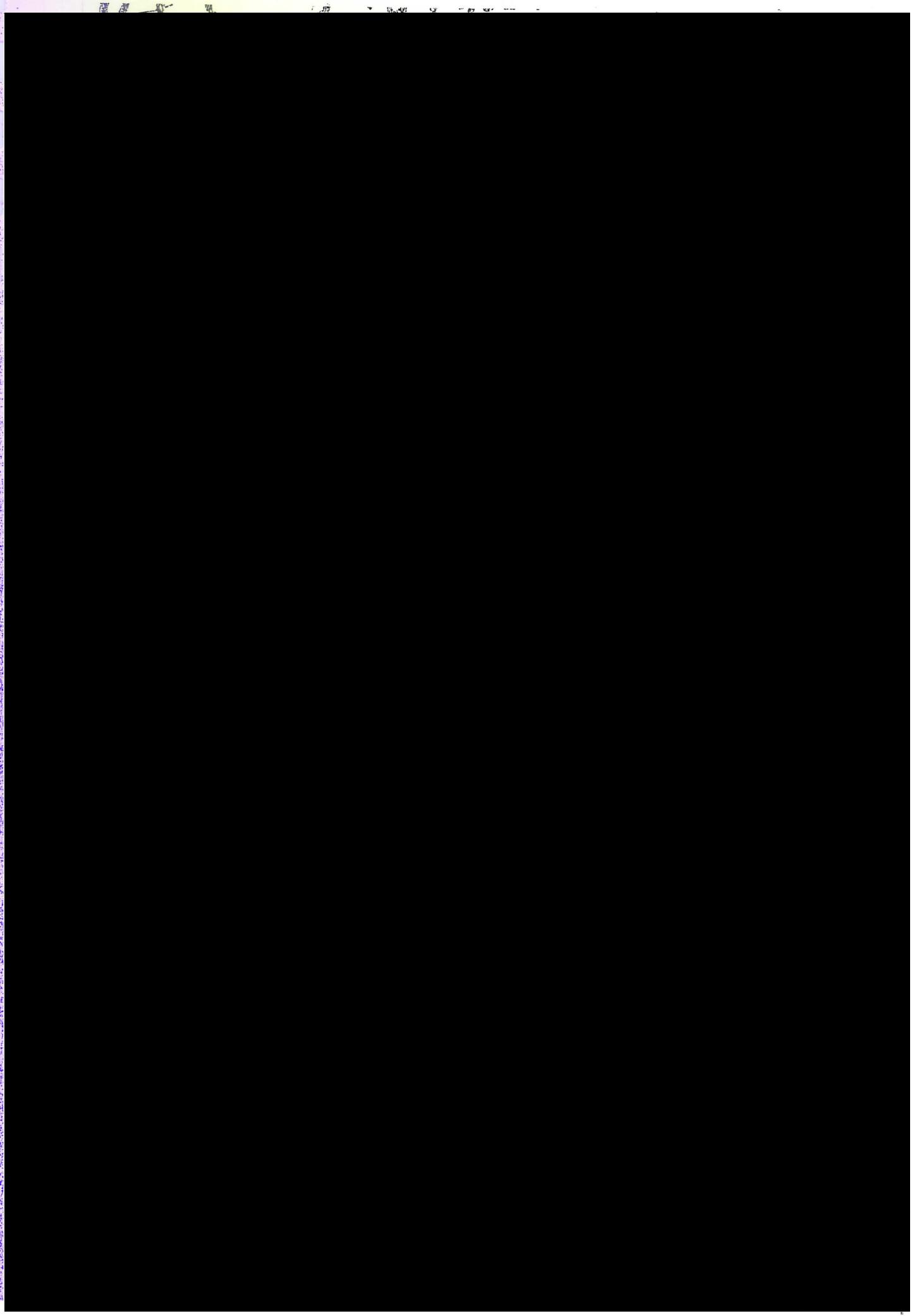

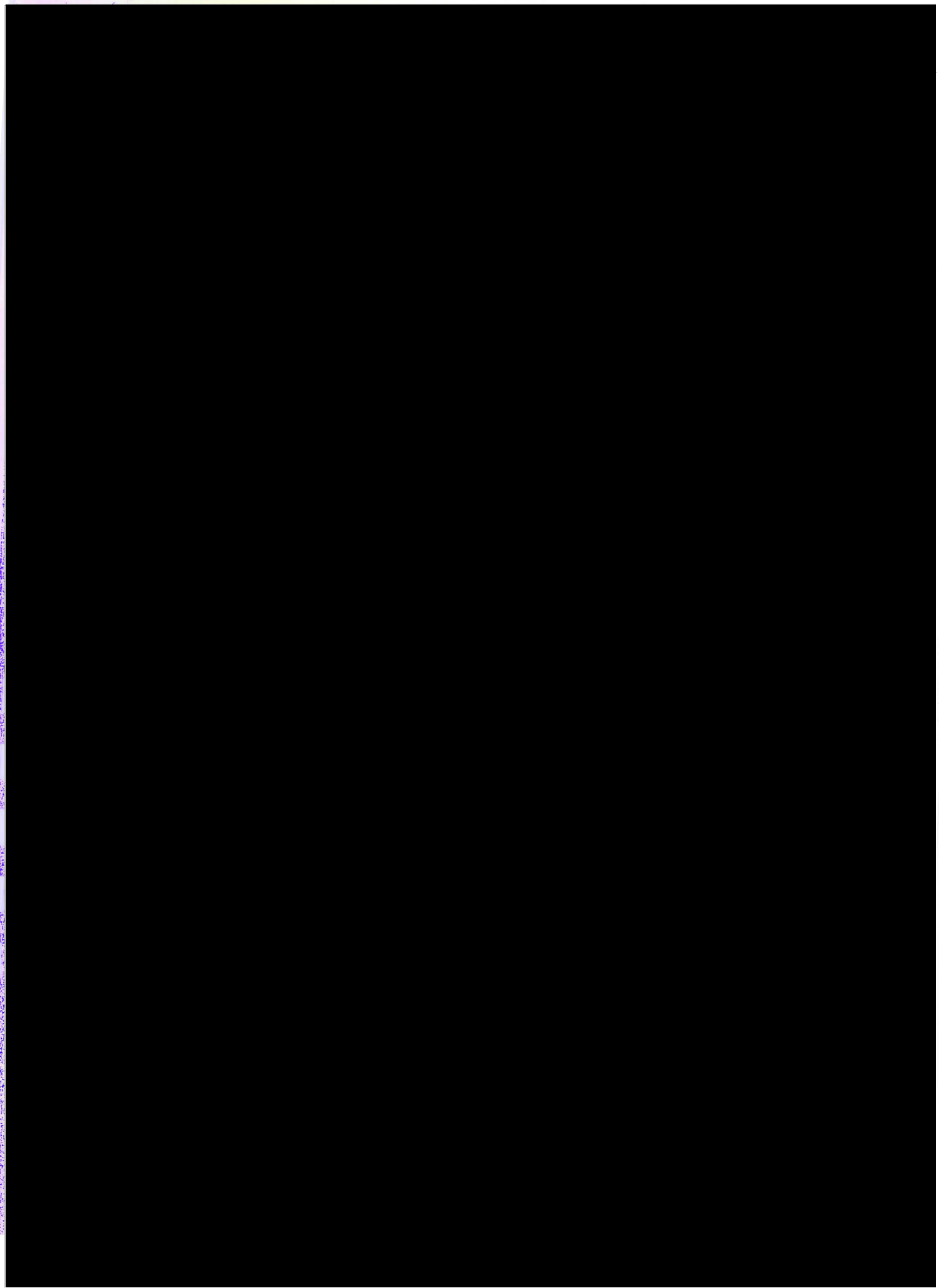

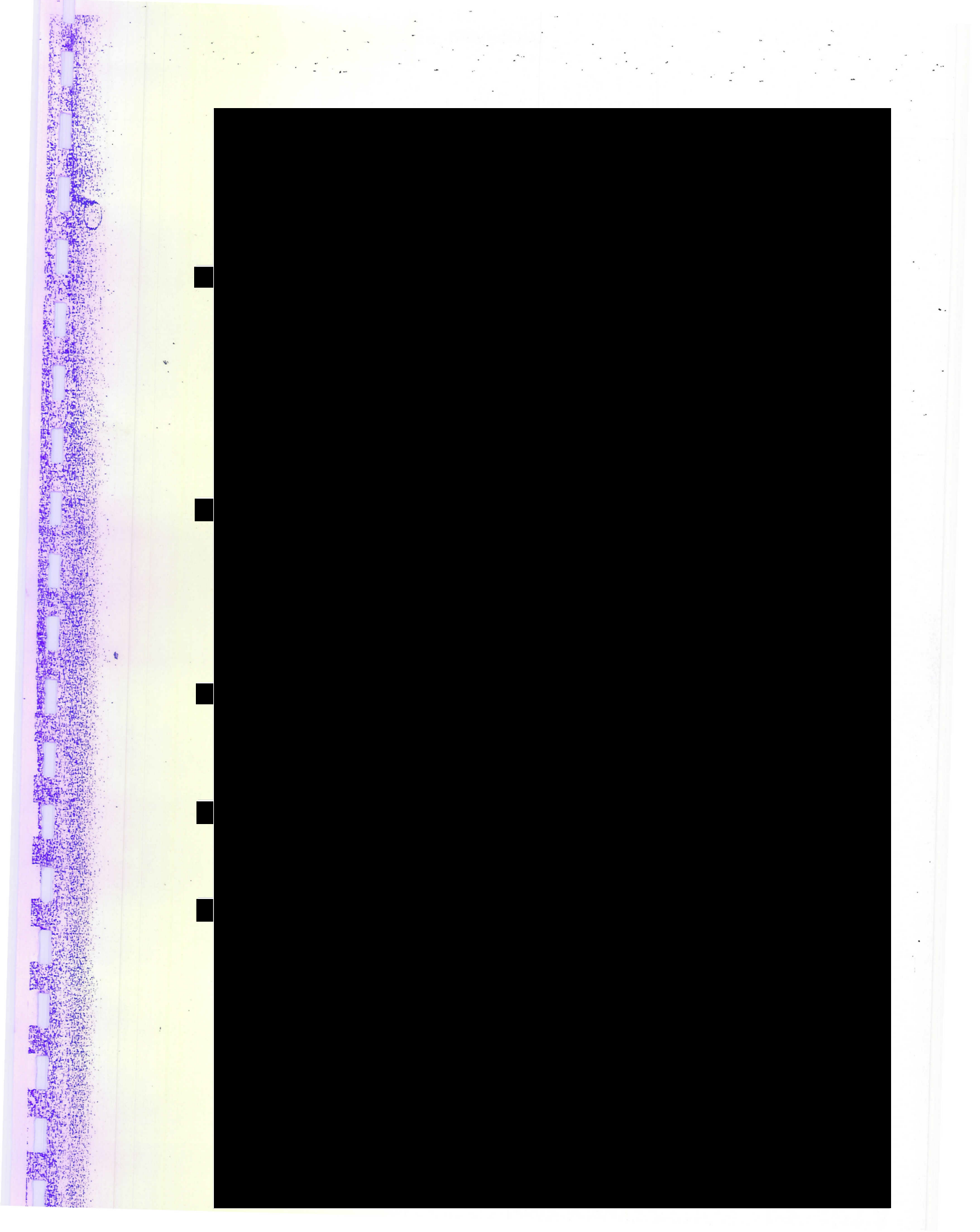

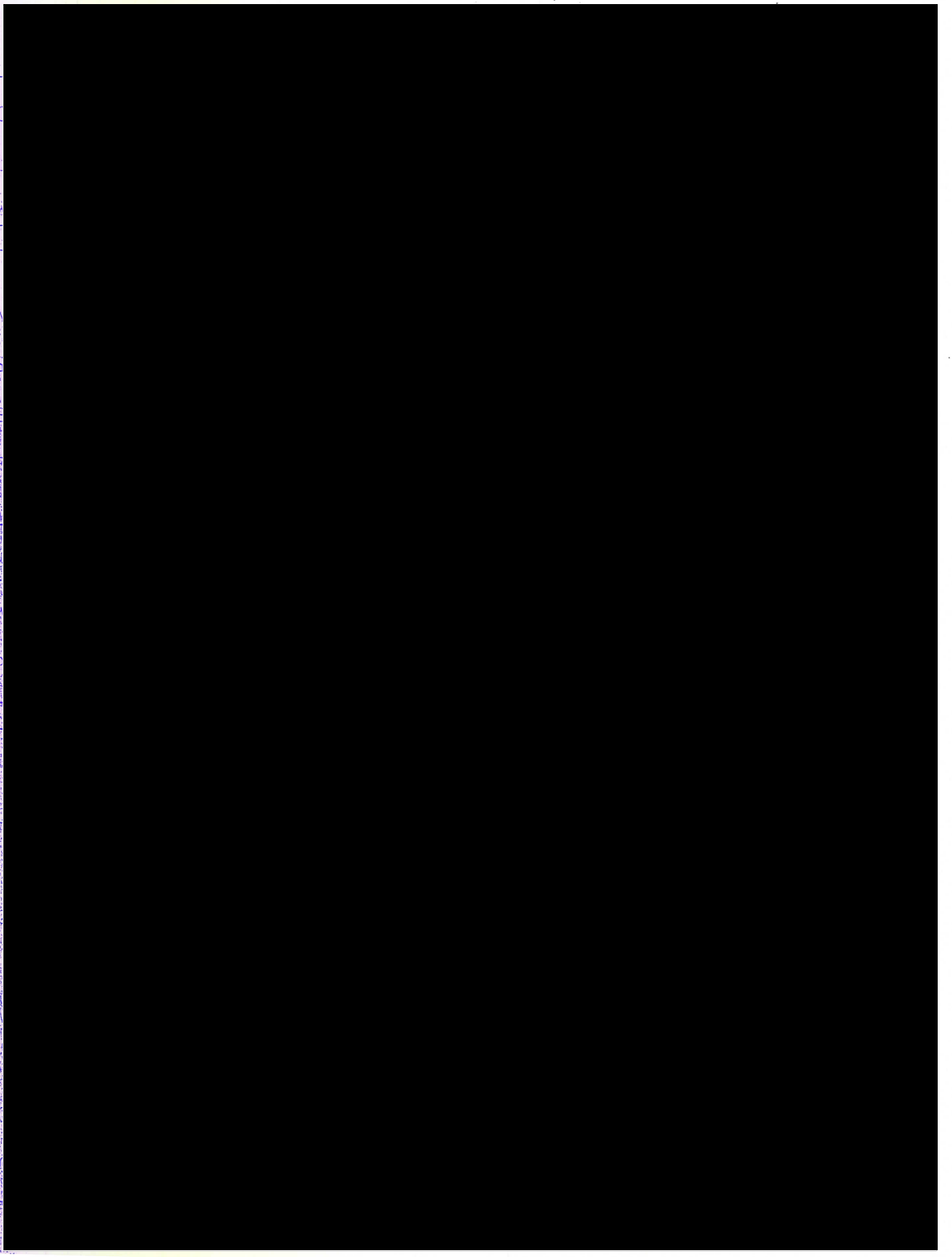

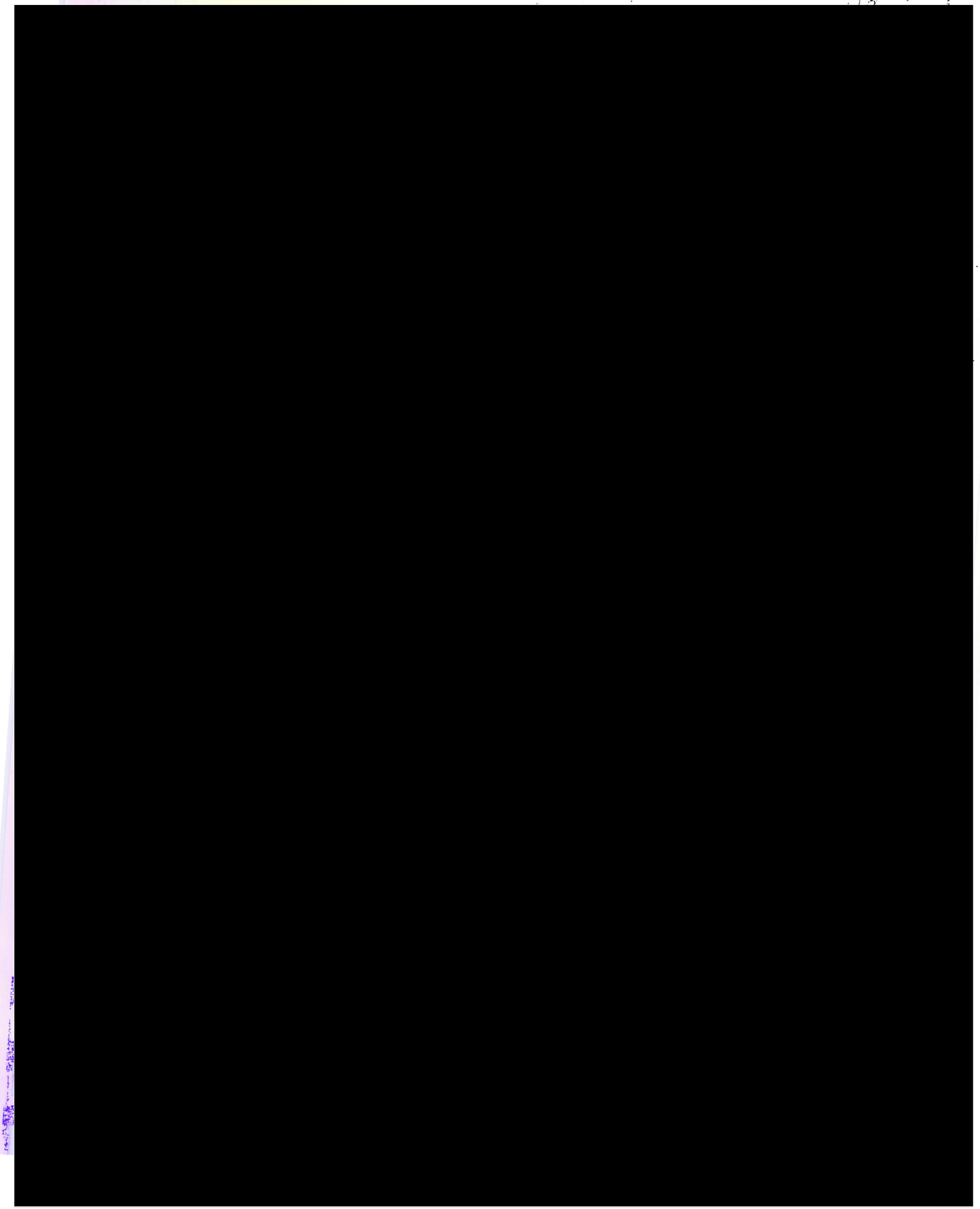

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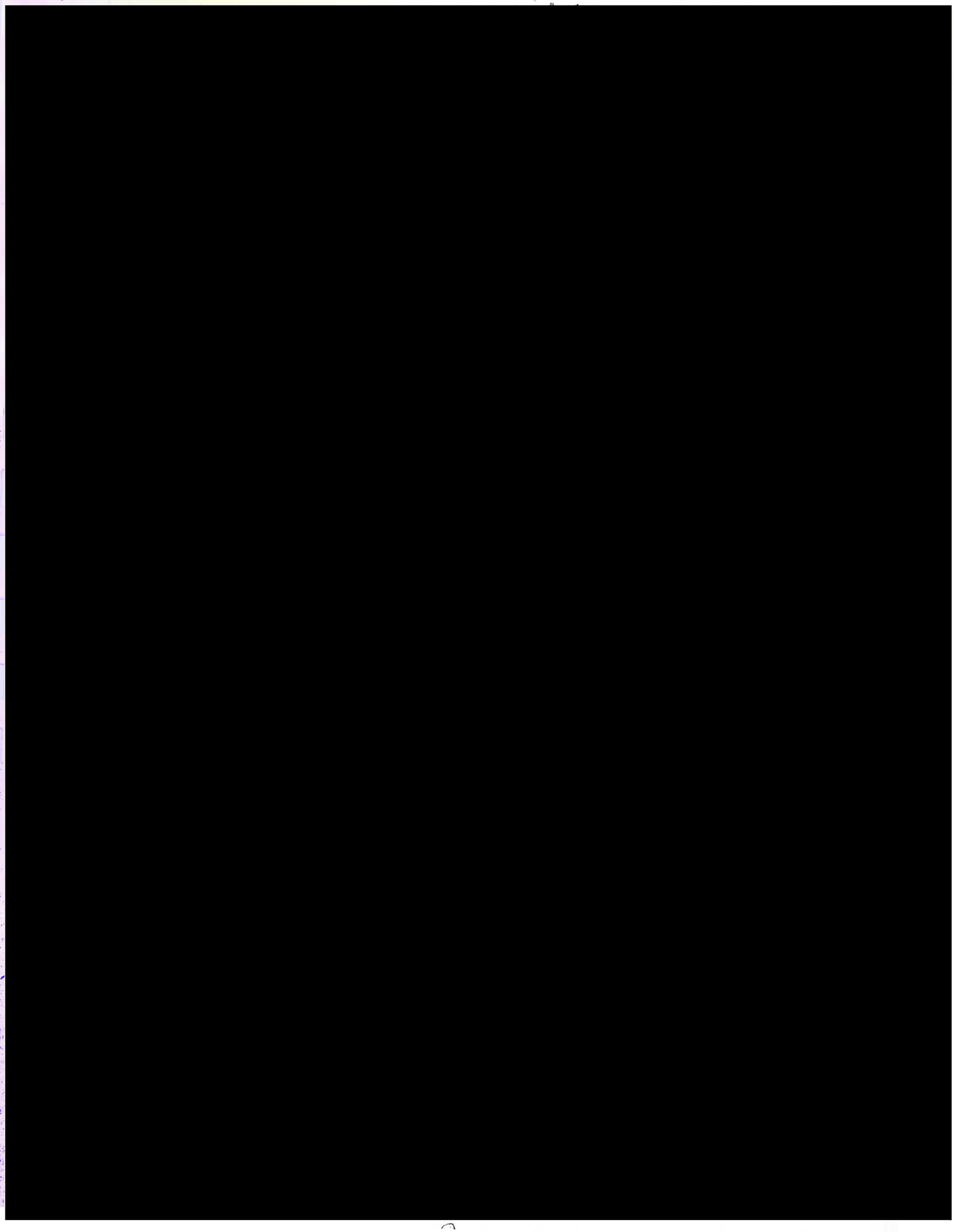
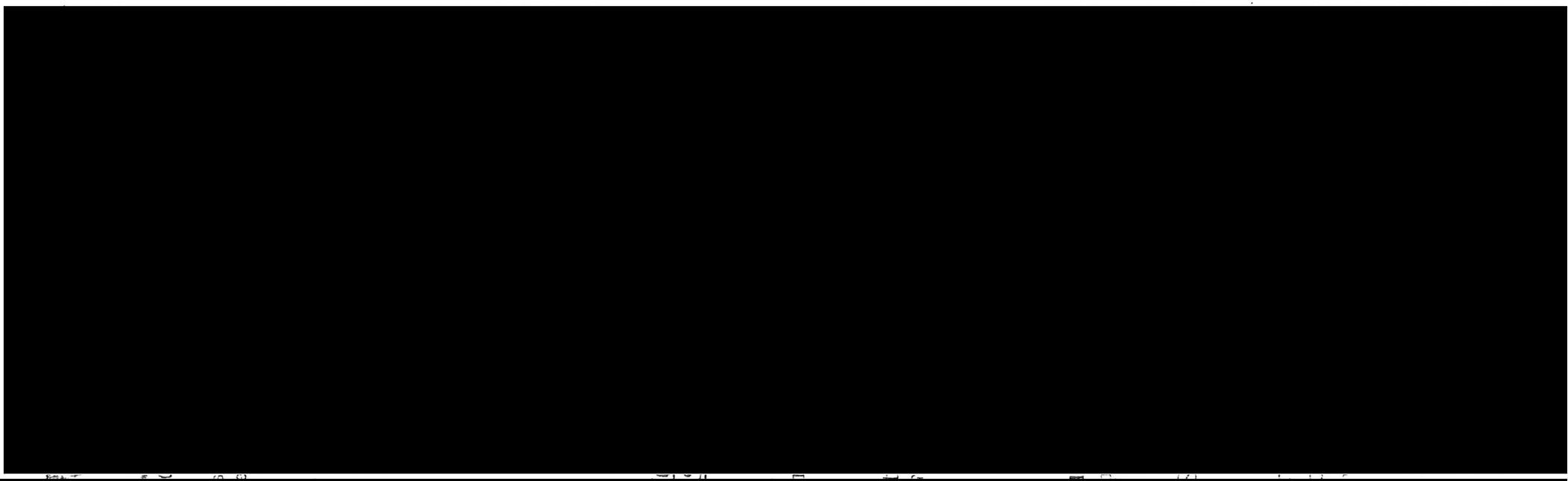
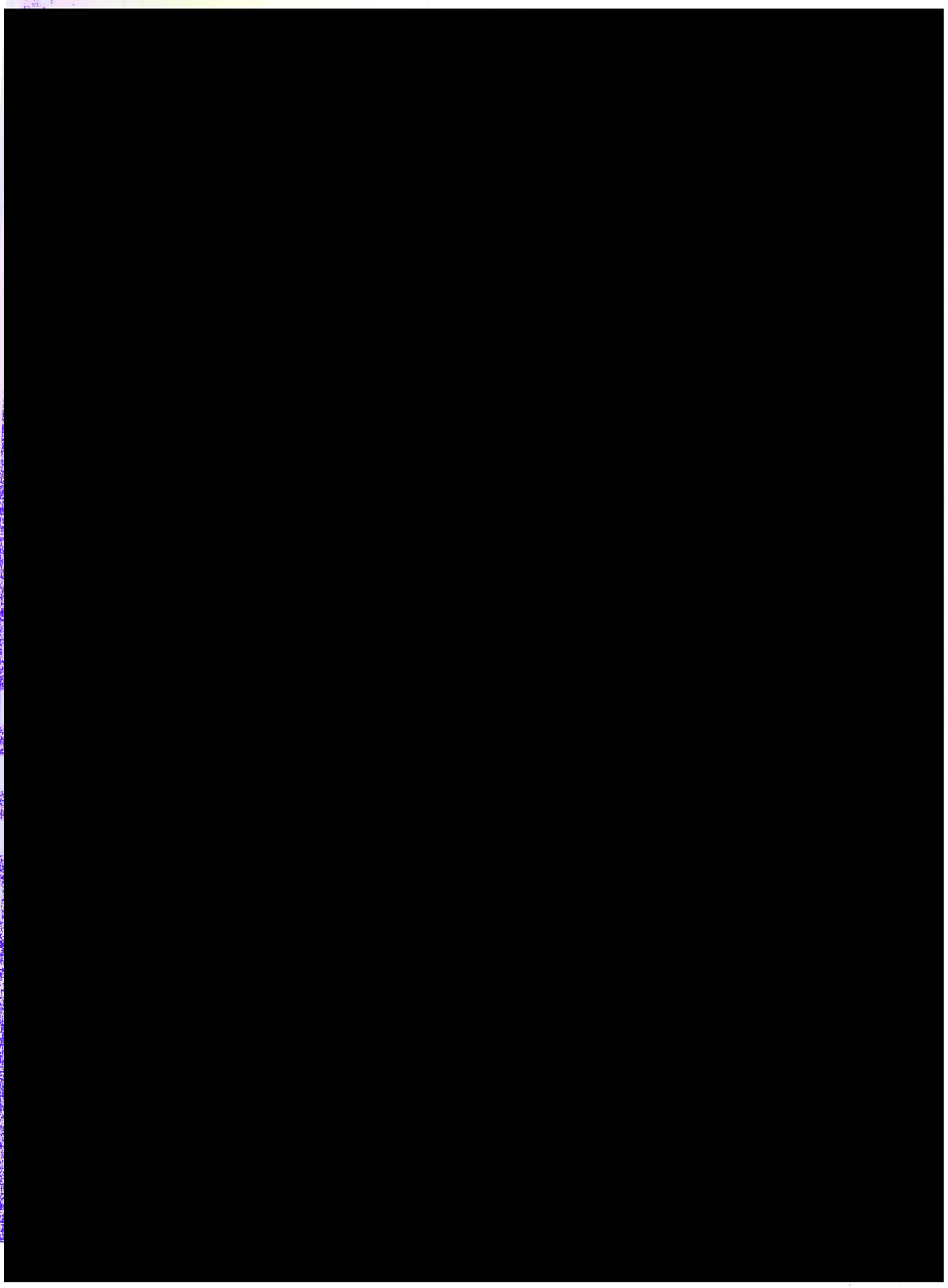
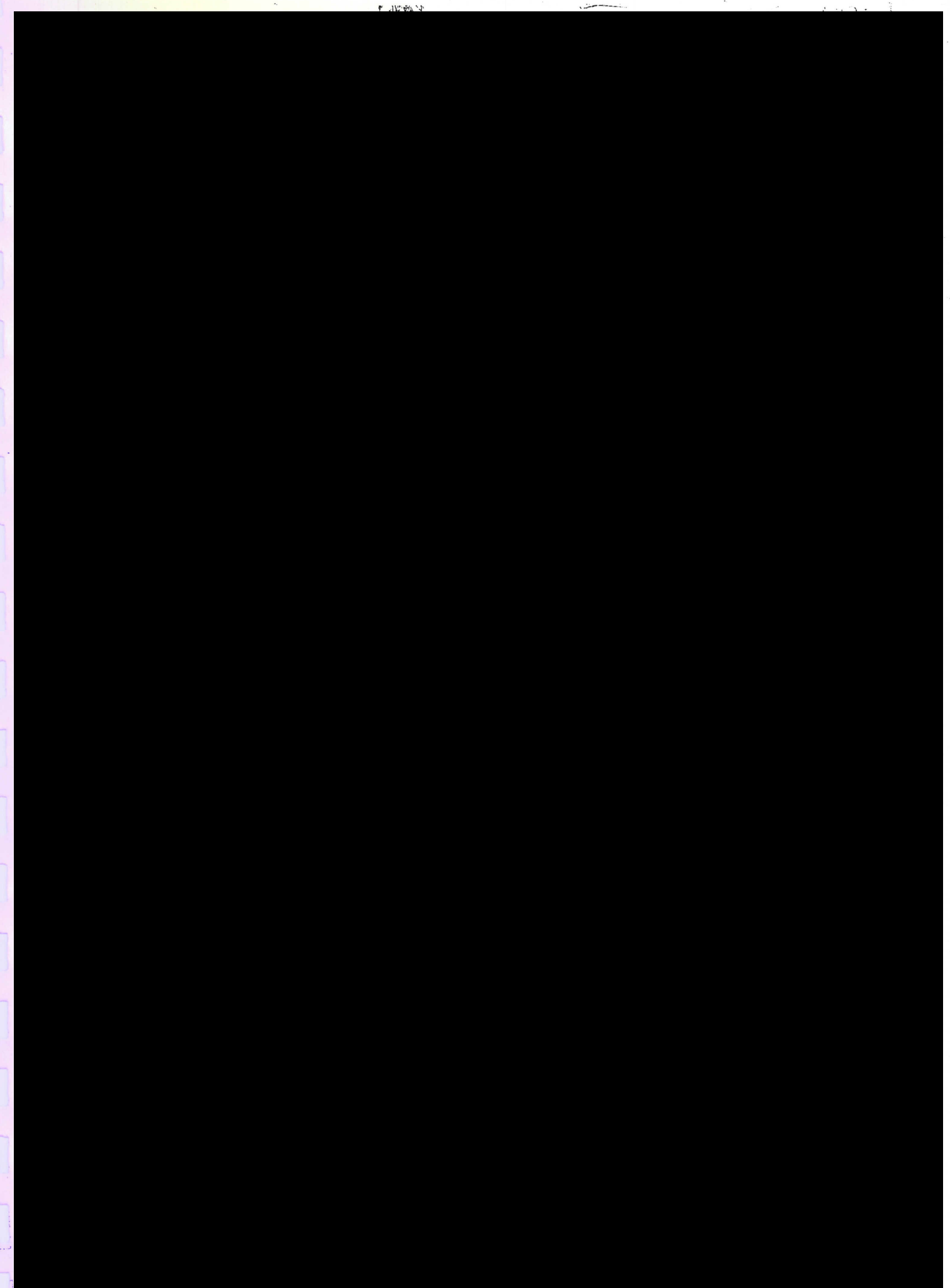
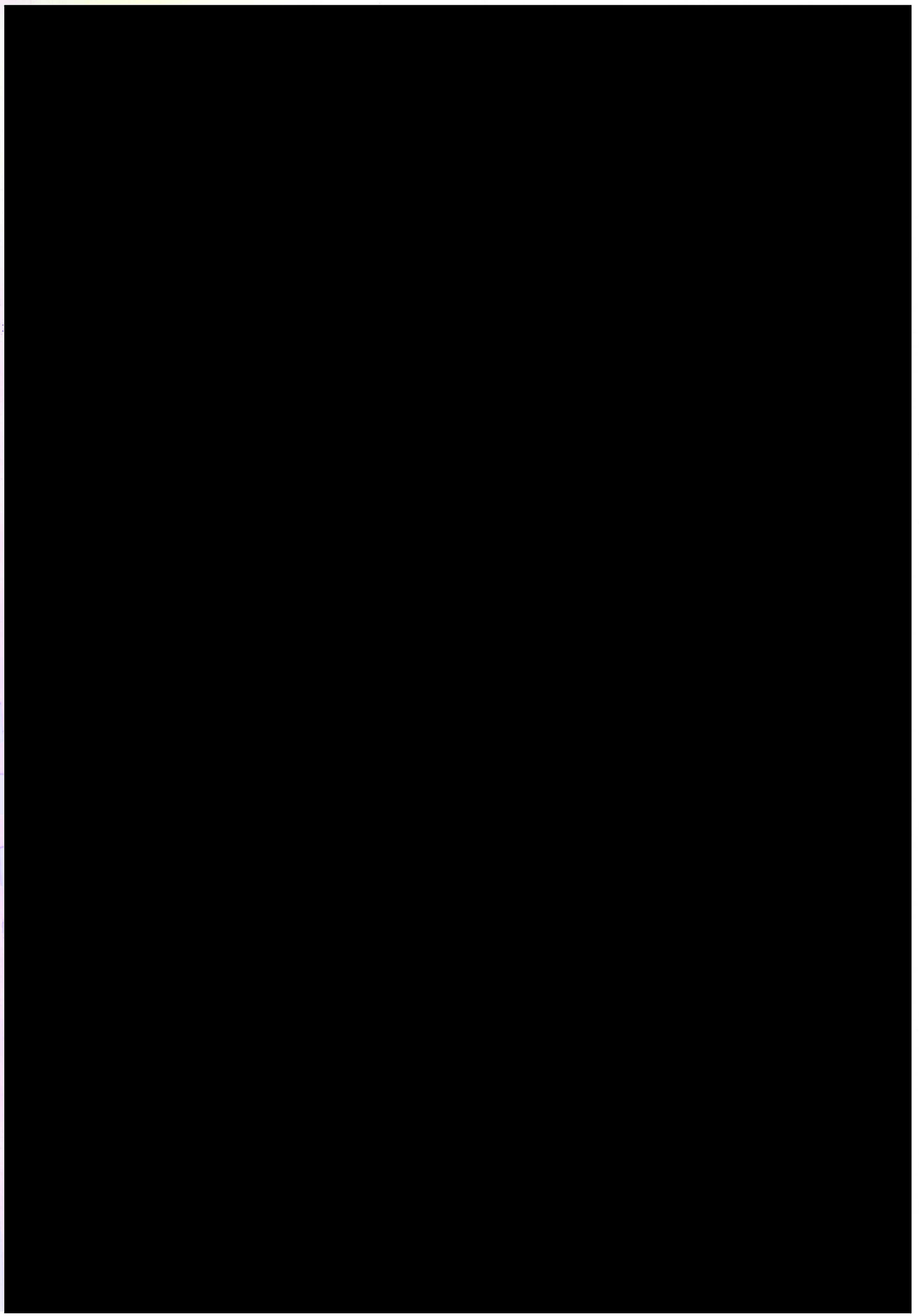










ANNEX X

REVIEW REPORT ON THE BUILD OPERATE & TRANSFER CONCESSION

ON

THE NEW DOMESTIC TERMINAL BUILDING AT MURTALA MUHAMMED AIRPORT IKEJA

GRANTED TO THE BI COURTNEY CONSORTIUM

PREPARED BY

First Courity Consultants

GRESHAM SUITE, PLOT 306/307, JIDE OKI STREET,
VICTORIA ISLAND. LAGOS

OCTOBER 2006

BOT REVIEW REPORT

Introduction

1. This document is the report of the review carried out by First County Consultants in line with the directives given to us by the Federal Airports Authority of Nigeria as Financial Adviser to the Authority to carry out a review of the Build-Operate and Transfer of the New Domestic Airport Terminal Building at the MMA, Lagos entered into by FAAN with the Bi-Courtney Consortium (BCC). The objective of the review is to advice FAAN on the optimal concession period for the BOT arrangement with the Bi-Courtney Consortium based on the project's revenue and cost profile.

2. The project review exercise was limited to financial evaluation and review of payback period determination only. It excluded any technical review or review of legal status of the project. Accordingly we did not carry out a legal or technical review of the project.

Scope of Assignment

3 The Scope of the review assignment which were commissioned to undertake are as follows:

- carrying out due diligence investigation of project cost based on client projections (feasibility report), expended costs and estimated cost to complete.

- carrying out revenue verification and audit as it relates to the project , evaluating the project's revenue potential including the identification of the optimal revenue profile of the project

- determination of an optimal payback period of the BOT Project based upon (a) and (b) above.

- verification of adequacy or otherwise of financing sources of concessionaires and advising on the effect on the BOT arrangements' thus convincing the concessionaire to go for a debt-equity mix mode of financing rather than 100% debt financing.

Objectives of the Report

4. The objectives of this review therefore include :

- The evaluation of the revenue profile of the project
- The evaluation of the cost of the project (which estimate is deemed at the time of this report to be inclusive of the cost to completion and associated finance charges)

- The ascertainment of the management, operating and maintenance cost of the project; and
- The preparation of project cash flows to determine the optimal repayment period.

Project Background

5. This project to which the BOT arrangement relates consists of an ultra modern Airport Terminal Building with modern facilities and appurtenances as well as a multi-level car park. The BOT agreement dated April 24, 2003 was executed between the Federal Government of Nigeria and the Bi-Courtney Consortium. Under the Agreement, Bi-Courtney Consortium is to be granted full monopoly of all domestic aviation traffic under the control of FAAN in Lagos State during the period of the BOT concession. Therefore, Bi-Courtney Limited will have the market share of 100% as far as the Ikeja Domestic Terminal is concerned.

6. The following are the parties to the concession agreement signed:

(i) Bi-Courtney Limited – The Concessionaire

(ii) Stabilini Visinoni-Limited – The Sponsor

(iii) Federal Airports Authority of Nigeria – The Grantor

(iv) The Federal Government of Nigeria.

7. A supplementary concession agreement was executed on 26th June, 2004 extending construction period to 33 years. The initially agreed upon concession period is 12 years after which the concessionaire, Bi-Courtney Limited, is to transfer the Terminal Building to the Federal Airports Authority of Nigeria (FAAN) in a well-maintained state.

8. The Concessionaire submitted to FAAN a Feasibility Study conducted on its behalf by KPMG which faulted the feasibility of the 12 years concession period, thus necessitating the review of the concession period. Some findings in this report are used as added inputs into this BOT report being submitted by us.

Method of Approach

9. In carrying out our assignment we obtained information from various sources. The figures used in this report were based on:

- Data obtained from FAAN (provided on request) including project cost estimate submitted by James Cubit Associate
- Data obtained from Bi-Courtney directly (during meetings) and indirectly (through the feasibility study prepared by KPMG)

- Demand potential and growth rate of revenue profile of the existing and proposed facilities.
- Contingency Cost .
- FAAN Tariff Structure.
- Evaluated capacity of the project facilities.
- Inflation rate (for adjustment of historical figures).
- The Concession Agreement.

10. In the determination of costs over the review period, the following costs were considered:

- Capital cost of equipment, design cost, building cost and other pre-operating cost. i.e the cost of the project
- Operating and maintenance costs including Material consumption, utilities consumption, manning/management personal requirements and their corresponding costs, both currently and over the first twelve years of operation.
- Operation and Maintenance fees payable to the O&M Manager under the O&M Agreement
- Concession fee payable to FAAN.
- Depreciation charge for the assets in the terminal building.

11. As a result of the foregoing, we obtained an estimate of:

(i) Project Cost derived from representation from FAAN and James Cubit Associates (Cost Consultants to FAAN)

(ii) The operating and maintenance costs adapted from the KPMG report, prepared for Bi-Courtney Consortium.

(iii) Revenue from the projec using combined information from FAAN, the KPMG Report submit id by Bi Courtney and discussions with Bi-Courtney and

(iv) A forecast of cash flo s, of the project to determine its payback period.

Project Scope

12. The total land area pr vided for both the terminal building and multi-storey car park is 25,0 0 square metres while the total car park space is 28,000 square metres he project shall provide the following facilities :

(4)

- An arrival and a departure hall on two levels with an appropriate holding capacity for passengers. This will include a general and executive lounges. The two levels shall be linked by a central escalator as well as by staircases in the wings.
- Four walkways (passengers Boarding Bridges) for passenger to embark and disembark from and into aircrafts.
- Information Display System.
- Rentable space to accommodate various businesses such as banks, post office, bookshops, jewellers, photographers, restaurants, bars, eateries, bureaux-de-change medical and allied services, hotel reservations, car hire/rental services and so on.
- Digital Voice Recorders and Public Address Systems.
- Ticketing offices, check-in counters, and baggage handling facilities
- Adequate parking facilities in multi-storey level car park.

Construction Period

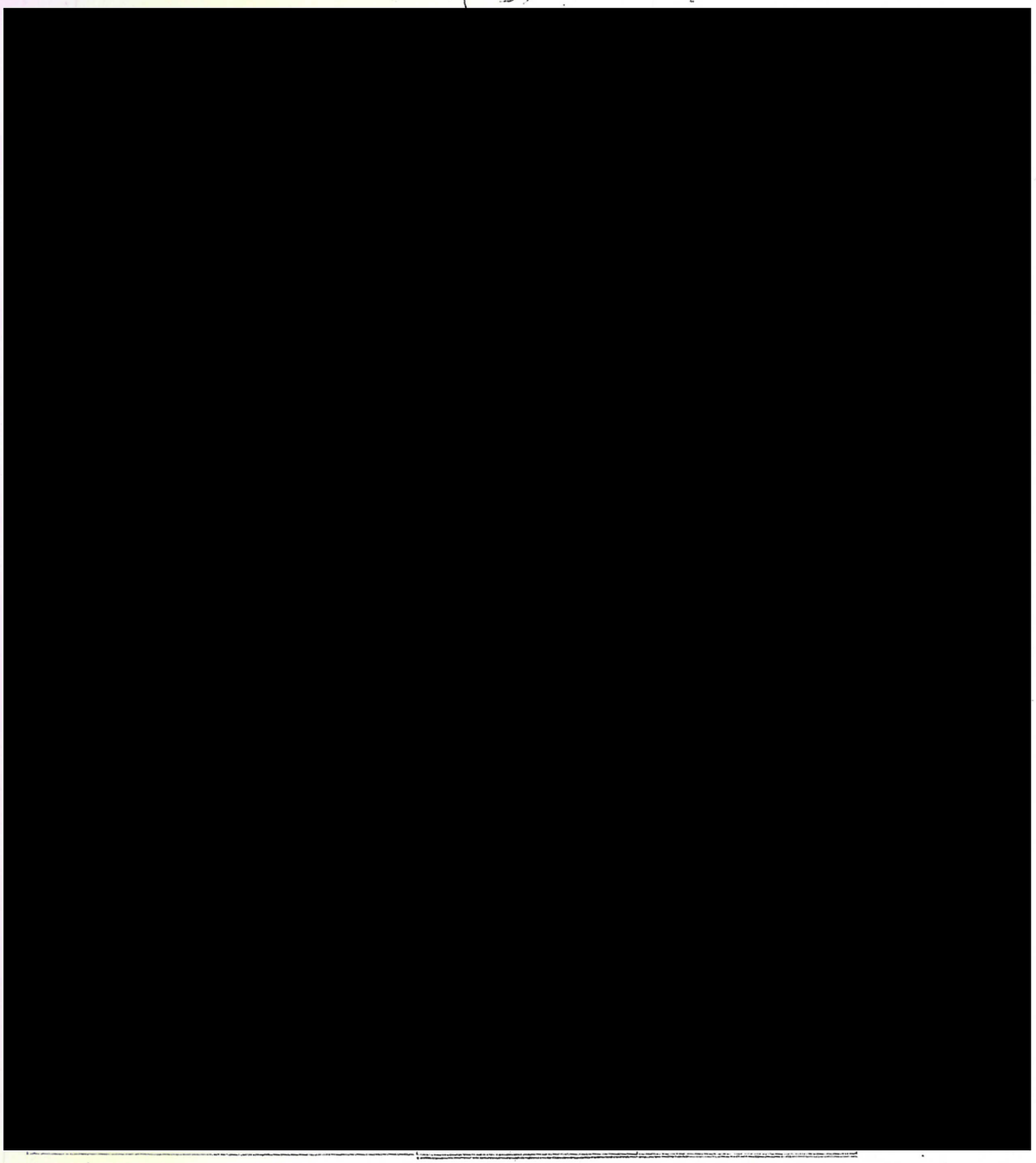
13. The construction of the project was agreed to take approximately 33 months.

Project Cost

14. The estimated cost of the project was initially agreed at N9.235 billion. It was subsequently increased to N15.1 billion. This figure formed the basis of our earlier substantive report which put the concession period at 45 years.

15. The estimated period was deemed high enough to warrant a review of the project cost by FAAN. A meeting was thereafter held between FAAN's Management and First County Consultant whereby, it was observed that the cost of the project be reviewed as the figure of N5.1 billion seemed too high. Consequently, both James Cubit and FAAN's Engineering Services Directorate were directed to determine the real cost of the project instead of simply using a Bi Courtney derived figure.

16. After extensive reviews the following project cost figures were submitted by both James Cubit and FAAN's Engineering Services Directorate:



17. In the determination of project costs for the purpose of determining the optimal payback period, we took into consideration two versions of costs which are as follows:

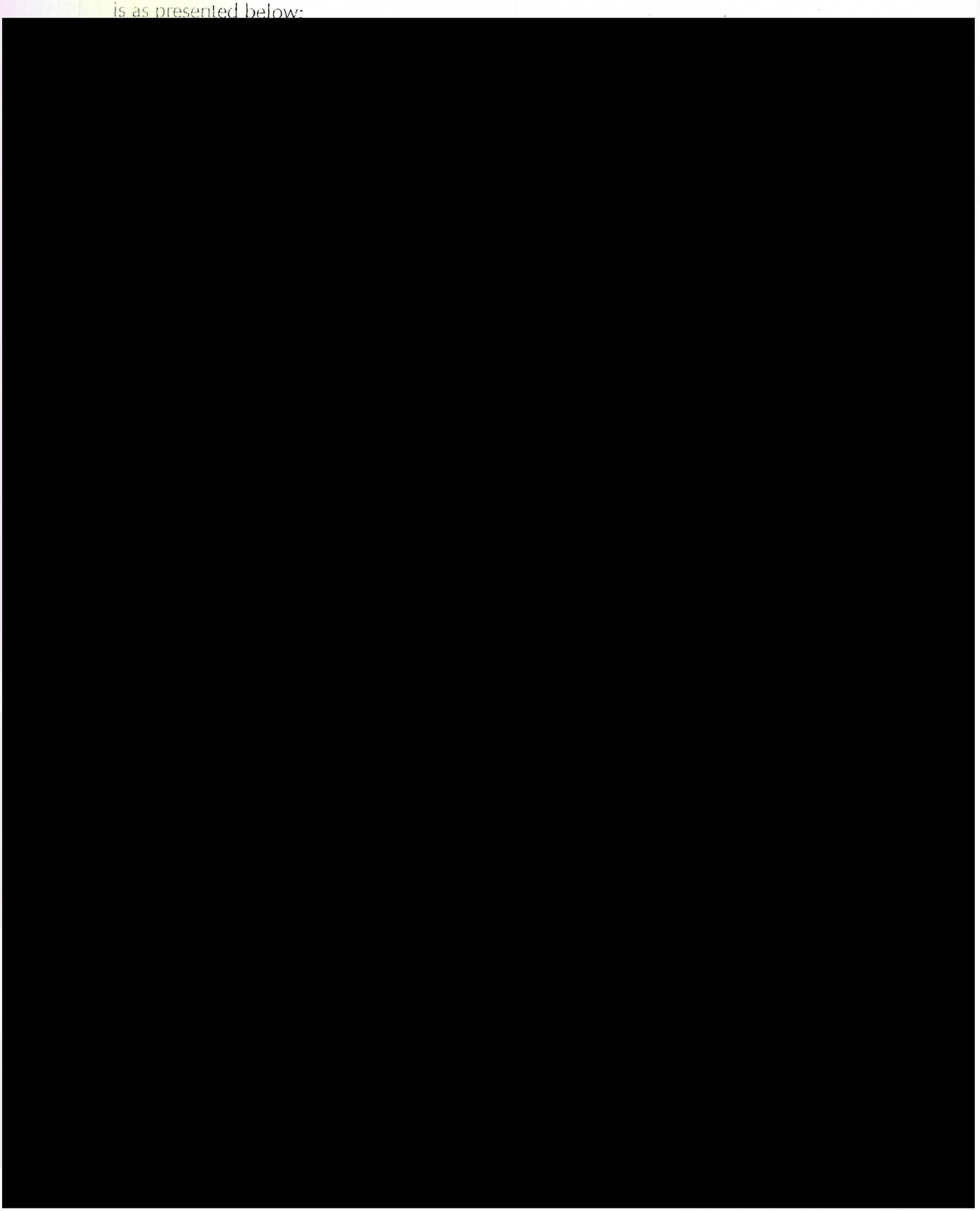
a) Estimated costs computed by James Cubit
b) Estimated costs computed by the Engineering Services directorate of FAAN.

These two estimates which are exclusive of

- Value Added Tax and

- Concessionaire's Overhead
- Cost of funds

is as presented below:



Debt-Equity Mix

19. We also took into consideration the provision that the project shall be financed by a combined mix of debt of (60%) and equity (40%).

20. With the certainty that based on the revenue profile of the project, any debt financed cost that is more than N9 billion will lead to the project payback period going into perpetuity, an agreement was reached during our firm's meeting with Messrs Bi-Courtney, that the project cost be financed on a debt equity ratio of 60:40.

21. This is reinforced by article 12.1 of the Concession Agreement which states that:
"The Concessionaire shall be solely responsible for obtaining all the finance, both equity and debt necessary to construct operate and maintain the terminal for the duration of the concession period"

Cost of Funds

22. Bi-Courtney Consortium in its feasibility study itemised the pattern of disbursement for the loan to be obtained. This cost of fund is estimated at 25% as interest payable during the Construction period.

23. However, in the determination of the cost of funds during the construction period, a blanket rate of 20% was used in a report submitted to FAAN by Messrs James Cubit & Associates based on the firm's vetting of submissions made by Messers Bi-Courtney of September, 2005 irrespective of the pattern disbursement. This rate of 20% was also adopted by us for the purpose of computing the construction period's cost of funds.

24. We however tried to consider different alternatives by flexing the cost of funds by using 25% as the blanket rate instead of 20% to accommodate an alternative computation by Bi Courtney.

Determination of Project Cost

25. In the determination of the project cost incorporating both the debt equity mix, we approached the issue from two angles.

a. the consideration of the cost of funds during construction period as 20% on the one hand and flexing it to 25% on the other hand

b. the splitting of the pre-cost of fund project cost into the debt and equity mix and computing interest only on the debt portion. In this case the total debt will be 60% of the project cost plus interest expenses thereon. This however will distort the debt equity mix formula of the project.

[redacted]

Option 8

FAAN estimate initially excluding cost of funds at 25% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio, and thereafter adding the cost of funds to the debt portion of the cost. This shall give the total cost of the project at N9,883,982,094.49 yielding a debt of [redacted]9.02 [redacted] [redacted].48

[redacted]

[redacted]

26. Our approach shall include the evaluation of the project Payback Period based on the project cost alternatives identified above and from all the scenarios evaluated recommend an appropriate Payback period.

Project Finance

27. Initially, the financing structure of the project has no equity content. Unlike most BOT projects which incorporates a specified percentage of the total cost as equity contribution by the concessionaire, the full cost of the project was projected borrowed from lenders. This scenario however was recommended for restructuring (and agreed upon) so that the project's financing structure will be made up of both debt and equity. Accordingly, 60% of the total project cost is recommended as long term debt financing while the balance of 40% shall be designated as equity. The recommended interest rate for the debt financing is recommended at 20% per annum based on a 3% spread above the prime lending rate of 17%. This rate is all-inclusive of all fees changeable on the loan.

Operation and Maintenance Management

28. The Concession agreement provides for an Operation and Maintenance Management (O&M) contract in order to ensure that the Murtala Mohammed Domestic Airport Terminal is operated and managed along the line of internationally acceptable standards. The O&M management firm will have the responsibility for the day-to-day management of the project. The O&M fee is 10% of turnover. In order to ensure that the airport is well maintained, 2.5% of the turnover is to be set aside and used for the cleaning and maintenance of the project in the first year..

Concession Fee

29. The concession agreement provides that the concessionaire shall pay to FAAN 5% of its annual turnover from the project as Concession Fee.

Fixed Assets

30. It is projected that N367.5 million of the project cost will be used for the purchase of fixed assets (apart from the building) which will include vehicles, office equipment & computers, furniture & fittings and generating plant. This is made up as follows:

Item	Cost
Plant & Machinery	94,500,000
Motor Vehicles	52,500,000
Office Equipment	147,000,000
Furniture & Fittings	73,500,000
Total Project Cost	**367,500,000**

Depreciation

31. Depreciation of the various categories of assets is to be provided as follows:

Assets	Depreciation Rates
Buildings	10%
Vehicle	25%
Office Equipment & Computer	20%
Furniture and office Equipment	20%
Plant & Equipment	20%

Pre-Operating Costs

32. The pre-operating costs (as contained in the KPMG report, which is the only source of information for same) include expenses which are incurred before construction commences and those to be incurred during construction phase of the project. The pre-operation costs which are estimated at N1,382,569,918 include plan modification, feasibility study, legal advisory expenses and pre-operating administrative costs.

Preoperational Expenses include	N
Preliminaries	394,508,030
Professional Fees	288,500,000
Contingencies	50,000,000
Overheads	649,561,888
	1,382,569,918

General and Administrative Expenses

33. These are in respect of operational and logistics expense including training and travelling costs. The estimate for the first year after commencement of operation is as follows:

38. "The aeronautical and non-aeronautical charges and tariffs collectible by the concessionaire from users of the terminal during the concession period will be derivable from the following sources approved by FAAN:

a) passenger service charge-collectible from departing passengers including avio-bridge charges;
b) VIP Lounge Usage Charges
c) Car park charge
d) Rents/concession franchise fees
e) Service charge payable by concessionaires within the terminal
f) Advertisement royalties payable by advert concessionaires within the terminal excluding advertisement royalties accruable from advertisements along the roads; and
g) Associated revenue derivable from the use of associated facilities in the terminal."

Target Market

39. The target market for Bi-Courtney Limited-operated Domestic Airport Terminal include the following:

- Airlines (commercial and non commercial) operating on the domestic route. The facilities at the terminal and the quality of service will make it very attractive to Airlines to use the facilities to the maximum.
- Passengers going through the Terminal. The passenger traffic is quite high in Lagos Terminal and far higher than any other domestic Terminal in Nigeria. The passengers must receive value for the money they pay in form of airport tax by guaranteeing them comfort strong aesthetic appeal and quality service all the time.
- Business concerns – There are number of businesses that go on in the Domestic Terminal. Bi-Courtney Limited will grant tenancy to a number of businesses ranging from banking to trading to do their businesses. Therefore, Bi-Courtney Limited will have tenants that will also add value to the service offered in the Terminal. Good business relationship must be the watchword and the services offered to the businesses must be of high quality to ensure that the businesses are also contributing their quota to service offering.
- Visitors to the Domestic Terminal. Every Nigerian has the right to visit or travel through the domestic Terminal. Taxi parks are provided and visitors will also be provided with parking spaces at a fee. In fact, the parking space as provided in the architectural design is large enough and it is estimated that about 2000 visitors will be serviced daily. This is a large number for the company to make quite reasonable income.
- Meeting and conference rooms will be provided at the Airport. Passengers can converge from other parts of the country at the airport to

hold meetings and disperse to their various destinations without having to go into town. This is an innovation that will yield income for the project.

- Billboards and Posters. These will be provided for advertisement of products and services within the terminal building including the car park.

Revenue Verification

40. We carried out a review of the revenue sources of the project based on existing sources of revenue collected by FAAN. This formed the basis of the preliminary report issued by us. However a further review of the Concession Agreement between FAAN and Bi-Courtney revealed that there are specific revenue sources allowed to be collected by the concessionaire. This led to a further evaluation of the revenue profile of the project taking into consideration appropriate economic variables and projected passenger and user traffic.

Pricing & Tariffs

41. The pricing and tariff structure adopted by this report is based on the most feasible consideration of various data sources reviewed for the purpose of determining the realistic income to be earned by the project. Sources considered include the concessionaire's proposed pricing plan for its facilities and services, and FAAN tariff structure and revenue profile of FAAN in the past years. The pricing structure forming the basis of the revenue projections used in this report is as contained in the table below:

	ANALYSIS OF REVENUE				
	Revenue Sources				
No		Unit	# of units	Unit rate (in NGN)	Amount (in NGN)
1	Lounge Income/Airport Tax				
1.1	Executive Lounge				200,000,000
	Subtotal Lounge Income/Airport Tax				200,000,000
2	Space Rental Revenue				
2.1	20 sq metres - Airlines Operators	Per sq metre	5,028	45,000	226,260,000
2.2					-
2.3					-
2.4	Service Recovery Charge	20%			45,252,000
2.5	Electricity Recovery Charge	175%		64,450,000	112,787,500
	Subtotal Space Rental Revenue				384,299,500

3	Meeting/Conference Center				
3.1	4 Meeting Rooms	Rooms			
3.2	1 Conference Center - Wednesdays & Sundays	Center			
3.3	1 Conference Center - 8 other days per month	Center			
	Subtotal Meeting/Conference Center				-
4	**Car Hire/Car Park**				
4.1	Car Hire	Cars	100	25,000	2,500,000
4.2	Car Park	Cars	Bicourteney Estimate		216,000,000
4.3					-
4.4	Cargo Vehicle Surcharge	Vehicles	9,125	2,000	18,250,000
	Subtotal Car Hire/Car Park				**218,500,000**
5	**Passenger Related Charges**				
5.10	Passenger Service Charge	Passengers	2,000,000	500	1,000,000,000
5.2	Walk ways (Boarding Bridges)	Aircrafts	Bicourteney Estimate		189,000,000
5.3	Trolley Services	Passengers			12,000,000
5.4	Left Luggage Surcharge	Luggages			-
5.5	Avio Bridge Charges	Aircrafts			-
	Subtotal Passenger Related Charges				**1,201,000,000**
6	**Advert Related Income**				
6.1	Advert & Billboard Royalty				100,000,000
	Subtotal Advert Related Income				**100,000,000**
	TOTAL				**2,103,799,500**

Revenue Projection

42. There are several sources form which the project will generate income. These include Lounge Income, Space Rental, Car Park fares, Airport Tax, Rental from Conference and Meeting rooms, Adverts and Walkways. Some of these sources are as explained below:

(i) **Lounge Income**

Lounge Income shall be earned from VIP Lounge alone as the General Lounge earns no income. It is estimated that the revenue from this source for the first year of operations shall be N200,000,000.

(ii) **Space Rental Revenue**

The lettable space at the New M.M Domestic Airport Terminal is 5,028 sq metres made up of:

Ground Floor	268m^2
Upper Ground Floor	930 m^2
First Floor	2630 m^2
Upper First Floor	1200 m^2

According to FAAN Tariff structure the approved rate is N30,000 per square metre per annum. However a rate of N45,000 is used as a result of the upgraded facilities. This translates to N226,125,000 for the first year. This shall increase at the rate of 10% every two years.

(iii) **Electricity Recovery**

This is charged at NEPA bill plus 75% plus 300 per KVA demand. The electricity charge estimated for the project according to the initial KPMG report of 2004 was N64,450,000 for the first year. Recovery therefore shall be 175% of this amount. It is treated as an inflow/income since the electricity cost has already been regarded as an outflow as part of expenses.

(iv) **Service Recovery Charge**

This is charged at the rate of 20% on rent.

(v) **Conference Centre and Meeting Rooms**

These shall be assumed to be part of lettable space and therefore no separate revenue shall be recognised for the purpose of this report.

(vii) **Car Hire**

There is expected to be 100 cars on car hire at the rate of N25,000 per Car Hire Permit. This amounts to N2,500,000 per annum.

(viii) Car Park Rental Revenue

The facility has a multi storey car park. However we could not obtain the capacity of the car park. While Bi-Courtney estimated that only N20,400,000 can be earned from the new multi-storey car par, FAAN's records showed that the Authority earned N34,069,633 from the existing car park in 2005. With an envisaged bigger parking capacitywhich is a multiple of existing capacity, the new car park is expected to generate a multiple of what was earned by FAAN from the existing parking facility. We believe for the purpose of this report that car park fees will be N216 million for the first year of operations. This shall be expected to increase at the rate of 7.5% per annum.

(ix) Car Stickers

For conservatism purposes, no income is expected to be earned from car sticker revenue.

(x) Cargo Vehicle Surcharge

Cargo Vehicles entering the terminal building are expected to be 9,125 per annum (at the rate of 25 vehicles per day) with a surcharge rate of N2,000. Examples include those vehicles bringing in newspapers magazines etc to be air-freighted by passenger flights. This shall be N18,250,000 for the first year of operation. It shall increase at the rate of 7.5% per annum.

(xi) Passenger Service Charge

Passenger Service Charge is currently being charged at the rate of N350 per passenger. Total passenger traffic (domestic departures only) at the MMA for 2005 was 1,151,743.(2004:1,149,459). It is assumed that there will be 2,000,000 passengers when the enlarged facility is put in place and the rate of N500 per passenger is envisage as air fares are increasing. This put the revenue for the first year at N900 million. It is expected to increase like most other revenue at the rate of 7.5% per annum.

(xii) Walkways (Boarding Bridges)/ Aviobridges

Another significant source of income is the walkways through which passengers are expected to embarl and disembark into and out of the aircrafts. The project has four su h walkways. The airlines will be

charged a fee of N15,000 per aircraft using the walkways. The number of aircrafts expected to use the walkways per day is 90.This for a 350-day year shall be N472.5 million The number is expected to increase at an annual rate of 5%. However for conservatism purposes, Bi-Courtney figure as contained in the KPMG Feasibility Report of N189,000,000

(xiii) **Trolley Services**

This is estimated at N2,000,000 per annum. This shall be expected to increase at the rate of 7.5% per annum.

(xiv) **Left Luggage**

This is assumed to be so insignificant and difficult to forecast. It is therefore not taken into consideration for the purpose of this report.

(xv) **Advertising Space and Billboards**

There will be ample space for billboard of various sizes both at the car park and Terminal building. Professional opinion put the realizable income from this source at N100 million in the first year, growing at an annual rate of 7.5%

Findings

43. After in-depth project analysis, our findings include the following:

Option 1

JCA's cost estimate incorporating cost of funds at 20% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio. This shall give the total cost of the project at N11,710,243,350.02 yielding a debt of N7,026,146,010.01 and equity of N4,684,097,340.01. Under this option, the payback period for debt is 16 years and for debt plus equity 21 years (See Appendix A)

Option 2

FAAN 's estimate incorporating cost of funds at 20% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio. This shall give the total cost of the project at N10,349,120,825.24 yielding a debt of N6,209, 472,495.32 and equity of N4,139,648,330.21. Under this option, the payback period for debt capital is 12 years while for debt plus equity it is 17 years (See Appendix B)

c. The evaluation of the project from the viewpoint of both James Cubit and the Engineering Services Directorate of FAAN.

d. The treatment of cost of funds as part of the total project cost before splitting the cost into debt and equity or as part of the project cost after splitting the pre-cost of funds project costs into debt and equity components of 60:40.

26. In all, these give eight different project cost scenario to be used in carrying out this evaluation. In all we evaluated the project from eight perspectives of the project costs which are as follows:

Option 1

JCA's cost estimate incorporating cost of funds at 20% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio. This shall give the total cost of the project at N11,710,243,350.02 yielding a debt of N7,026,146,010.01 and equity of N4,684,097,340.01as follows:

	JCA ESTIMATE
PRELIMINARIES	394,508,030.00
TERMINAL BUILDING	2,083,424,795.00
MULTI STOREY CAR PARK	1,267,714,165.00
GENERATOR SECURITY HOUSE	62,422,825.00
EXTERNAL WORKS	920,123,825.00
BUILDERS WOKS IN M&E WORKS	10,755,750.00
ABORTIVE WORKS	35,719,250.00
PIPED SERVICES (BILLS)	503,196,323.80
AIRCONDDITIONING (BILLS)	758,483,450.00
ELECTRICAL SERVICES (BILLS)	720,809,674.00
KITCHEN EQUIPMENT (PS)	38,500,655.00
LIFTS AND ESKALATORS (PS)	216,666,435.00
AIRPORT EQUIPMENT (PS)	1,310,000,000.00
FLUNCTUATION IN PRICES	-
SUB TOTAL	**8,322,325,177.80**
PROFESSIONAL FEES	288,500,000.00
CONTINGENCY SUM	50,000,000.00
SUB TOTAL	**8,660,825,177.80**
Concessionaire's Overheads	**649,561,888.34**
	9,310,387,066.14
Plant& Machinery	94,500,000.00
Furniture & Fittings	73,500,000.00
Office Equipment	147,000,000.00
Motor Vehicles	52,500,000.00
	9,677,887,066.14
Add Cost of Fund @20%	1,935,577,413.23
	11,613,464,479.36
ADD VAT @5%	96,778,870.66
GRAND TOTAL	**11,710,243,350.02**

ANNEX B

PERFORMANCE BOND

POLICY NO. _____

Brief description of Contract: **Construction of Murtala Muhammed Domestic Airport, Ikeja, Lagos** (referred to as **"the Terminal"**).

Name and address of Beneficiary: **FEDERAL GOVERNMENT OF NIGERIA** and the **FEDERAL AIRPORTS AUTHORITY NIGERIA** (together with its successors-in-title and assigns, referred to in the Concession Agreement as "the Guarantor").

BY THIS BOND, We **BI-COURTNEY LIMITED** (Concessionaire under the Concession Agreement) as **Principal** and _____ **INSURANCE COMPANY LIMITED** whose office is at _____; as **Guarantor** are irrevocably held and firmly bound to the **Beneficiary** in the total amount of **₦1,000,000,000.00** (the "Bond Amount") for the due performance of the Principal's construction obligations under the Agreement. The Bond shall be released upon the commencement of the Concession Period under the Concession Agreement (the **"Expiry Date"**).

All or so much of the Bond as shall remain outstanding shall be released upon the earlier of

(a) six (6) months after the Final Completion Date of the Terminal, and

(b) the date of submission by the Concessionaire of the Maintenance Bond in accordance with Article 10.5; or

(c) termination of this Agreement after deduction of any compensation due to the Grantor from the Concessionaire in respect of any liability of the Concessionaire under the Concession Agreement arising on or prior to such termination.

The Bond shall become effective on the Construction Commencement Date defined in the **Concession** Agreement.

We hereby undertake to pay to you any sum or sums not exceeding in aggregate **₦1,000,000,000.00** on receipt by us on this office of your first demand on us in writing, the signature appearing thereon to be duly authenticated by your bankers, complying with all the requirements hereof, quoting our above Guarantee Number and stating:

(1) the amount payable, and

2. that the Concessionaire has failed to perform the terms of the said Concession Agreement.

However, the total liability of the Guarantor shall not exceed the Bond amount and the Bond amount shall reduce pro-rata with the quantum of construction work performed by the Principal.

The obligations and liabilities of the Guarantor shall not be discharged by any allowance of time or other indulgence whatsoever by the Beneficiary to the Principal, or by any variation or suspension of the works to be executed under the Concession Agreement, or by any amendments to the Concession Agreement or to the constitution of the Principal or the Beneficiary or by any other matter, whether with or without the knowledge or consent of the Guarantor.

Any claim under this Bond must be received by the Guarantor on or before (the "Expiry Date"), when this Bond shall expire and shall be returned to the Guarantor.

The benefit of this Bond may be assigned subject to the provisions for assignment to a lawful assignee of the Concession Agreement and subject to the receipt by the Guarantor of evidence of such assignment.

This Bond shall be governed by the laws of the Federal Republic of Nigeria.

Wherefore this Bond has been issued by the Principal and the Guarantor on January 7, 2003.

The Common Seal of the within named

ANNEX C

PROJECT IMPLEMENTATION SCHEDULE

[Separate Volume]

ANNEX D

OPERATION AND MAINTENACE MANUAL

[Separate Volume]

ANNEX E

PROJECT SURVEY/SITE PLAN

[Separate Volume]

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ANNEX F

LIST OF CONCESSIONAIRE'S SHAREHOLDERS

1. SPECTRA LIMITED – 9,000,000 million shares
2. CHIEF T.K. AKINBAMI – 500,000 shares
3. DR. OLAWALE BABALAKIN – 500,000 shares

ANNEX II

NEW MURTALA MOHAMMED AIRPORT
DOMESTIC TERMINAL
IKEJA

SUPPLEMENTAL CONCESSION AGREEMENT

PREPARED BY:

Professor Oluwole Akanle

Oluwole Akanle & Co.

Allied House [5th Floor]
155/161 Broad Street
Lagos

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT hereinafter referred to as "this Agreement" is made and entered into this 21st day of June 2024

BETWEEN

THE FEDERAL GOVERNMENT OF NIGERIA represented by THE MINISTER OF AVIATION (hereinafter referred to as "the FGN", which expression shall wherever the context so admits include its successors-in-title and assigns) of the first part;

FEDERAL AIRPORTS AUTHORITY OF NIGERIA, a parastatal established by statute having its headquarters situate at Murtala Muhammed Airport, Ikeja, Lagos, (hereinafter referred to as "FAAN" which expression shall wherever the context so admits include its successors-in-title, nominees, appointees, agents, servants and assigns) of the second part;

AND

BI-COURTNEY LIMITED, a limited liability company duly incorporated under the Laws of the Federal Republic of Nigeria and having its registered office situate at the Rooftop, 8th – 10th Floors, 24A, Campbell Street, Lagos, (hereinafter referred to as "**the Concessionaire**" which expression shall wherever the context so admits include its successors-in-title, appointees, agents and assigns) of the third part;

STABILINI VISINONI LIMITED, a limited liability company duly incorporated under the Laws of the Federal Republic of Nigeria, having its registered office situate at Kilometre 5, Apapa-Oshodi Expressway, Adeyanju-Daniel Street, Awodi Ora, Kirikiri, Apapa, Lagos, (hereinafter referred to as "**the Sponsor**" which expression shall wherever the context so admits include its successors-in-title, appointees, agents and assigns) of the fourth part.

WHEREAS:

1. The Parties herein entered into a Concession Agreement [herein "**the Concession Agreement**"] dated 24th day of April, 2003 for the design, engineering procurement, construction, completion, commissioning operation and transfer of a new domestic terminal at the Murtala Mohammed Airport, Ikeja on Build, Operate and Transfer terms;

2. The Grantor is concerned at the slow pace of work on the Project which has resulted in Construction Works being ten (10) months behind the Project Implementation Schedule;

3. The Parties have held consultations, meetings and negotiations to address all the problems and issues that have arisen and have resolved to give the Project a new boost and have therefore agreed to vary the said terms of the Concession Agreement in the manner herein set out

NOW IT IS HEREBY AGREED as follows:

ARTICLE 1 NEW CONSTRUCTION COMPLETION DATE

1.1 The Construction Period for achieving the completion of Construction Works is hereby extended to 33 months instead of the original Construction Period of 18 months from the Construction Commencement Date fixed by the Concession Agreement.

1.2 The provisions of Clause 1.1 of this Supplemental Agreement shall be effective and binding only if a Certificate of Full Compliance is issued to the Concessionaire by the Appointed Consultants certifying that the Concessionaire has fully complied with the provisions of Article 2 of this Supplemental Agreement.

1.3 The Appointed Consultants shall issue the Certificate of Full Compliance not later than seven (7) days after the delivery of the last document of compliance with the last condition prescribed in Article 2 of this Supplemental Agreement.

1.4 Where the Concessionaire fails to or is unable to achieve full compliance as stated herein the Appointed Consultants shall notify both the Concessionaire and the Grantor of the failure or inability by issuing a Certificate of Non Compliance stating the nature of the condition(s) that has not been complied with.

ARTICLE 2 CONDITIONS PRECEDENT TO THE ISSUANCE OF CERTIFICATE OF FULL COMPLIANCE

The Concessionaire shall –

2.1 not later than August 15, 2004, deliver to the Grantor copies of all duly executed and binding Financing Agreements such as loans, bank guarantees, equipment leases and, other forms of financing agreements acceptable to the Grantor and equity contributions for the full amount of the total cost of the project;

2.2 not later than May 31, 2004, submit to the Appointed Consultants the Concessionaire's programme for the completion of all Architectural, Structural Engineering and M & E Services Drawings and

Documentation:

2.3 not later than May 31, 2004 submit to the Appointed Consultants a Preliminary Design Report, Outline Specification and Construction Programme incorporating a Time Table for all M & E Services including Plant and Equipment;

2.4 not later than May 31, 2004 deliver to the Grantor a detailed description of the Project Scope of Works;

2.5 not later than May 31, 2004, submit to the Grantor all the preliminary design, architectural, structural, electrical and mechanical drawings and engineering specifications incidental to the commencement and continuation of the Modified Construction Works;

2.6 not later than October 15, 2004, deliver to the Grantor copies of all necessary and appropriate certificates of insurance as required by Clause 15.12 of the Concession Agreement;

2.7 not later than *October 15, 2004*, deliver to the Grantor a duly executed and binding Operation and Maintenance (O & M) Agreement with an O & M contractor acceptable to the Grantor as required by Clause 10.9 of the Concession Agreement;

2.8 not later than May 31, 2004, deliver to the Grantor copies of a Feasibility Studies' Report essential for costing the Project as well as determining the scope of the Project and the Concession Period to be granted;

2.9 not later than September 15, 2004 submit to the Appointed Consultants all Detailed Design and Working Drawings (Architectural, Structural Engineering, M & E Services, Engineering Specifications) Priced Bills of Quantities, Detailed Programme for Procurement and Installation of all M & E Plant and Equipment including Airport specific equipment;

ARTICLE 3 CONSEQUENCES OF NON COMPLIANCE WITH ARTICLE 2 REQUIREMENTS

3.1 If any of the requirements prescribed in Article 2 of this Supplemental Agreement is not fully complied with within the specified period the right of the Grantor to terminate the Concession Agreement and this Supplemental Agreement shall immmediately accrue on the due date and may terminate the Concession Agreement and this Supplemental Agreement immediately:

Provided that a termination under this Article arising from non-compliance with any of the requirements of Clauses 2.2 – 2.9 shall not take place unless the Grantor, acting through the Appointed Consultants, has given the Concessionaire a period of fourteen (14) days within which to fully comply with the requirement.

2 The Grantor,

(a) shall not in any way be liable to the Concessionaire for any damages or losses arising by reason of the termination of the Concession Agreement and this Supplemental Agreement pursuant to this Article, and

(b) shall be entitled to draw on the Performance Bond issued under the Concession Agreement to the extent specified therein as if this Supplemental Agreement has not been made.

For the avoidance of doubt the provisions of Clause 17.3 of the Concession Agreement shall not apply to any decision to terminate the Concession Agreement and this Supplemental Agreement pursuant to the provisions of Article 3 of this Supplemental Agreement.

Where the Grantor exercises the right to terminate this Supplemental Agreement and the Concession Agreement pursuant to Article 2 hereof, the Grantor hereby undertakes to pay to the Concessionaire an amount representing the assessed value of work done on the Project as at the date of the termination of these Agreements in accordance with the Approved Price Bills of Quantities.

The payment to the Concessionaire for the value of work done so far shall be made subject to the rights of the Grantor to be compensated for delays under this Supplemental Agreement and the Concession Agreement.

An assessment of the value of the work done and the amount payable to either Party shall be concluded not later than three (3) months from the date of termination under this Article.

Any payment due to either Party pursuant to this Article shall be made within a period of six (6) months from the date of the determination of the amount payable.

ARTICLE 4 CERTIFICATE OF COMPLIANCE

The Appointed Consultants shall immediately upon the expiration of each of the dates specified in Article 2 of this Supplemental Agreement, notify each of the Parties whether or not the Concessionaire has fully complied with the requirements specified under the relevant Clause of Article 2 of this Supplemental Agreement.

ARTICLE 5 MISCELLANEOUS

The documents and drawings referred to in Article 2 of this Supplemental Agreement shall be endorsed by the Parties and, when so endorsed, shall be deemed to be annexed to this Supplemental Agreement and shall be read as part of the Concession Agreement.

5.2 The Parties herein undertake to renegotiate Clause 2.3 of the Concession Agreement within 30 days of the Concessionaire complying with Clause 2.8 of this Supplemental Agreement.

5.3 In this Supplemental Agreement,

"Concession Agreement" means the Concession Agreement executed between the Parties herein and dated the 24th day of April 2003.

Without prejudice to the foregoing, all terms used in the Concession Agreement shall *mutatis mutandi* apply to this Supplemental Agreement.

5.4 Subject only to the variations herein contained and such other alterations (if any) as may be necessary to make the Concession Agreement consistent with the Supplemental Agreement the Concession Agreement remains in full force and effect and shall be read and construed and be enforceable as if the terms of this Supplemental Agreement were inserted therein by way of addition or substitution as the case may be.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be signed by their duly authorised representatives on the dates first above written.

SIGNED, SEALED AND DELIVERED

BY THE HONOURABLE MINISTER OF AVIATION

For and on behalf of

THE FEDERAL GOVERNMENT OF NIGERIA

15/06/04

In the presence of:

Name: THOMAS ADEPO OYELAJE

Address: MINISTRY OF AVIATION ABUJA

Occupation: CIVIL SERVANT

Signature: 15.06.04

THE COMMON SEAL OF THE
FEDERAL AIRPORTS AUTHORITY OF NIGERIA
Was hereunto affixed in the presence of:

15/06/04

DIRECTOR

SECRETARY

THE COMMON SEAL OF
BI-COURTNEY LIMITED
Was hereunto affixed in the presence of:

25/06/2004

DIRECTOR

25/6/04

SECRETARY

THE COMMON SEAL OF
STABILINI VISINONI LIMITED
Was hereunto affixed in the presence of:

DIRECTOR

SECRETARY

PREPARED BY:

Oluwole Akanle & Co.
Allied House [5th Floor]
155/161 Broad Street
Lagos

ANNEX III

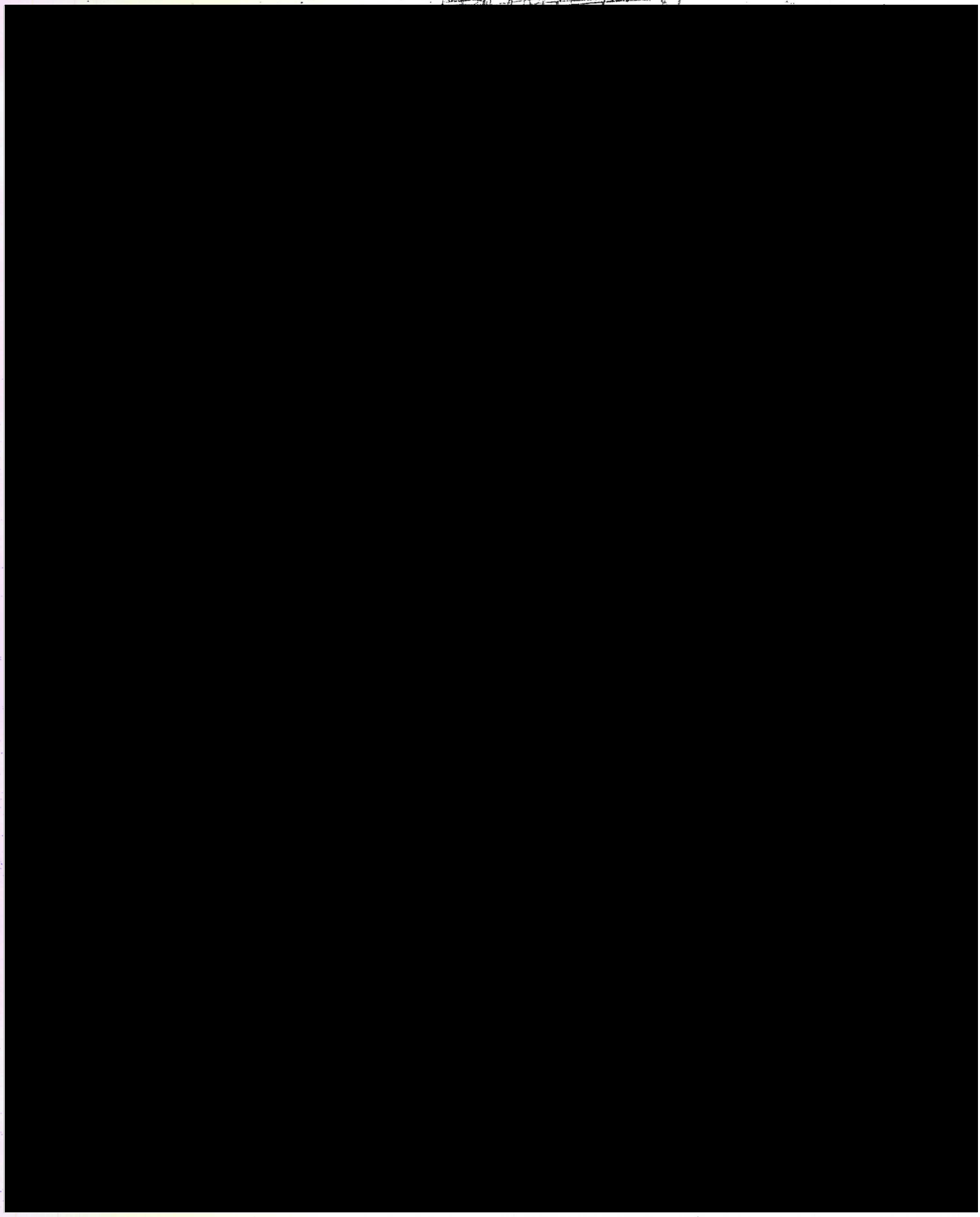
Appendix 3

[redacted]

KEJA

Appendix V

[redacted]



FEDERAL AIRPORT AUTHORITY OF NIGERIA

BILLS OF QUANTITIES

For

NEW MURITALA MOHAMMED AIRPORT TERMINAL 1

At

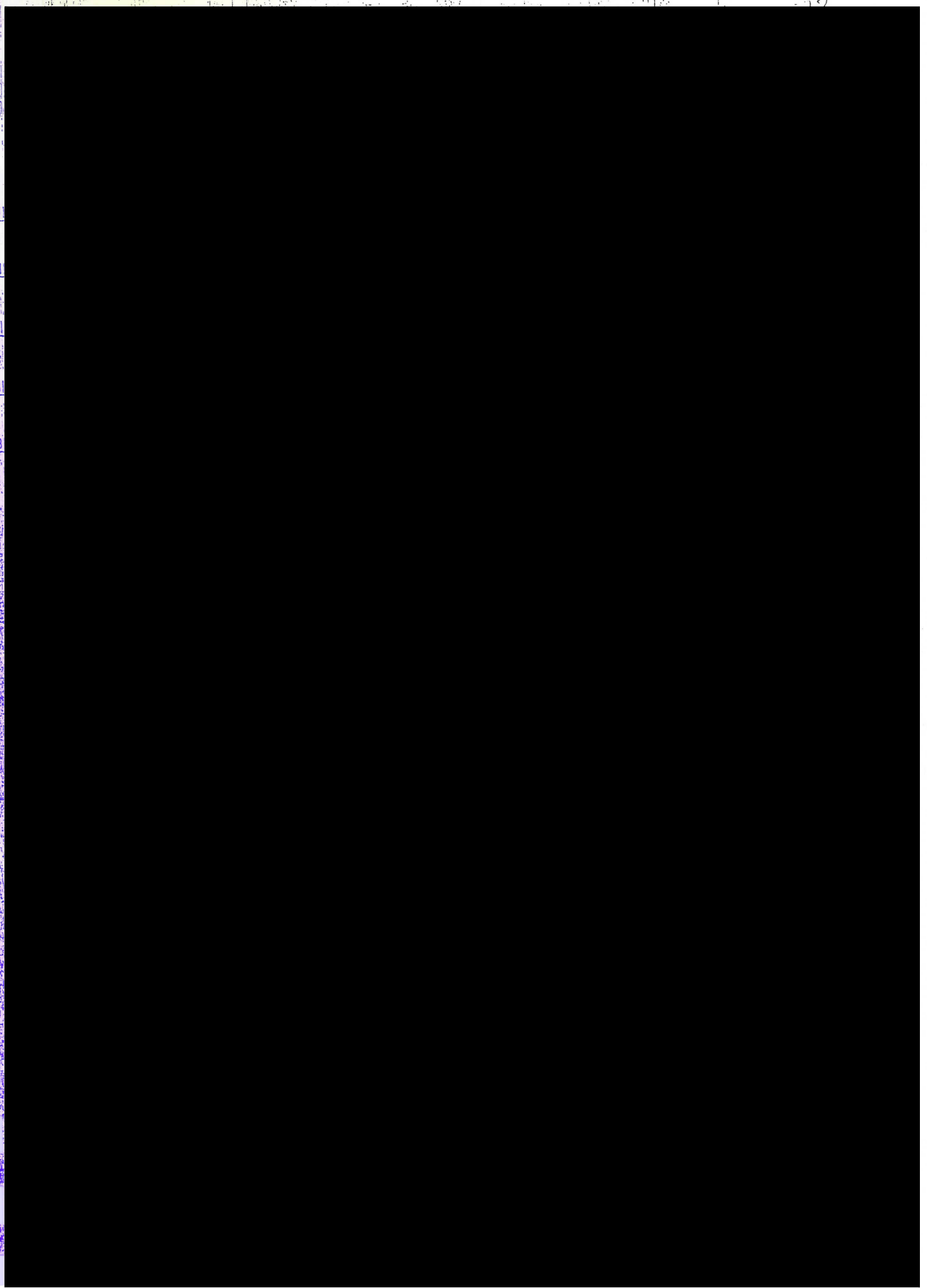
MURTALA MOHAMMED INTERNATIONAL AIPORT
IKEJA, LAGOS

TILLYARD NIGERIA UNLIMITED
Chartered Quantity Surveyors
241 Igbosere Road
Lagos
Nigeria

99/04

October 2005

JCA CURRENT EDITION



KSA/DCA
MISSION
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1510.0946.01 Vol. VII
11

FAAN

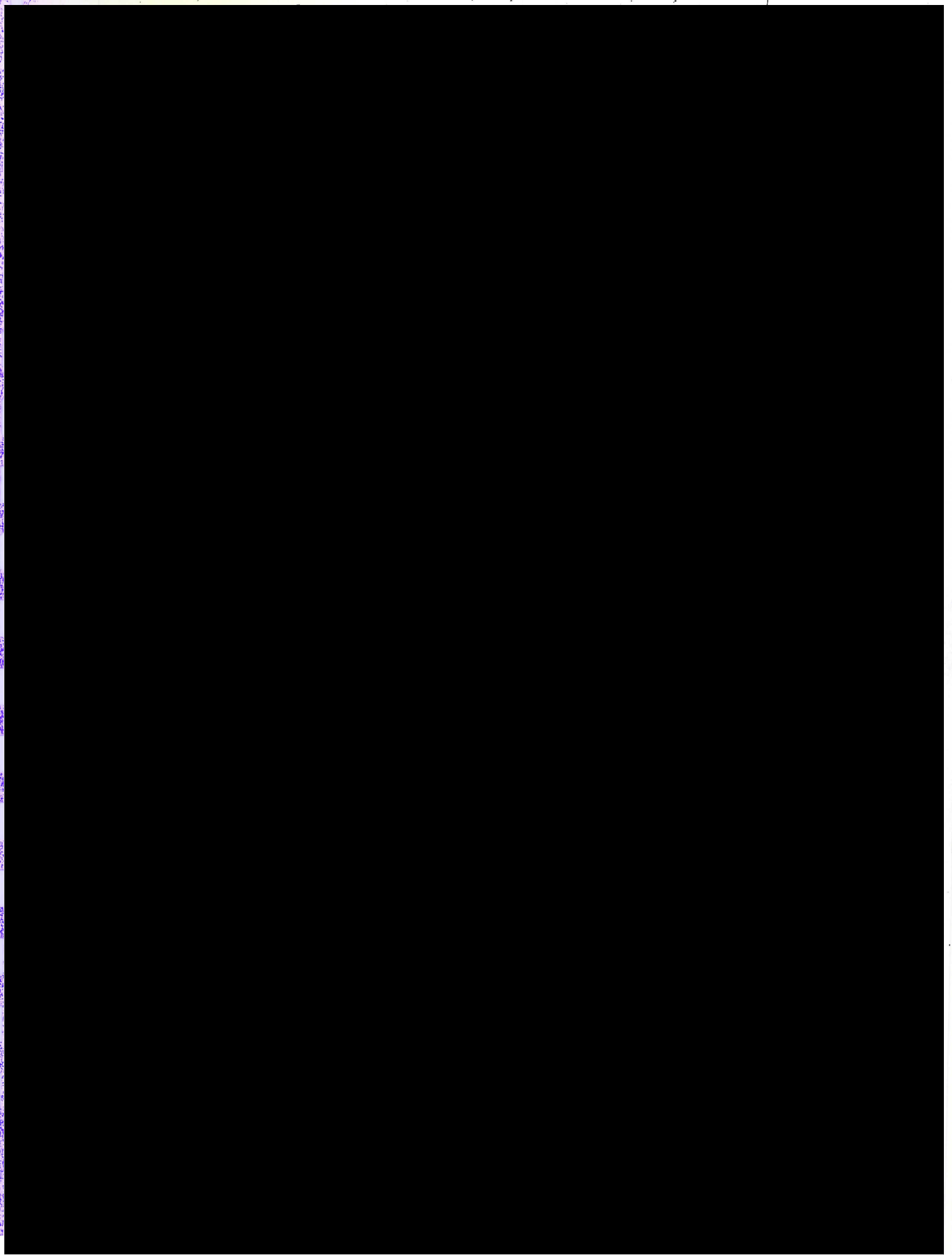
New Domestic Terminal No. 1
Murtala Muhammed Airport, Ikeja

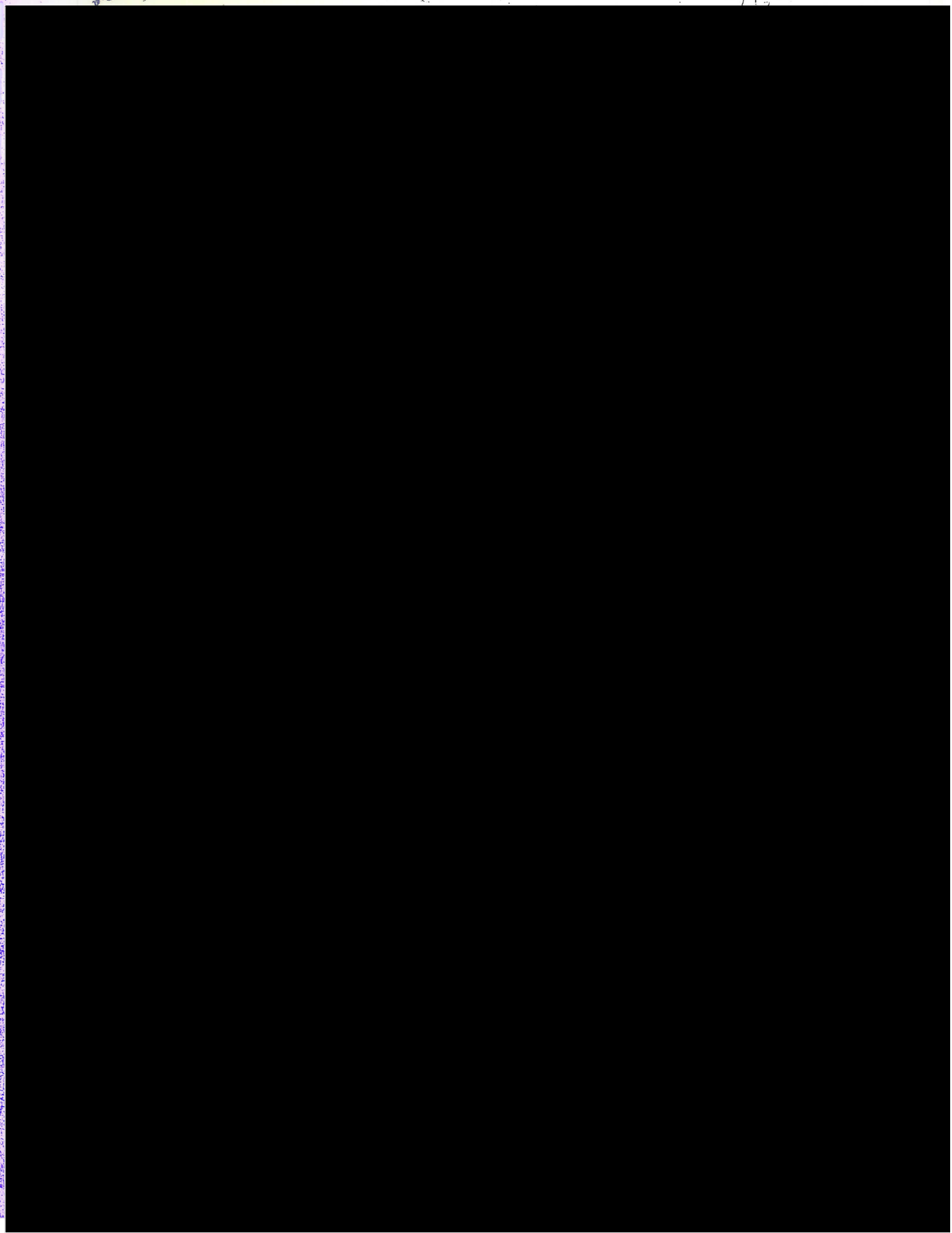
Project Summary

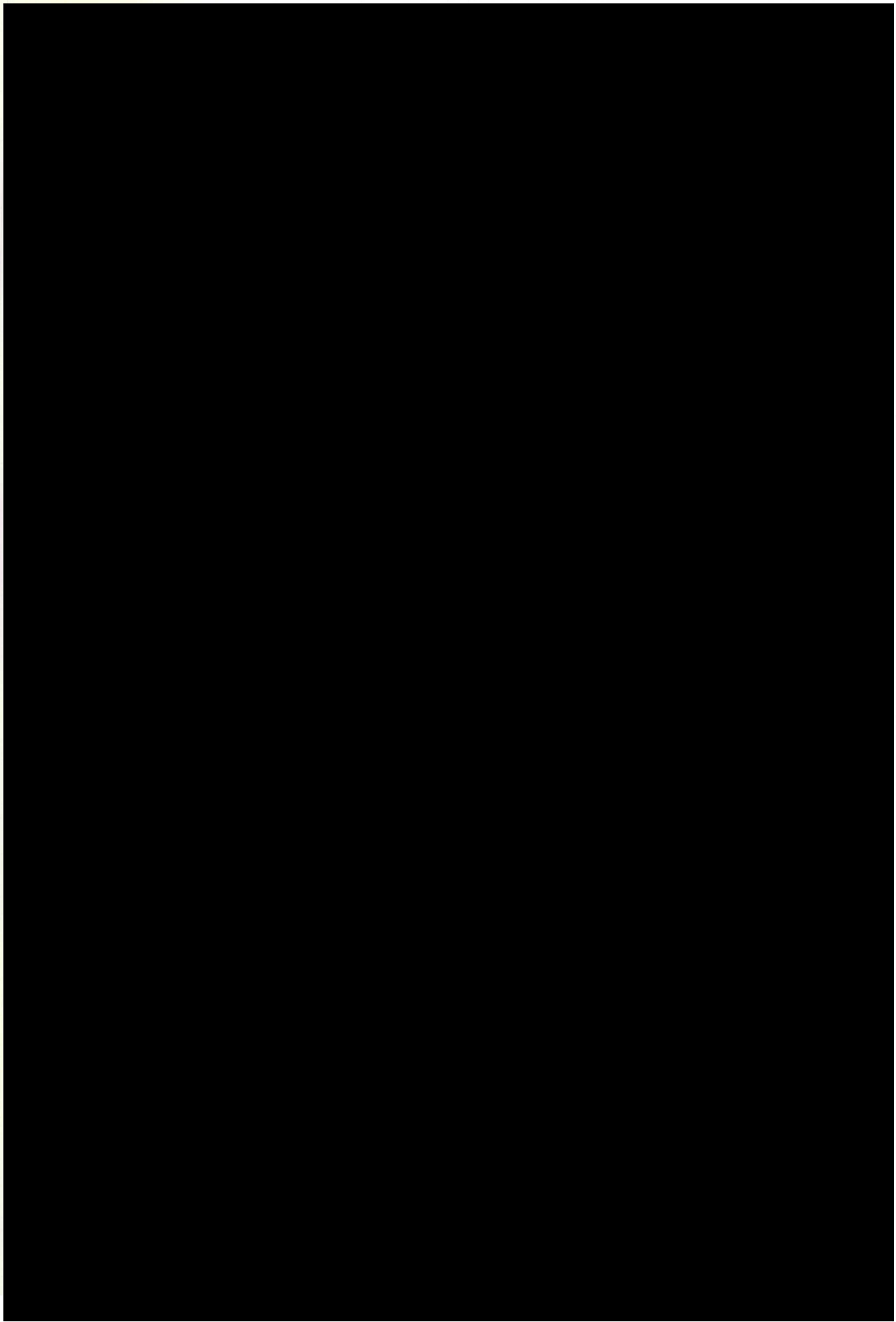
12

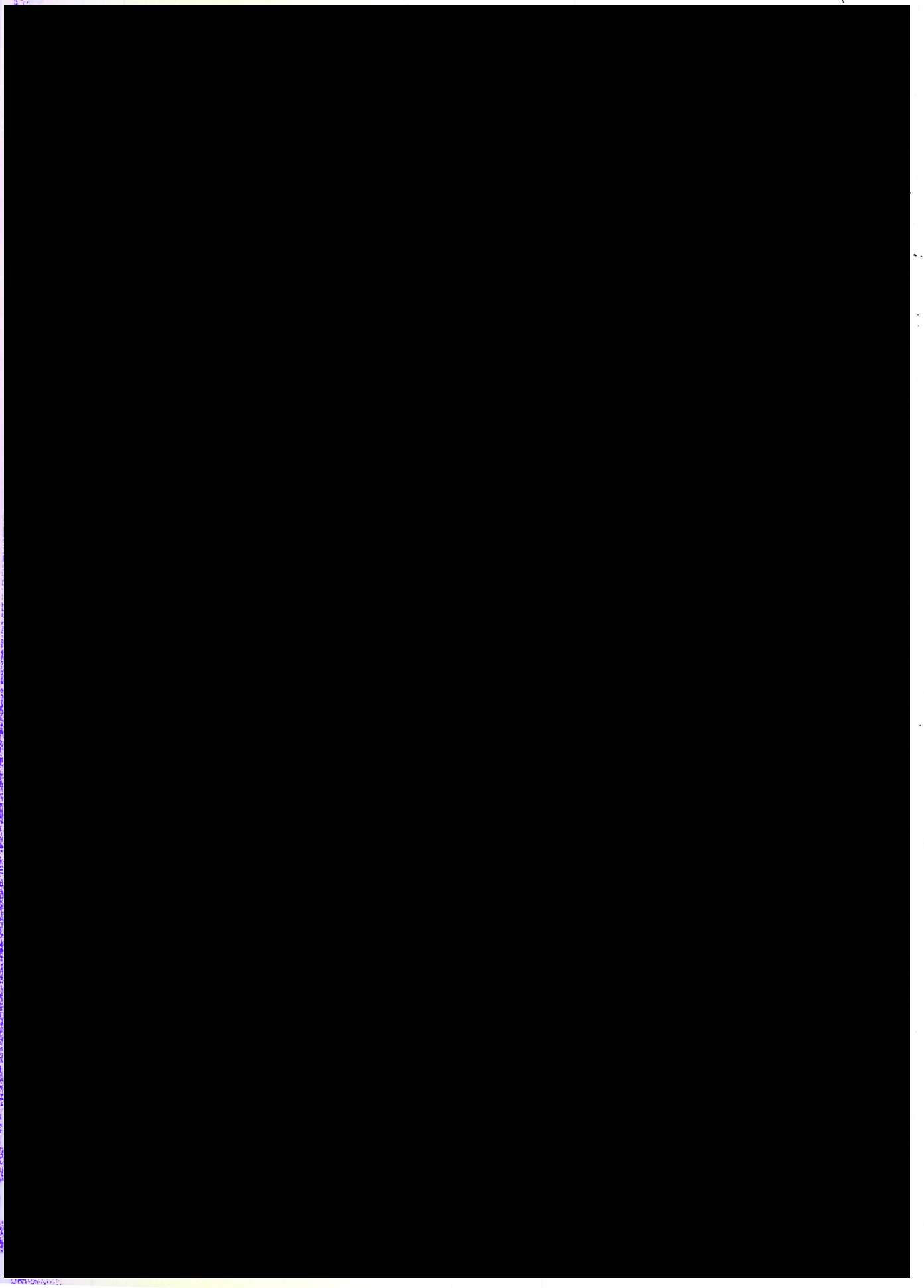
10 November 2005

KSA/DCA Submission Area ON









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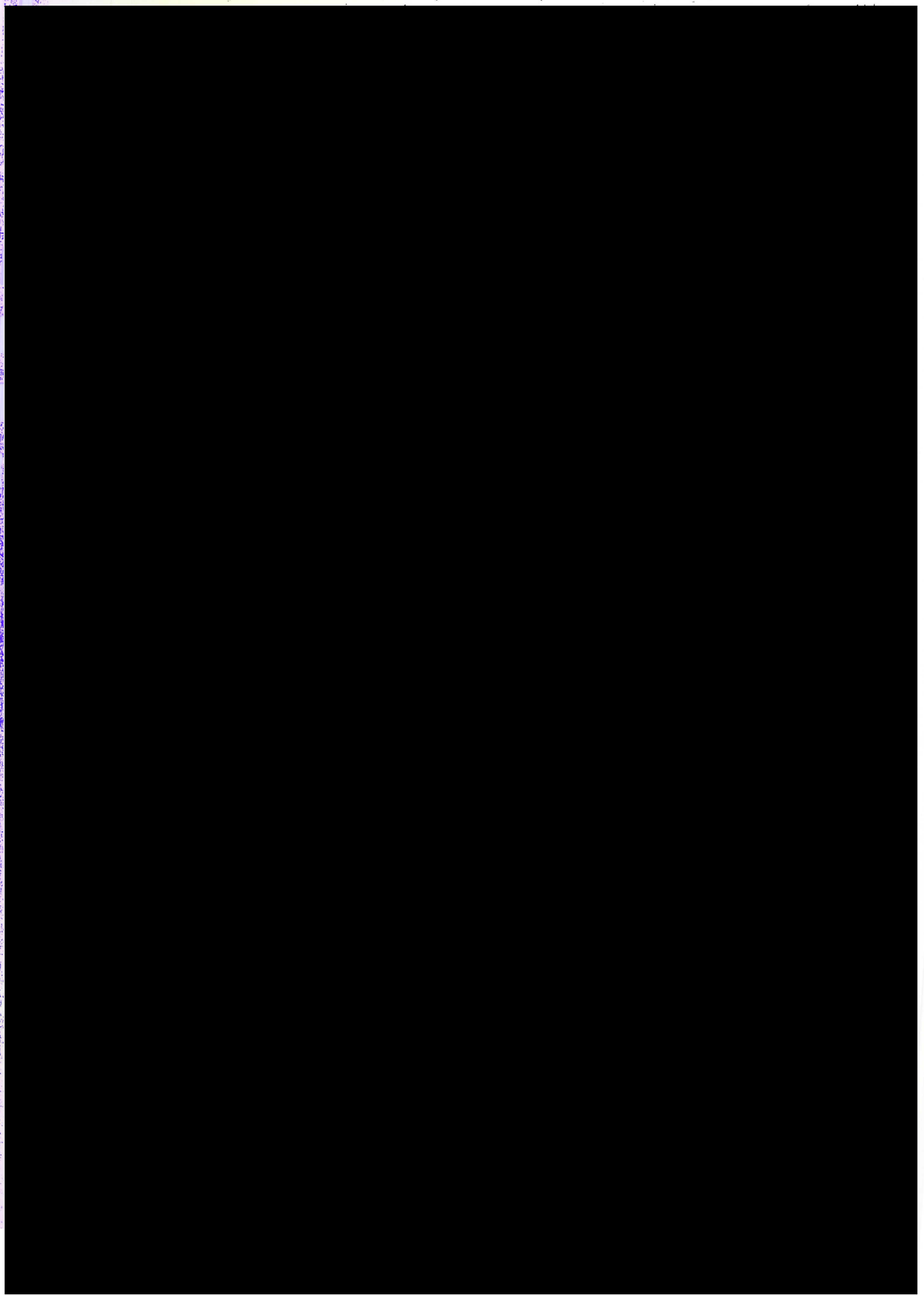
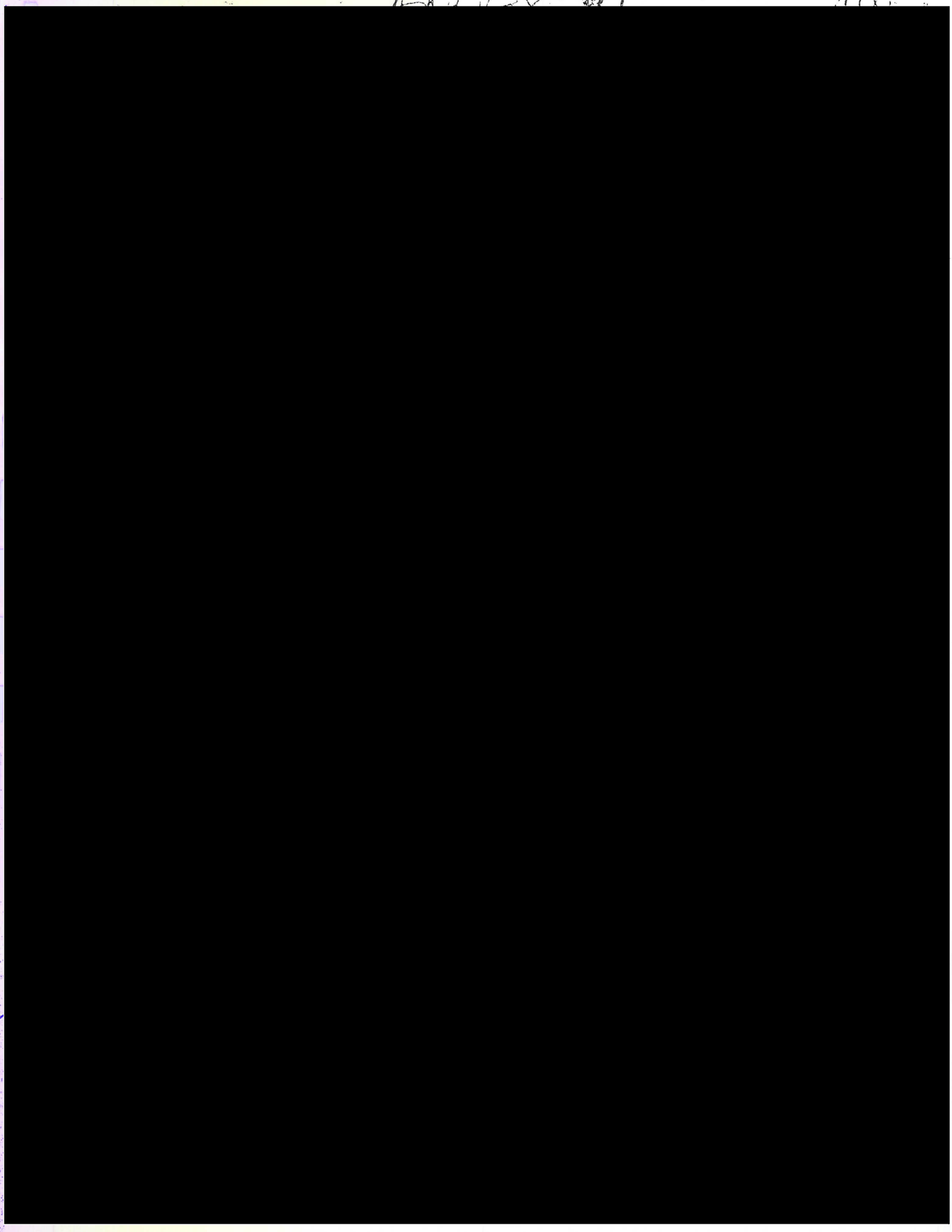
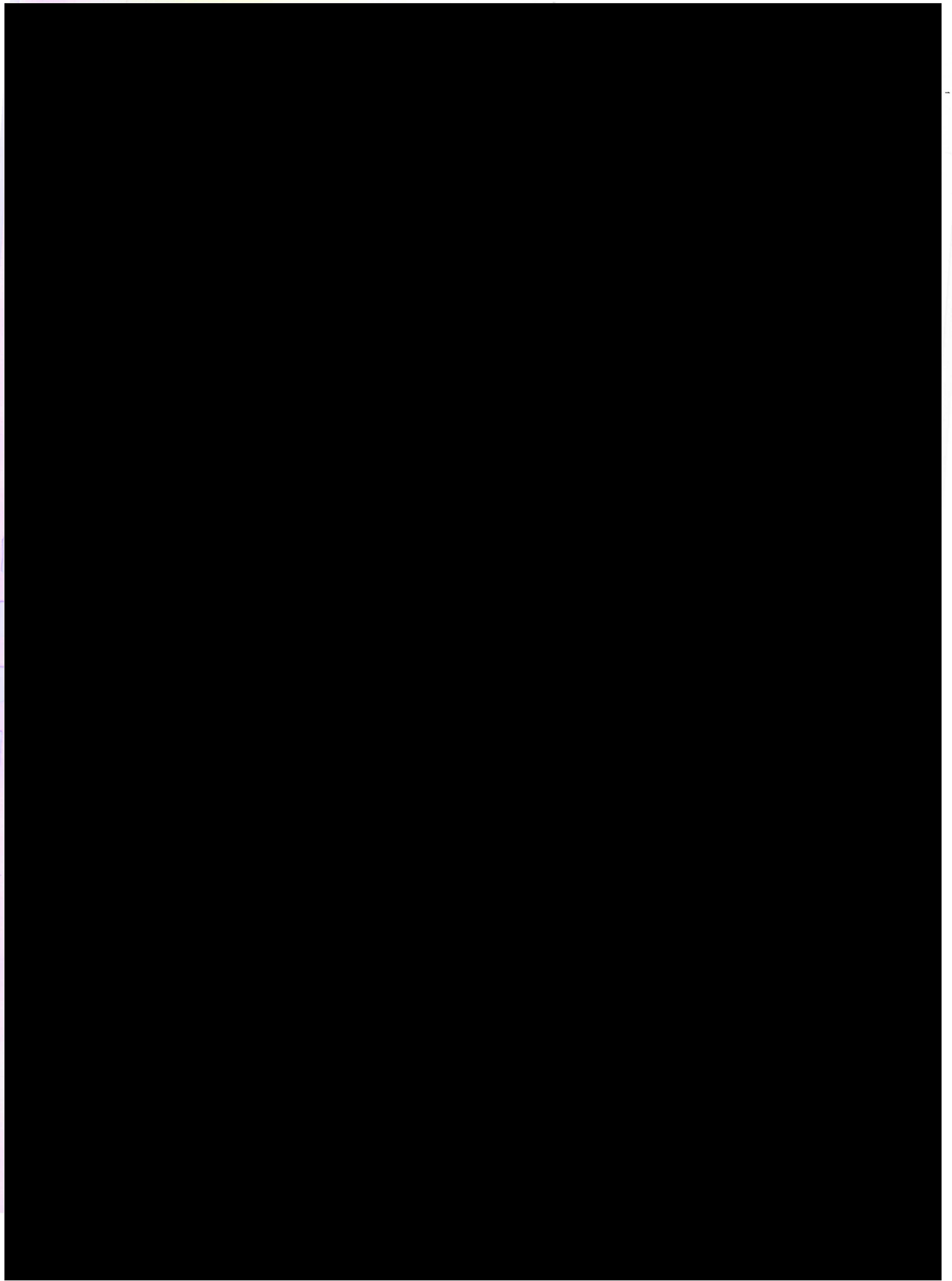
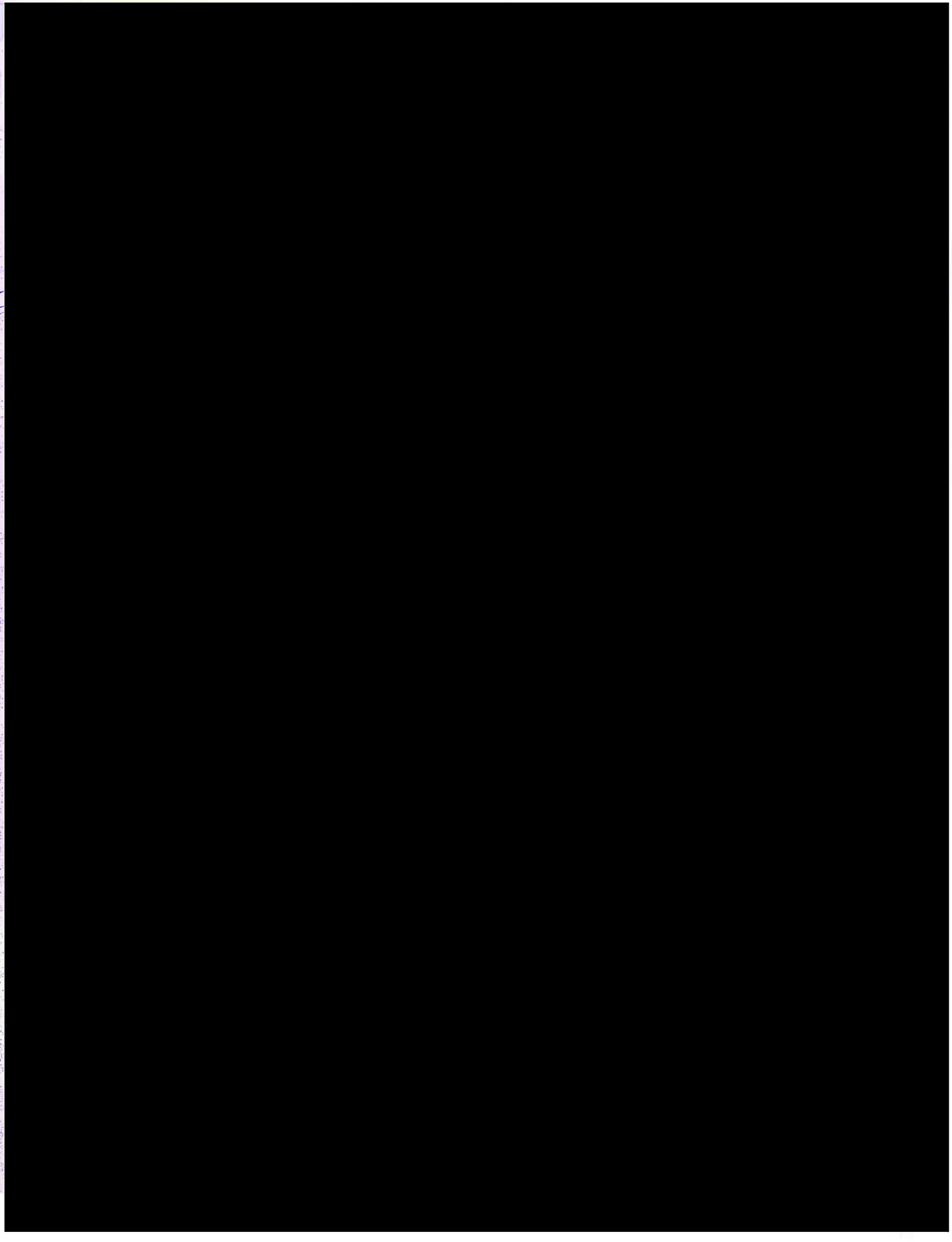
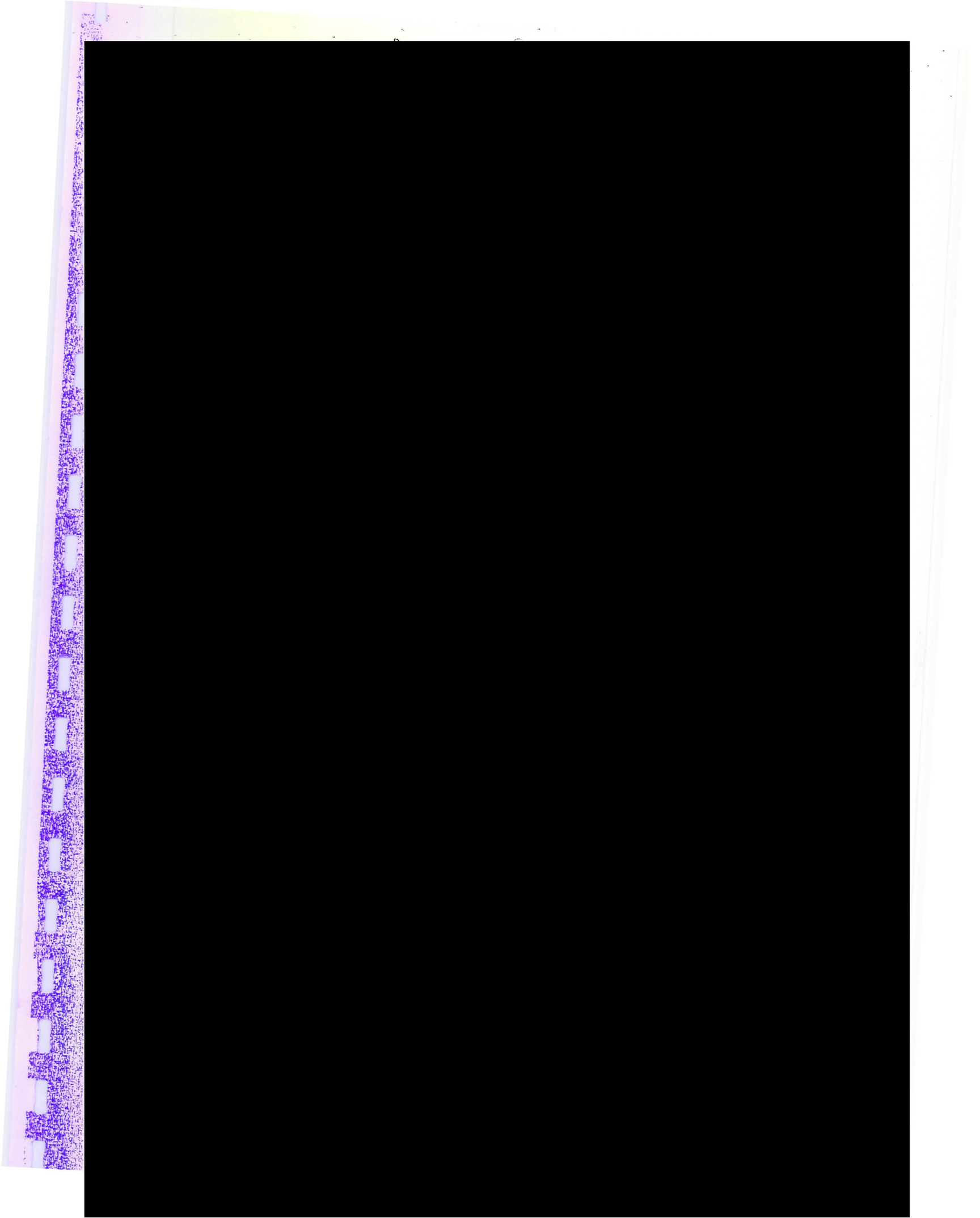


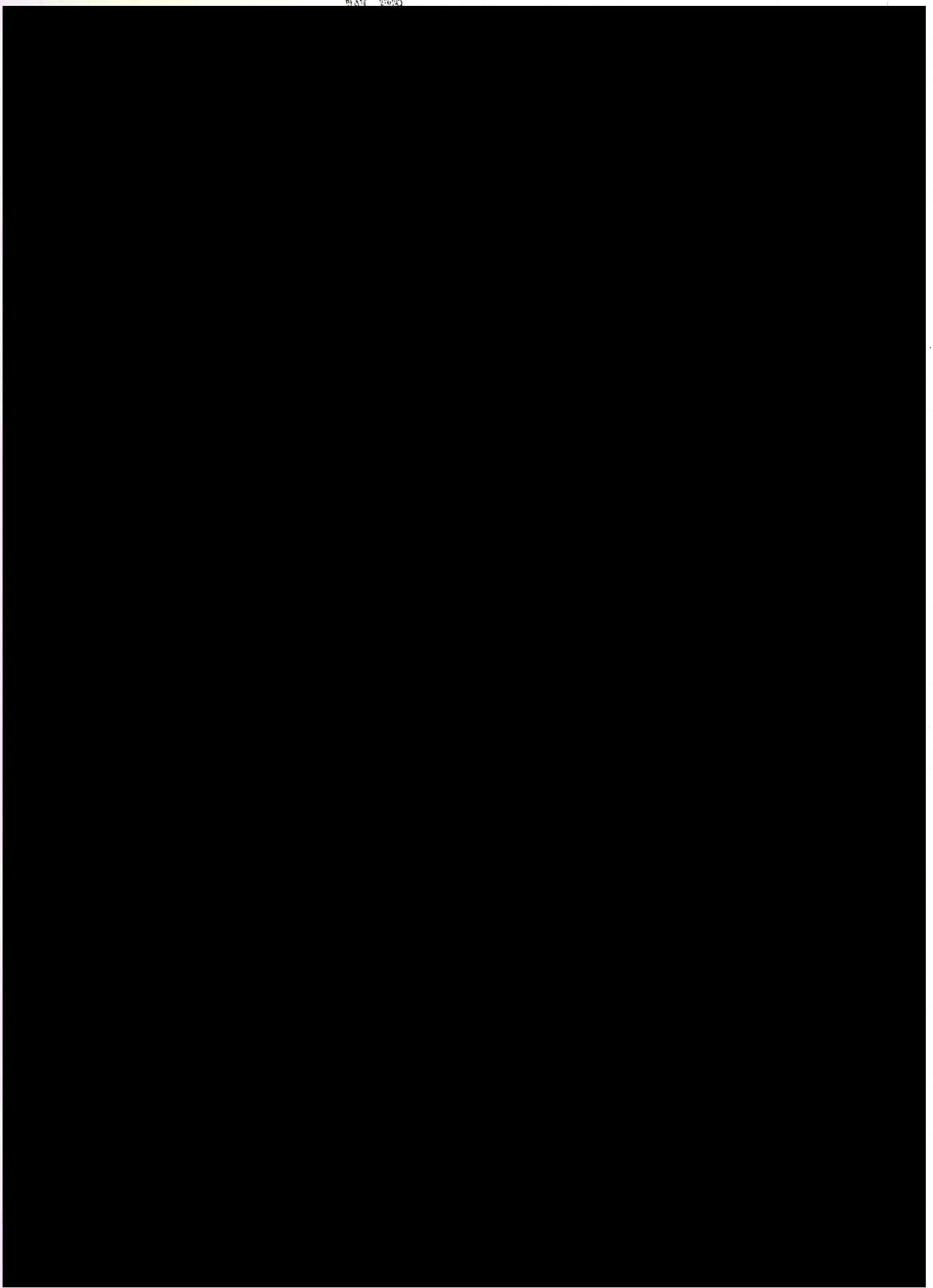


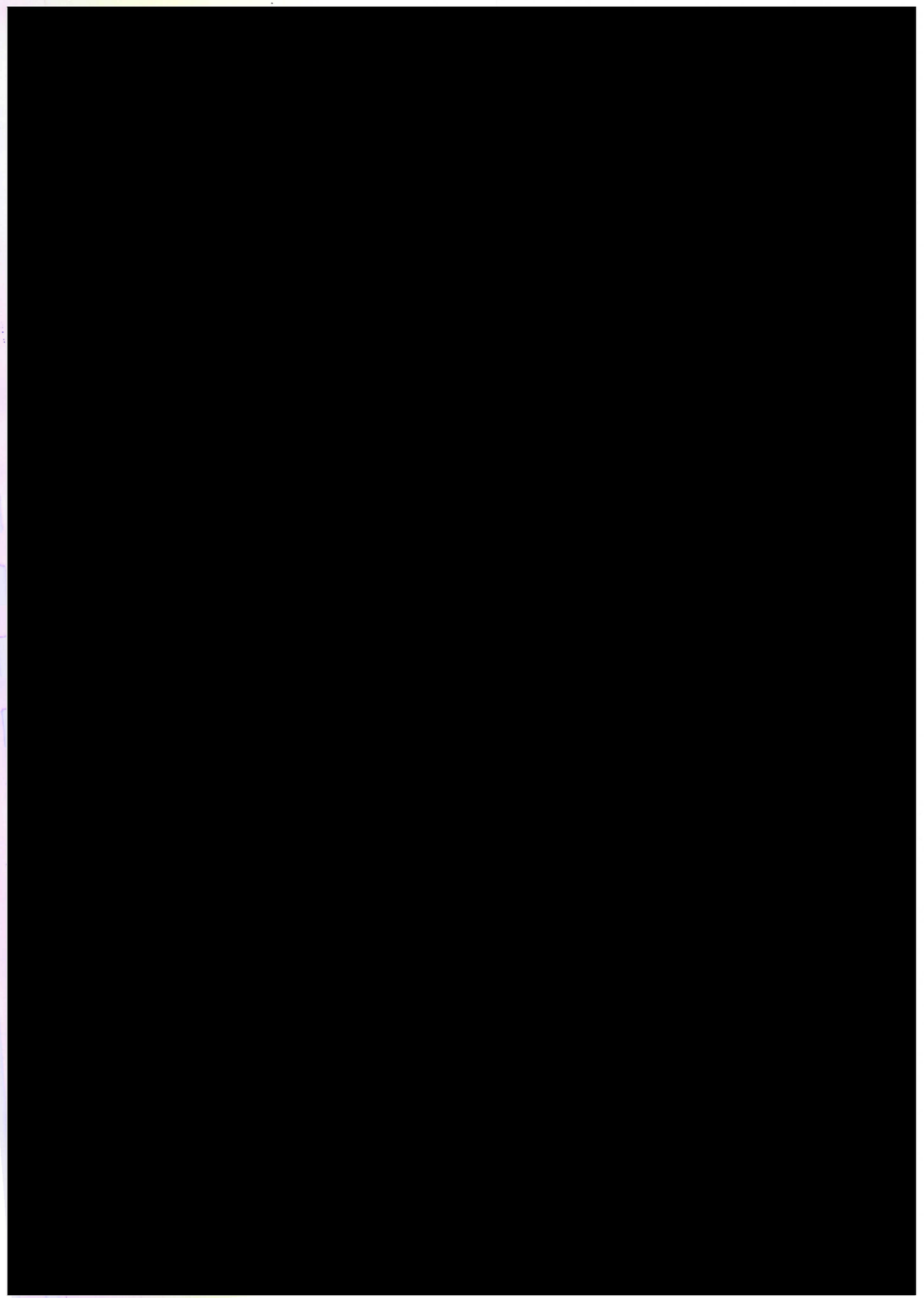


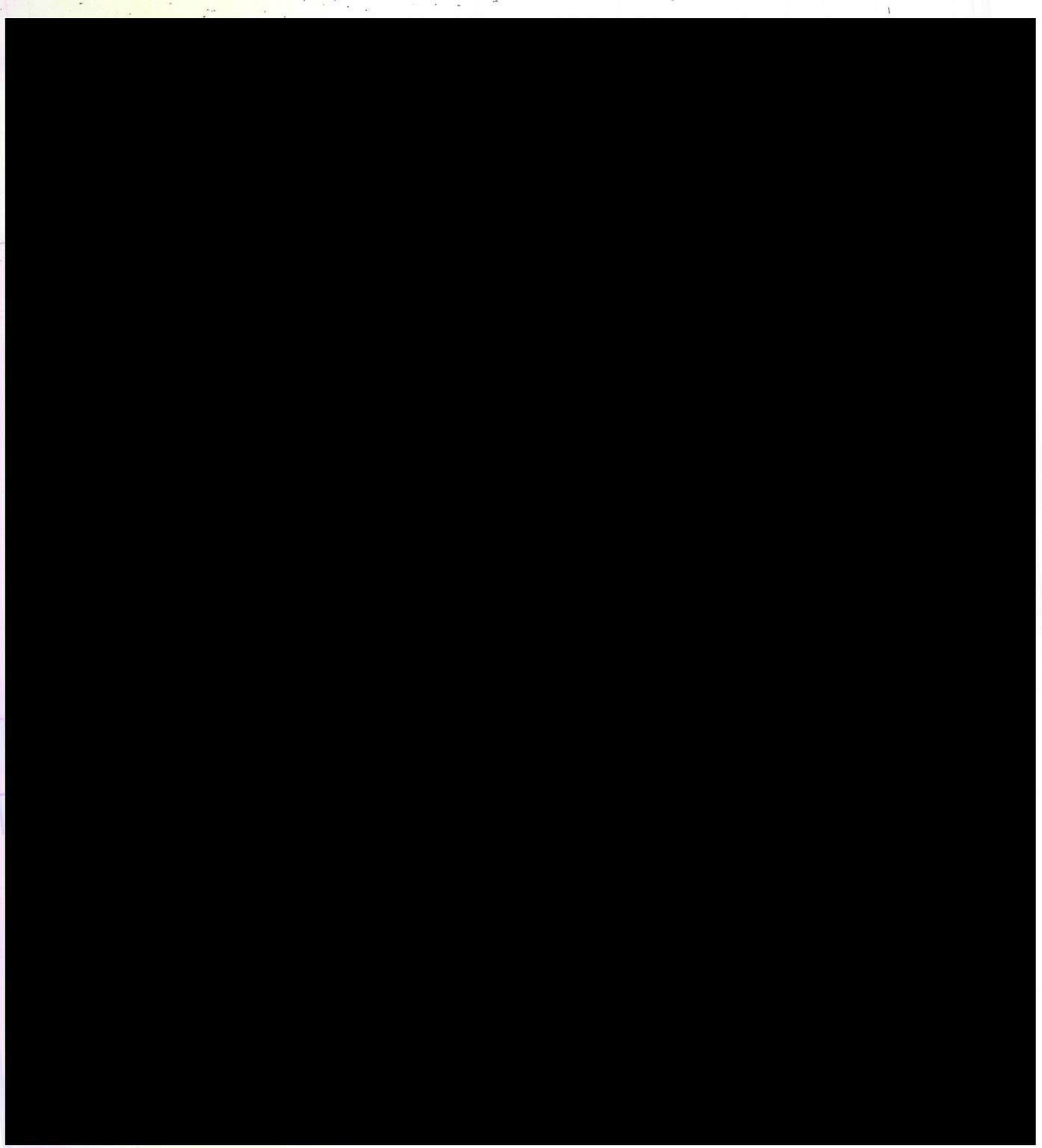




ANNEX IX







ANNEX X

REVIEW REPORT ON THE BUILD OPERATE & TRANSFER CONCESSION

ON

THE NEW DOMESTIC TERMINAL BUILDING AT MURTALA MUHAMMED AIRPORT IKEJA

GRANTED TO THE BI COURTNEY CONSORTIUM

PREPARED BY

First Courity Consultants

GRESHAM SUITE, PLOT 306/307, JIDE OKI STREET,
VICTORIA ISLAND. LAGOS

OCTOBER 2006

BOT REVIEW REPORT

Introduction

1. This document is the report of the review carried out by First County Consultants in line with the directives given to us by the Federal Airports Authority of Nigeria as Financial Adviser to the Authority to carry out a review of the Build-Operate and Transfer of the New Domestic Airport Terminal Building at the MMA, Lagos entered into by FAAN with the Bi-Courtney Consortium (BCC). The objective of the review is to advice FAAN on the optimal concession period for the BOT arrangement with the Bi-Courtney Consortium based on the project's revenue and cost profile.

2. The project review exercise was limited to financial evaluation and review of payback period determination only. It excluded any technical review or review of legal status of the project. Accordingly we did not carry out a legal or technical review of the project.

Scope of Assignment

3 The Scope of the review assignment which were commissioned to undertake are as follows:

- carrying out due diligence investigation of project cost based on client projections (feasibility report), expended costs and estimated cost to complete.

- carrying out revenue verification and audit as it relates to the project , evaluating the project's revenue potential including the identification of the optimal revenue profile of the project

- determination of an optimal payback period of the BOT Project based upon (a) and (b) above.

- verification of adequacy or otherwise of financing sources of concessionaires and advising on the effect on the BOT arrangements' thus convincing the concessionaire to go for a debt-equity mix mode of financing rather than 100% debt financing.

Objectives of the Report

4. The objectives of this review therefore include :

- The evaluation of the revenue profile of the project
- The evaluation of the cost of the project (which estimate is deemed at the time of this report to be inclusive of the cost to completion and associated finance charges)

- The ascertainment of the management, operating and maintenance cost of the project; and
- The preparation of project cash flows to determine the optimal repayment period.

Project Background

5. This project to which the BOT arrangement relates consists of an ultra modern Airport Terminal Building with modern facilities and appurtenances as well as a multi-level car park. The BOT agreement dated April 24, 2003 was executed between the Federal Government of Nigeria and the Bi-Courtney Consortium. Under the Agreement, Bi-Courtney Consortium is to be granted full monopoly of all domestic aviation traffic under the control of FAAN in Lagos State during the period of the BOT concession. Therefore, Bi-Courtney Limited will have the market share of 100% as far as the Ikeja Domestic Terminal is concerned.

6. The following are the parties to the concession agreement signed:

(i) Bi-Courtney Limited – The Concessionaire

(ii) Stabilini Visinoni-Limited – The Sponsor

(iii) Federal Airports Authority of Nigeria – The Grantor

(iv) The Federal Government of Nigeria.

7. A supplementary concession agreement was executed on 26th June, 2004 extending construction period to 33 years. The initially agreed upon concession period is 12 years after which the concessionaire, Bi-Courtney Limited, is to transfer the Terminal Building to the Federal Airports Authority of Nigeria (FAAN) in a well-maintained state.

8. The Concessionaire submitted to FAAN a Feasibility Study conducted on its behalf by KPMG which faulted the feasibility of the 12 years concession period, thus necessitating the review of the concession period. Some findings in this report are used as added inputs into this BOT report being submitted by us.

Method of Approach

9. In carrying out our assignment we obtained information from various sources. The figures used in this report were based on:

- Data obtained from FAAN (provided on request) including project cost estimate submitted by James Cubit Associate
- Data obtained from Bi-Courtney directly (during meetings) and indirectly (through the feasibility study prepared by KPMG)

- Demand potential and growth rate of revenue profile of the existing and proposed facilities.
- Contingency Cost .
- FAAN Tariff Structure.
- Evaluated capacity of the project facilities.
- Inflation rate (for adjustment of historical figures).
- The Concession Agreement.

10. In the determination of costs over the review period, the following costs were considered:

- Capital cost of equipment, design cost, building cost and other pre-operating cost. i.e the cost of the project
- Operating and maintenance costs including Material consumption, utilities consumption, manning/management personal requirements and their corresponding costs, both currently and over the first twelve years of operation.
- Operation and Maintenance fees payable to the O&M Manager under the O&M Agreement
- Concession fee payable to FAAN.
- Depreciation charge for the assets in the terminal building.

11. As a result of the foregoing, we obtained an estimate of:

(i) Project Cost derived from representation from FAAN and James Cubit Associates (Cost Consultants to FAAN)

(ii) The operating and maintenance costs adapted from the KPMG report, prepared for Bi-Courtney Consortium.

(iii) Revenue from the projec using combined information from FAAN, the KPMG Report submit id by Bi Courtney and discussions with Bi-Courtney and

(iv) A forecast of cash flo s, of the project to determine its payback period.

Project Scope

12. The total land area pr vided for both the terminal building and multi-storey car park is 25,0 0 square metres while the total car park space is 28,000 square metres he project shall provide the following facilities :

(4)

- An arrival and a departure hall on two levels with an appropriate holding capacity for passengers. This will include a general and executive lounges. The two levels shall be linked by a central escalator as well as by staircases in the wings.
- Four walkways (passengers Boarding Bridges) for passenger to embark and disembark from and into aircrafts.
- Information Display System.
- Rentable space to accommodate various businesses such as banks, post office, bookshops, jewellers, photographers, restaurants, bars, eateries, bureaux-de-change medical and allied services, hotel reservations, car hire/rental services and so on.
- Digital Voice Recorders and Public Address Systems.
- Ticketing offices, check-in counters, and baggage handling facilities
- Adequate parking facilities in multi-storey level car park.

Construction Period

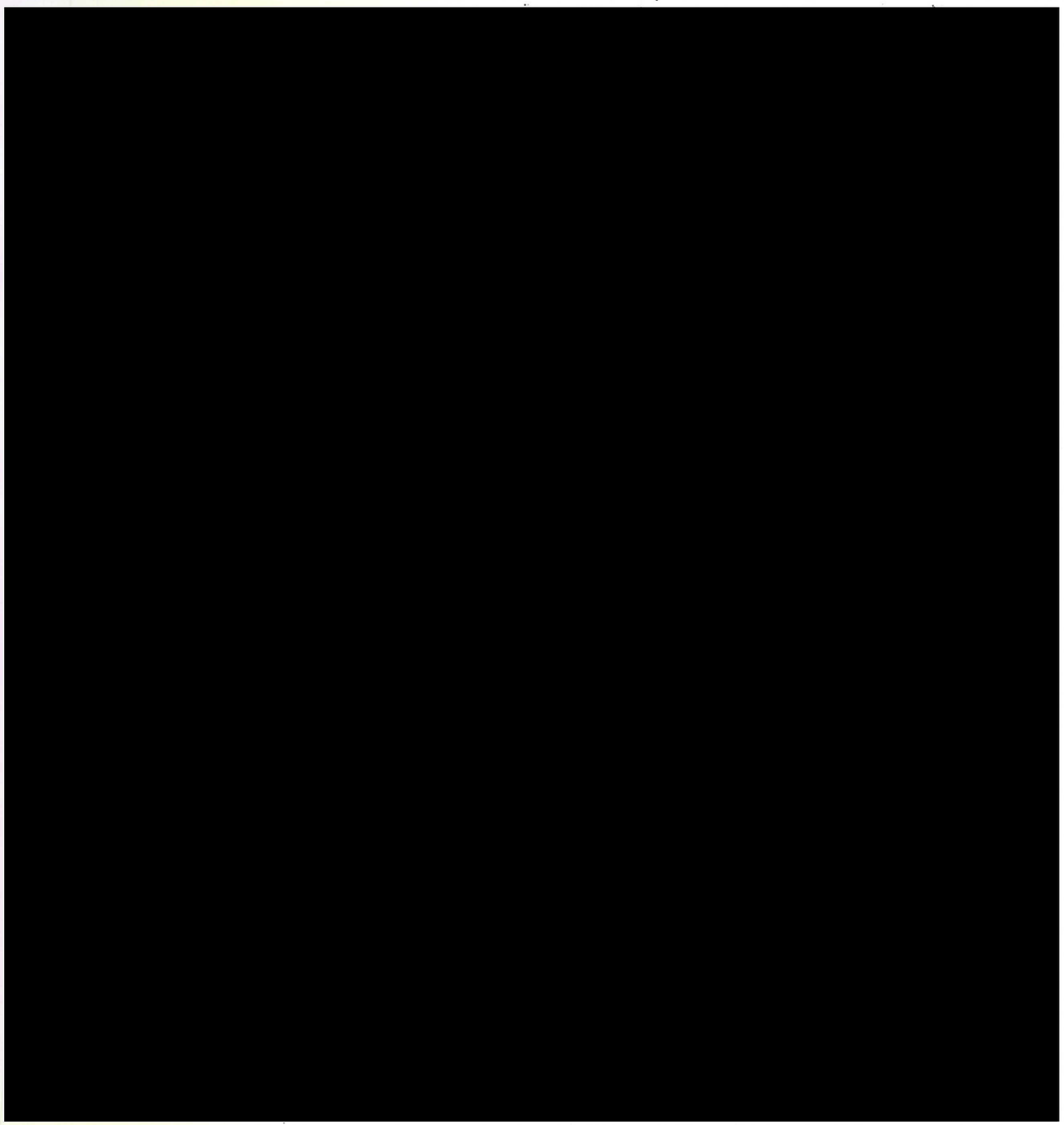
13. The construction of the project was agreed to take approximately 33 months.

Project Cost

14. The estimated cost of the project was initially agreed at N9.235 billion. It was subsequently increased to N15.1 billion. This figure formed the basis of our earlier substantive report which put the concession period at 45 years.

15. The estimated period was deemed high enough to warrant a review of the project cost by FAAN. A meeting was thereafter held between FAAN's Management and First County Consultant whereby, it was observed that the cost of the project be reviewed as the figure of N5.1 billion seemed too high. Consequently, both James Cubit and FAAN's Engineering Services Directorate were directed to determine the real cost of the project instead of simply using a Bi Courtney derived figure.

16. After extensive reviews the following project cost figures were submitted by both James Cubit and FAAN's Engineering Services Directorate:



17. In the determination of project costs for the purpose of determining the optimal payback period, we took into consideration two versions of costs which are as follows:

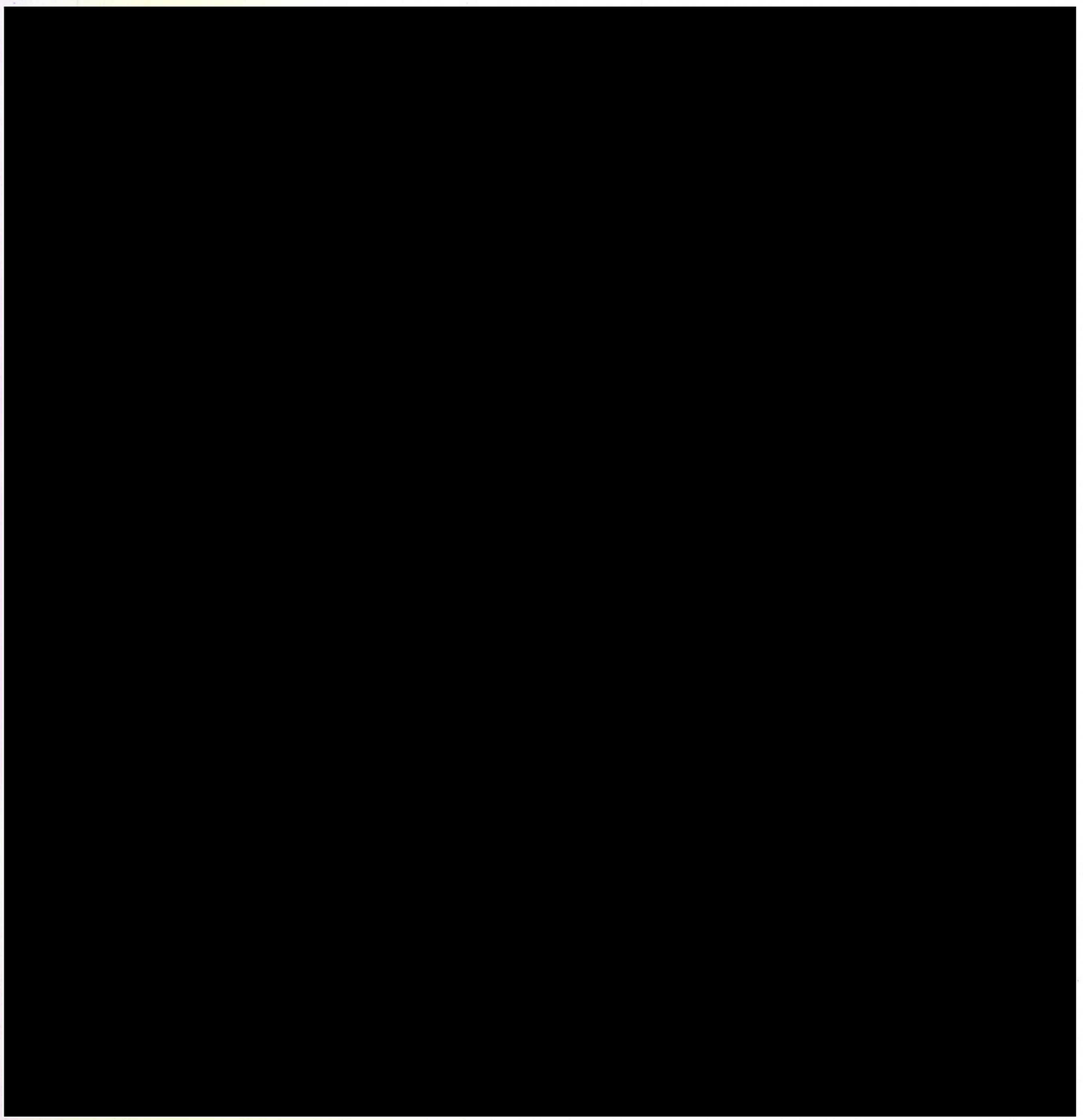
a) Estimated costs computed by James Cubit
b) Estimated costs computed by the Engineering Services directorate of FAAN.

These two estimates which are exclusive of

- Value Added Tax and

- Concessionaire's Overhead
- Cost of funds

is as presented below:



18. In arriving at the total project costs, we added the above cost items in the following order:

    - Concessionaire's Overhead
    - Cost of funds; and
    - Value Added Tax

Debt-Equity Mix

19. We also took into consideration the provision that the project shall be financed by a combined mix of debt of (60%) and equity (40%).

20. With the certainty that based on the revenue profile of the project, any debt financed cost that is more than N9 billion will lead to the project payback period going into perpetuity, an agreement was reached during our firm's meeting with Messrs Bi-Courtney, that the project cost be financed on a debt equity ratio of 60:40.

21. This is reinforced by article 12.1 of the Concession Agreement which states that:
"The Concessionaire shall be solely responsible for obtaining all the finance, both equity and debt necessary to construct operate and maintain the terminal for the duration of the concession period"

Cost of Funds

22. Bi-Courtney Consortium in its feasibility study itemised the pattern of disbursement for the loan to be obtained. This cost of fund is estimated at 25% as interest payable during the Construction period.

23. However, in the determination of the cost of funds during the construction period, a blanket rate of 20% was used in a report submitted to FAAN by Messrs James Cubit & Associates based on the firm's vetting of submissions made by Messers Bi-Courtney of September, 2005 irrespective of the pattern disbursement. This rate of 20% was also adopted by us for the purpose of computing the construction period's cost of funds.

24. We however tried to consider different alternatives by flexing the cost of funds by using 25% as the blanket rate instead of 20% to accommodate an alternative computation by Bi Courtney.

Determination of Project Cost

25. In the determination of the project cost incorporating both the debt equity mix, we approached the issue from two angles.

a. the consideration of the cost of funds during construction period as 20% on the one hand and flexing it to 25% on the other hand

b. the splitting of the pre-cost of fund project cost into the debt and equity mix and computing interest only on the debt portion. In this case the total debt will be 60% of the project cost plus interest expenses thereon. This however will distort the debt equity mix formula of the project.

[redacted]

Option 8

FAAN estimate initially excluding cost of funds at 25% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio, and thereafter adding the cost of funds to the debt portion of the cost. This shall give the total cost of the project at N9,883,982,094.49 yielding a debt of [redacted]9.02 [redacted] [redacted]3,437,906,815.48

[redacted]

[redacted]

26. Our approach shall include the evaluation of the project Payback Period based on the project cost alternatives identified above and from all the scenarios evaluated recommend an appropriate Payback period.

Project Finance

27. Initially, the financing structure of the project has no equity content. Unlike most BOT projects which incorporates a specified percentage of the total cost as equity contribution by the concessionaire, the full cost of the project was projected borrowed from lenders. This scenario however was recommended for restructuring (and agreed upon) so that the project's financing structure will be made up of both debt and equity. Accordingly, 60% of the total project cost is recommended as long term debt financing while the balance of 40% shall be designated as equity. The recommended interest rate for the debt financing is recommended at 20% per annum based on a 3% spread above the prime lending rate of 17%. This rate is all-inclusive of all fees changeable on the loan.

Operation and Maintenance Management

28. The Concession agreement provides for an Operation and Maintenance Management (O&M) contract in order to ensure that the Murtala Mohammed Domestic Airport Terminal is operated and managed along the line of internationally acceptable standards. The O&M management firm will have the responsibility for the day-to-day management of the project. The O&M fee is 10% of turnover. In order to ensure that the airport is well maintained, 2.5% of the turnover is to be set aside and used for the cleaning and maintenance of the project in the first year..

Concession Fee

29. The concession agreement provides that the concessionaire shall pay to FAAN 5% of its annual turnover from the project as Concession Fee.

Fixed Assets

30. It is projected that N367.5 million of the project cost will be used for the purchase of fixed assets (apart from the building) which will include vehicles, office equipment & computers, furniture & fittings and generating plant. This is made up as follows:

[redacted]

Depreciation

31. Depreciation of the various categories of assets is to be provided as follows:

Assets	Depreciation Rates
Buildings	10%
Vehicle	25%
Office Equipment & Computer	20%
Furniture and office Equipment	20%
Plant & Equipment	20%

Pre-Operating Costs

32. The pre-operating costs (as contained in the KPMG report, which is the only source of information for same) include expenses which are incurred before construction commences and those to be incurred during construction phase of the project. The pre-operation costs which are estimated at N1,382,569,918 include plan modification, feasibility study, legal advisory expenses and pre-operating administrative costs.

[redacted]

General and Administrative Expenses

33. These are in respect of operational and logistics expense including training and travelling costs. The estimate for the first year after commencement of operation is as follows:

38. "The aeronautical and non-aeronautical charges and tariffs collectible by the concessionaire from users of the terminal during the concession period will be derivable from the following sources approved by FAAN:

a) passenger service charge-collectible from departing passengers including avio-bridge charges;
b) VIP Lounge Usage Charges
c) Car park charge
d) Rents/concession franchise fees
e) Service charge payable by concessionaires within the terminal
f) Advertisement royalties payable by advert concessionaires within the terminal excluding advertisement royalties accruable from advertisements along the roads; and
g) Associated revenue derivable from the use of associated facilities in the terminal."

Target Market

39. The target market for Bi-Courtney Limited-operated Domestic Airport Terminal include the following:

- Airlines (commercial and non commercial) operating on the domestic route. The facilities at the terminal and the quality of service will make it very attractive to Airlines to use the facilities to the maximum.
- Passengers going through the Terminal. The passenger traffic is quite high in Lagos Terminal and far higher than any other domestic Terminal in Nigeria. The passengers must receive value for the money they pay in form of airport tax by guaranteeing them comfort strong aesthetic appeal and quality service all the time.
- Business concerns – There are number of businesses that go on in the Domestic Terminal. Bi-Courtney Limited will grant tenancy to a number of businesses ranging from banking to trading to do their businesses. Therefore, Bi-Courtney Limited will have tenants that will also add value to the service offered in the Terminal. Good business relationship must be the watchword and the services offered to the businesses must be of high quality to ensure that the businesses are also contributing their quota to service offering.
- Visitors to the Domestic Terminal. Every Nigerian has the right to visit or travel through the domestic Terminal. Taxi parks are provided and visitors will also be provided with parking spaces at a fee. In fact, the parking space as provided in the architectural design is large enough and it is estimated that about 2000 visitors will be serviced daily. This is a large number for the company to make quite reasonable income.
- Meeting and conference rooms will be provided at the Airport. Passengers can converge from other parts of the country at the airport to

hold meetings and disperse to their various destinations without having to go into town. This is an innovation that will yield income for the project.

- Billboards and Posters. These will be provided for advertisement of products and services within the terminal building including the car park.

Revenue Verification

40. We carried out a review of the revenue sources of the project based on existing sources of revenue collected by FAAN. This formed the basis of the preliminary report issued by us. However a further review of the Concession Agreement between FAAN and Bi-Courtney revealed that there are specific revenue sources allowed to be collected by the concessionaire. This led to a further evaluation of the revenue profile of the project taking into consideration appropriate economic variables and projected passenger and user traffic.

Pricing & Tariffs

41. The pricing and tariff structure adopted by this report is based on the most feasible consideration of various data sources reviewed for the purpose of determining the realistic income to be earned by the project. Sources considered include the concessionaire's proposed pricing plan for its facilities and services, and FAAN tariff structure and revenue profile of FAAN in the past years. The pricing structure forming the basis of the revenue projections used in this report is as contained in the table below:

	ANALYSIS OF REVENUE				
	Revenue Sources				
No		Unit	# of units	Unit rate (in NGN)	Amount (in NGN)
1	Lounge Income/Airport Tax				
1.1	Executive Lounge				200,000,000
	Subtotal Lounge Income/Airport Tax				200,000,000
2	Space Rental Revenue				
2.1	20 sq metres - Airlines Operators	Per sq metre	5,028	45,000	226,260,000
2.2					-
2.3					-
2.4	Service Recovery Charge	20%			45,252,000
2.5	Electricity Recovery Charge	175%		64,450,000	112,787,500
	Subtotal Space Rental Revenue				384,299,500

3	Meeting/Conference Center				
3.1	4 Meeting Rooms	Rooms			
3.2	1 Conference Center - Wednesdays & Sundays	Center			
3.3	1 Conference Center - 8 other days per month	Center			
	Subtotal Meeting/Conference Center				-
4	**Car Hire/Car Park**				
4.1	Car Hire	Cars	100	25,000	2,500,000
4.2	Car Park	Cars	Bicourteney Estimate		216,000,000
4.3					-
4.4	Cargo Vehicle Surcharge	Vehicles	9,125	2,000	18,250,000
	Subtotal Car Hire/Car Park				**218,500,000**
5	**Passenger Related Charges**				
5.10	Passenger Service Charge	Passengers	2,000,000	500	1,000,000,000
5.2	Walk ways (Boarding Bridges)	Aircrafts	Bicourteney Estimate		189,000,000
5.3	Trolley Services	Passengers			12,000,000
5.4	Left Luggage Surcharge	Luggages			-
5.5	Avio Bridge Charges	Aircrafts			-
	Subtotal Passenger Related Charges				**1,201,000,000**
6	**Advert Related Income**				
6.1	Advert & Billboard Royalty				100,000,000
	Subtotal Advert Related Income				**100,000,000**
	TOTAL				**2,103,799,500**

Revenue Projection

42. There are several sources form which the project will generate income. These include Lounge Income, Space Rental, Car Park fares, Airport Tax, Rental from Conference and Meeting rooms, Adverts and Walkways. Some of these sources are as explained below:

(i) **Lounge Income**

Lounge Income shall be earned from VIP Lounge alone as the General Lounge earns no income. It is estimated that the revenue from this source for the first year of operations shall be N200,000,000.

(ii) **Space Rental Revenue**

The lettable space at the New M.M Domestic Airport Terminal is 5,028 sq metres made up of:

Ground Floor	268m^2
Upper Ground Floor	930 m^2
First Floor	2630 m^2
Upper First Floor	1200 m^2

According to FAAN Tariff structure the approved rate is N30,000 per square metre per annum. However a rate of N45,000 is used as a result of the upgraded facilities. This translates to N226,125,000 for the first year. This shall increase at the rate of 10% every two years.

(iii) **Electricity Recovery**

This is charged at NEPA bill plus 75% plus 300 per KVA demand. The electricity charge estimated for the project according to the initial KPMG report of 2004 was N64,450,000 for the first year. Recovery therefore shall be 175% of this amount. It is treated as an inflow/income since the electricity cost has already been regarded as an outflow as part of expenses.

(iv) **Service Recovery Charge**

This is charged at the rate of 20% on rent.

(v) **Conference Centre and Meeting Rooms**

These shall be assumed to be part of lettable space and therefore no separate revenue shall be recognised for the purpose of this report.

(vii) **Car Hire**

There is expected to be 100 cars on car hire at the rate of N25,000 per Car Hire Permit. This amounts to N2,500,000 per annum.

(viii) Car Park Rental Revenue

The facility has a multi storey car park. However we could not obtain the capacity of the car park. While Bi-Courtney estimated that only N20,400,000 can be earned from the new multi-storey car par, FAAN's records showed that the Authority earned N34,069,633 from the existing car park in 2005. With an envisaged bigger parking capacitywhich is a multiple of existing capacity, the new car park is expected to generate a multiple of what was earned by FAAN from the existing parking facility. We believe for the purpose of this report that car park fees will be N216 million for the first year of operations. This shall be expected to increase at the rate of 7.5% per annum.

(ix) Car Stickers

For conservatism purposes, no income is expected to be earned from car sticker revenue.

(x) Cargo Vehicle Surcharge

Cargo Vehicles entering the terminal building are expected to be 9,125 per annum (at the rate of 25 vehicles per day) with a surcharge rate of N2,000. Examples include those vehicles bringing in newspapers magazines etc to be air-freighted by passenger flights. This shall be N18,250,000 for the first year of operation. It shall increase at the rate of 7.5% per annum.

(xi) Passenger Service Charge

Passenger Service Charge is currently being charged at the rate of N350 per passenger. Total passenger traffic (domestic departures only) at the MMA for 2005 was 1,151,743.(2004:1,149,459). It is assumed that there will be 2,000,000 passengers when the enlarged facility is put in place and the rate of N500 per passenger is envisage as air fares are increasing. This put the revenue for the first year at N900 million. It is expected to increase like most other revenue at the rate of 7.5% per annum.

(xii) Walkways (Boarding Bridges)/ Aviobridges

Another significant source of income is the walkways through which passengers are expected to embarl and disembark into and out of the aircrafts. The project has four su h walkways. The airlines will be

charged a fee of N15,000 per aircraft using the walkways. The number of aircrafts expected to use the walkways per day is 90.This for a 350-day year shall be N472.5 million The number is expected to increase at an annual rate of 5%. However for conservatism purposes, Bi-Courtney figure as contained in the KPMG Feasibility Report of N189,000,000

(xiii) **Trolley Services**

This is estimated at N2,000,000 per annum. This shall be expected to increase at the rate of 7.5% per annum.

(xiv) **Left Luggage**

This is assumed to be so insignificant and difficult to forecast. It is therefore not taken into consideration for the purpose of this report.

(xv) **Advertising Space and Billboards**

There will be ample space for billboard of various sizes both at the car park and Terminal building. Professional opinion put the realizable income from this source at N100 million in the first year, growing at an annual rate of 7.5%

Findings

43. After in-depth project analysis, our findings include the following:

Option 1

JCA's cost estimate incorporating cost of funds at 20% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio. This shall give the total cost of the project at N11,710,243,350.02 yielding a debt of N7,026,146,010.01 and equity of N4,684,097,340.01. Under this option, the payback period for debt is 16 years and for debt plus equity 21 years (See Appendix A)

Option 2

FAAN 's estimate incorporating cost of funds at 20% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio. This shall give the total cost of the project at N10,349,120,825.24 yielding a debt of N6,209, 472,495.32 and equity of N4,139,648,330.21. Under this option, the payback period for debt capital is 12 years while for debt plus equity it is 17 years (See Appendix B)

c. The evaluation of the project from the viewpoint of both James Cubit and the Engineering Services Directorate of FAAN.

d. The treatment of cost of funds as part of the total project cost before splitting the cost into debt and equity or as part of the project cost after splitting the pre-cost of funds project costs into debt and equity components of 60:40.

26. In all, these give eight different project cost scenario to be used in carrying out this evaluation. In all we evaluated the project from eight perspectives of the project costs which are as follows:

Option 1

JCA's cost estimate incorporating cost of funds at 20% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio. This shall give the total cost of the project at N11,710,243,350.02 yielding a debt of N7,026,146,010.01 and equity of N4,684,097,340.01as follows:

[redacted]

Option 5

JCA estimate excluding cost of funds at 20% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio, and thereafter a ding the cost of funds to the debt portion of the cost This shall give the total cost of the project at N10,949,015,189.77 yielding a debt of N7,038,652,567.78 and [redacted]y [redacted].78

[redacted]

[redacted]

Option 7

JCA estimate initially excluding cost of funds at 20% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio, and thereafter a ding the cost of funds at 20% to the debt portion of the cost. This shall give the total cost of the project at N11,242,292,382.36 yielding a debt of N7,331,929,814.58 and equity of N3,910,362,567.78

[redacted]

Option 3

JCA estimate incorporating cost of funds at 25% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio. This shall give the total cost of the project at N12,218,332,421.00 yielding a debt of N7,330,999,452.60 and equity of N4,887,332,968.40. Under this option, the payback period for debt capital is 18 years while for debt and equity is 23 years. (See Appendix C)

Option 4

FAAN estimate incorporating cost of funds at 25% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio. This shall give the total cost of the project at N10,798,152,927.47 yielding a debt of N6,478,891,756.48 and equity of N4,319,261,170.99. Under this option, the payback period for debt capital is 13 years while for debt and equity it is 18 years. (See Appendix D)

Option 5

JCA estimate excluding the cost of funds at 20% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio, and thereafter adding the cost of funds to the debt portion of the cost This shall give the total cost of the project at N10,949,015,189.77 yielding a debt of N7,038,652,622.00 and equity of N3,910,362,567.78. Under this option, the payback period for debt is 16 years while for both debt and equity is 20 years. (See Appendix E).

Option 6

FAAN estimate excluding the cost of funds at 20% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio, and thereafter a ding the cost of funds to the debt portion of the cost This shall give the total cost of the project at N9,626,139,083.33 yielding a debt of N6,188,232,267.86 and equity of N3,437,906,815.48. Under this option, the debt capital payback period is 12 years while for both debt and equity it is 16 years. (See Appendix F).

Option 7

JCA estimate initially excluding cost of funds at 25% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio, and thereafter a ding the cost of funds at 25% to the debt portion of the cost. This shall give the total cost of the project at N11,242,292,382 yielding a debt of N7,331,929,814.58 and equity of N3,910,362,567.78. Under this option, the debt capital is payback period is 18 years while for both debt and equity the payback period is 22 years. (See Appendix G).

Option 8

FAAN estimate initially excluding cost of funds at 25% as part of the overall project costs before splitting the total cost between debt and equity on a 6:4 ratio, and thereafter adding the cost of funds to the debt portion of the cost. This shall give the total cost of the project at N9,883,982,094:49 yielding a debt of N6,446,075,279.02 and equity of N3,437,906,815.48. Under this period the debt capital's payback period shall be 13 years while for both debt and equity it is 13 years.

Payback Period

44. The payback period is computed for each of the project cost options which is based upon the number of years it will take to recoup both debt capital and payback period. For each of the eight alternative project cost options considered, debt and equity recovery period are as follows:

Option	Debt Capital(N)	Equity Capital (N)	Total Capital(N)	PAYBACK IN YEARS Debt Capital (Years)	Equity Capital (Cash Basis) (Years)	Equity Capital (Profit Basis) (Years)	Average (Years)
1	7,026,146,010	4,684,097,340	11,710,243,350	16	21	18	18
2	6,209,472,495	4,139,648,330	10,349,120,825	12	17	13	14
3	7,330,999,453	4,887,332,968	12,218,332,421	18	23	20	20
4	6,478,891,756	4,319,261,171	10,798,152,927	13	18	14	15
5	7,038,652,622	3,910,362,568	10,949,015,190	16	20	17	18
6	6,188,232,268	3,437,906,815	9,626,139,083	12	16	12	13
7	7,331,929,815	3,910,362,568	11,242,292,382	18	22	19	20
8	6,446,075,279	3,437,906,815	9,883,982,095	13	16	13	14
	Average			15	19	16	17

Recommended Concession Period

45. Based on the result of the analysis present above, details of which are attached as appendix to this report, the maximum payback period for the project is 23 years. As at this point, both equity and debt capital would have been recouped. We recommend (subject to Negotiations) that additional 10 years be added to the payback period to arrive at a concession period of 33 years. The recommended concession period for the project be put at 33 years.

~~Appendix~~ ~~EE~~

ANNEX XI

FEDERAL AIRPORTS AUTHORITY OF NIGERIA

ADDENDUM

BETWEEN

1. THE FEDERAL GOVERNMENT OF NIGERIA
2. THE FEDERAL AIRPORTS AUTHORITY OF NIGERIA

AND

3. BI-COURTNEY LIMITED
4. STABILINI VISINONI LIMITED

&&&&&&&&&&&&&&&&&&&& &&&&&&&&&&&&&&&&&&

FOR THE NEW DOMESTIC TERMINAL OF MURTALA MUHAMMED AIRPORT ON BUILD, OPERATE AND TRANSFER TERMS.

&&&&&&&&&&&&&&&&&&& &&&&&&&&&&&&&&&&&&&

THIS ADDENDUM is made the 3rd day of FEBRUARY 2007

BETWEEN:

THE FEDERAL GOVERNMENT OF NIGERIA represented by THE MINISTER OF STATE I (AIR TRANSPORT) (hereinafter referred to as "the FGN", which expression shall wherever the context so admits include its successors-in-title and assigns) of the first part;

FEDERAL AIRPORTS AUTHORITY OF NIGERIA, a parastatal established by statute having its headquarters situate at Murtala Muhammed Airport, Ikeja, Lagos State (hereinafter referred to as "FAAN" which expression shall where the context so admits include its successors-in-title, nominees, appointees, agents, servants and assigns) of the second part;

AND

BI-COURTNEY LIMITED, a limited liability company duly incorporated under the Laws of the Federal Republic of Nigeria, and having its registered office at the Rooftop, 8th – 10th Floors, 24A, Campbell Street, Lagos, (hereinafter referred to as "the Concessionaire" which expression shall where the context so admits include its successors-in-title, appointees, agents and assigns) of the third part.

STABILINI VISINONI LIMITED a limited liability company duly incorporated under the Laws of the Federal Republic of Nigeria, and having its registered office at Kilometre 5, Apapa-Oshodi Expressway, Adeyanju-Daniel Street, Awodi Ora, Kirikiri, Apapa, Lagos, (hereinafter referred to as "the Sponsor" which expression shall where the context so admits include its successors-in-title, appointees, agents and assigns) of the fourth part.

WHEREAS:

i. The Parties herein entered into a Concession Agreement (hereinafter referred to as "the Concession Agreement") dated 24th day of April, 2003 for the design, engineering procurement, construction, completion, commissioning, operation and transfer of a new domestic terminal at the Murtala Mohammed Airport, Ikeja on Build, Operate and Transfer terms.

ii. Pursuant to the Concession Agreement, the Parties have agreed that certain amendments be made as is hereunder contained.

NOW IT IS HEREBY AGREED as follows: -

1. That Article 2.3 of the Concession Agreement be amended and is hereby amended as follows: -

> 2.3 **Concession Period**
>
> The Concession Period shall start on the Start Date and last until the thirty-sixth (36th) anniversary of the Start Date unless otherwise modified in accordance with this Agreement. At the end of the Concession Period, the Concessionaire shall transfer the Terminal to the Grantor (or any person designated by the Grantor) without the payment of any compensation and in accordance with the provisions of Article 13 of the Concession Agreement.

2. That all other terms and conditions of the Concession Agreement and Supplemental Agreement dated 24th day of April 2003 and 26th day of June 2004 respectively shall remain binding and govern the Parties.

3. That this amendment shall be construed as and form part of the Concession Agreement.

XXXX

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be signed by their duly authorised representatives on the date first above written.

SIGNED, SEALED AND DELIVERED
BY THE HONOURABLE MINISTER OF STATE I (AIR TRANSPORT)
For and on behalf of
THE FEDERAL GOVERNMENT OF NIGERIA

In the presence of:

NAME: S. D. KASSIM
ADDRESS: fed Min of Transport (Air Transport)
OCCUPATION CIVIL SERVANT

SIGNATURE:

THE COMMON SEAL OF THE
FEDERAL AIRPORTS AUTHORITY OF NIGERIA
Was hereunto affixed in the presence of:

MANAGING DIRECTOR

SECRETARY

THE COMMON SEAL OF
BI-COURTNEY LIMITED
Was hereunto affixed in the presence of:

DIRECTOR

SECRETARY

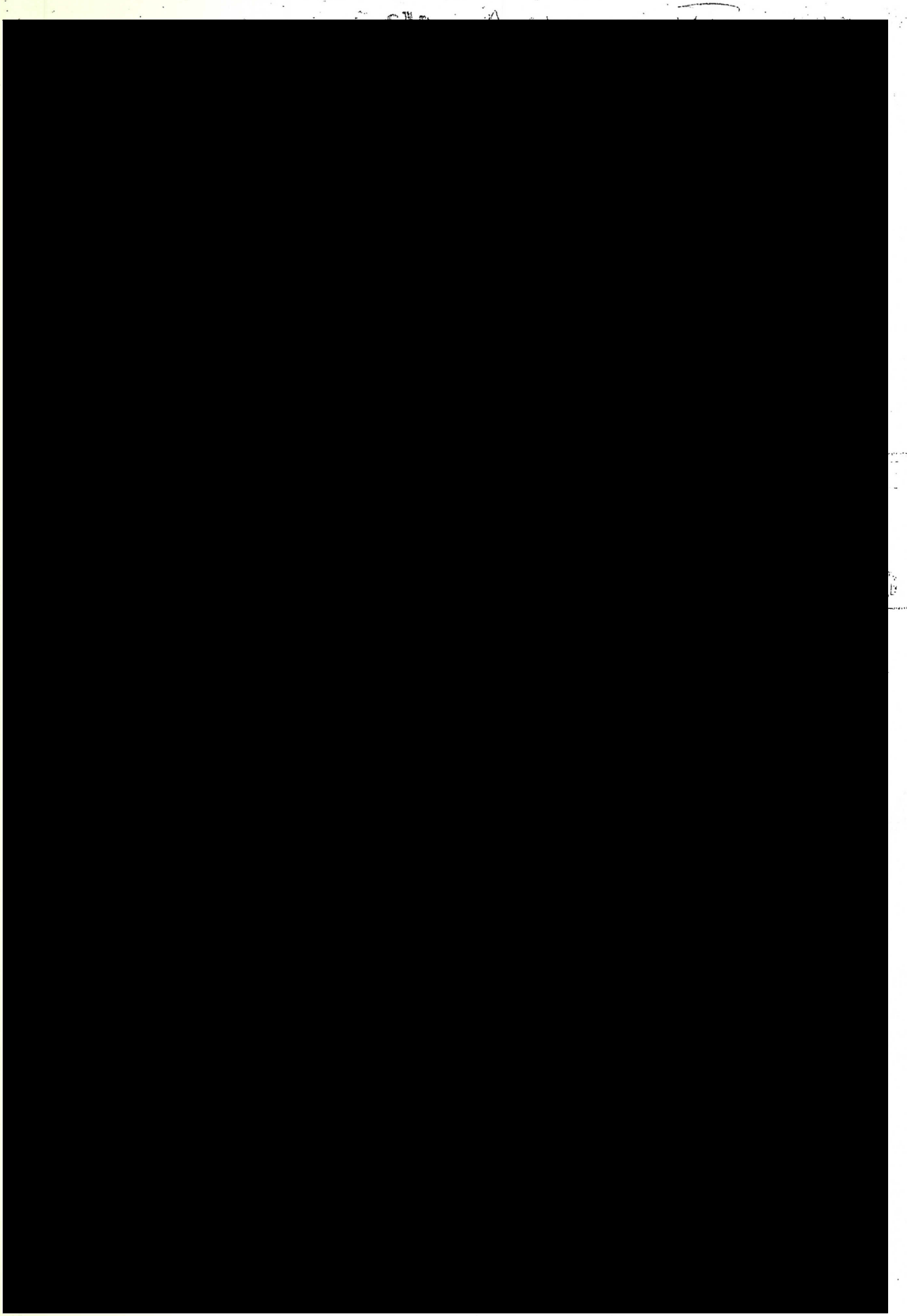
AMALGAMATED NOMINEES LTD

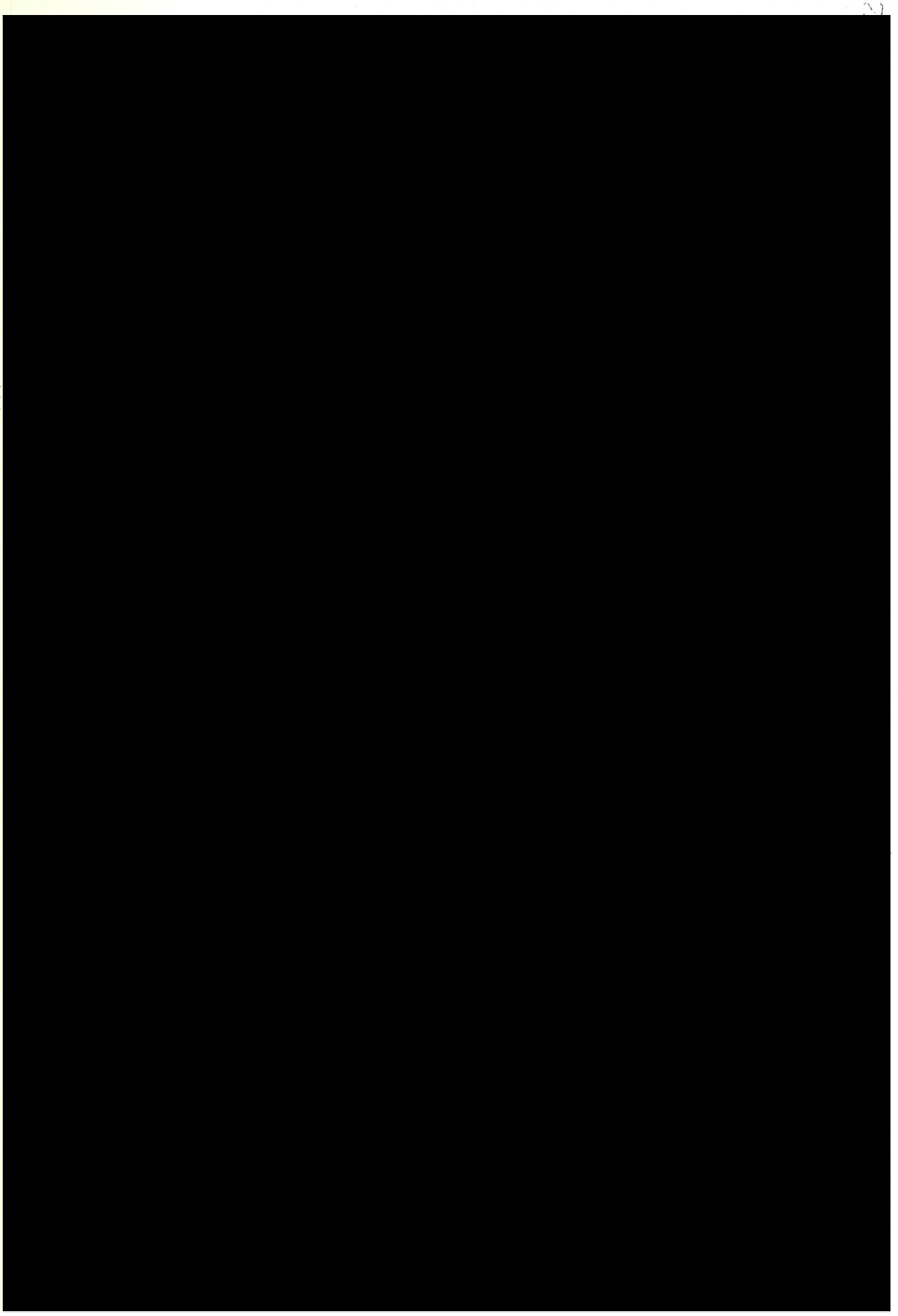
THE COMMON SEAL OF
STABILINI VISINONI LIMITED
Was hereunto affixed in the presence of:

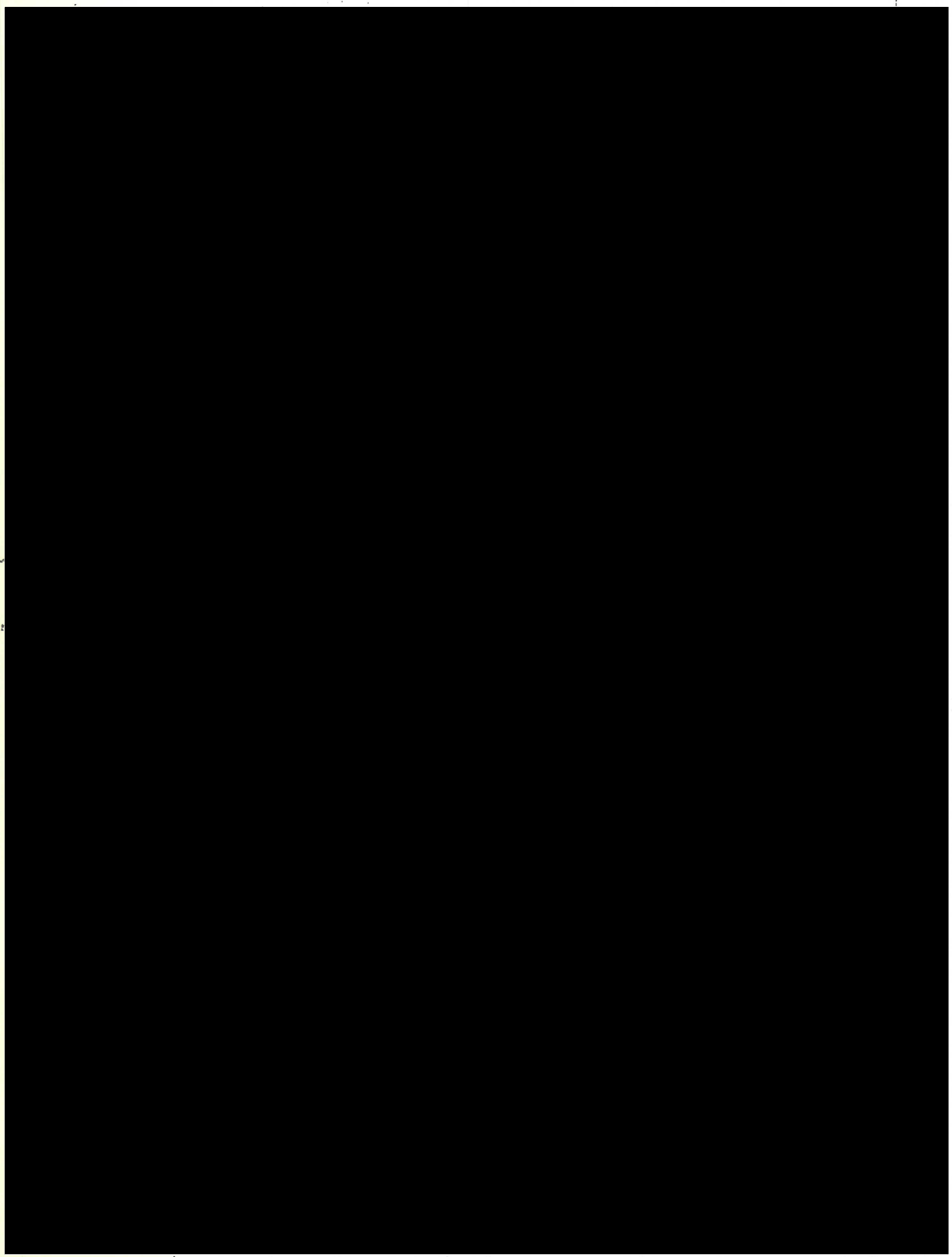
DIRECTOR

SECRETARY

AMALGAMATED NOMINEES LTD.







ANNEX W

REVIEW REPORT ON THE BUILD OPERATE & TRANSFER CONCESSION

ON

THE NEW DOMESTIC TERMINAL BUILDING AT MURTALA MUHAMMED AIRPORT IKEJA.

GRANTED TO THE BI COURTNEY CONSORTIUM

PREPARED BY

First County Consultants

GRESHAM SUITE, PLOT 306/307, JIDE OKI STREET,
VICTORIA ISLAND. LAGOS

OCTOBER 2006

This document has been prepared for the specific information of ***FEDERAL AIRPORTS AUTHORITY OF NIGERIA (FAAN)*** and may not be circulated to any other persons without the prior written consent of First County Consultants. First County Consultants disclaims liability for any losses that may arise from the unauthorized use or disclosure of the contents of this document.

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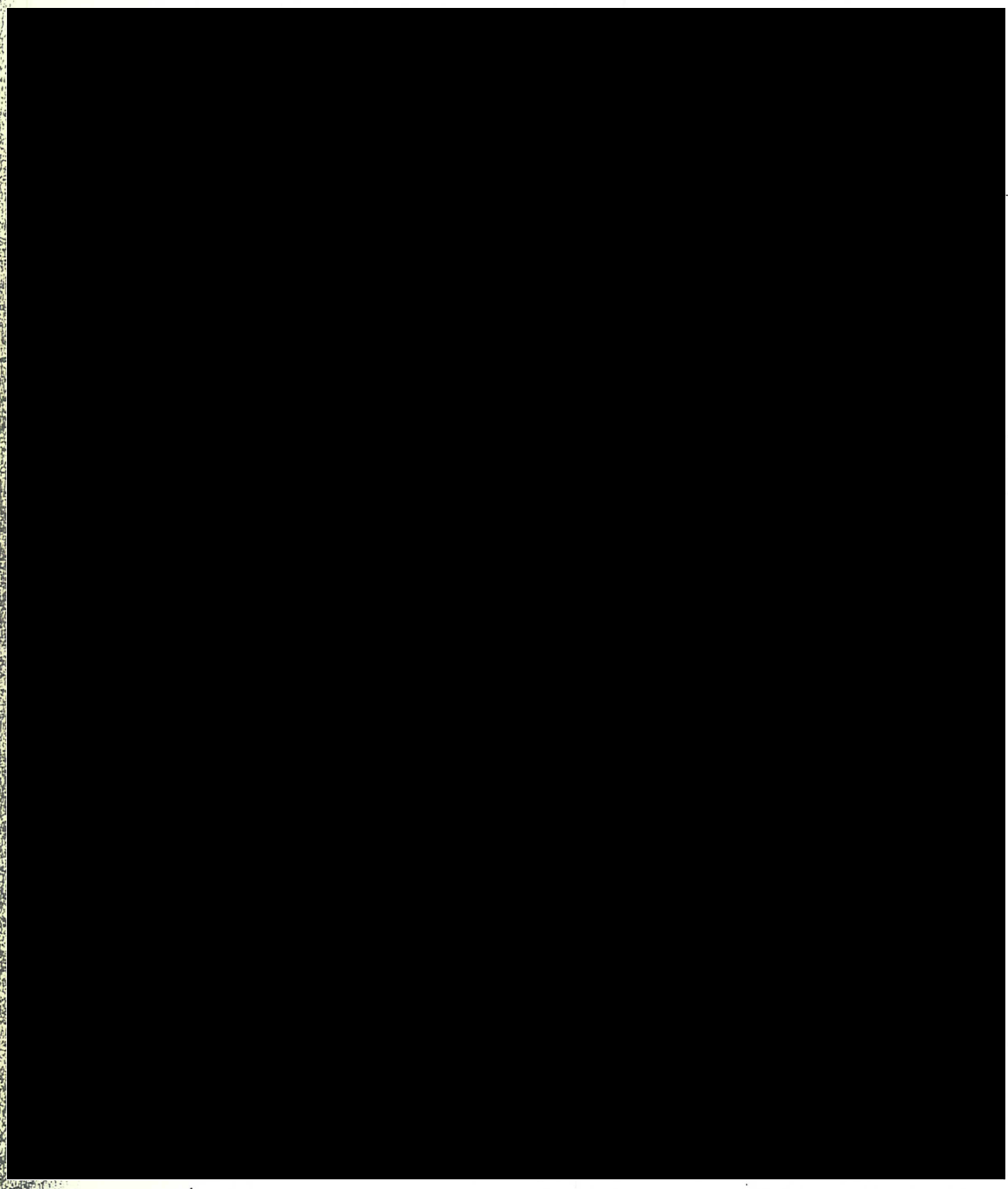
5. These two estimates which are exclusive of the following cost elements:

- Value Added Tax and
- Concessionaire's Overhead
- Cost of funds

is as presented below:



6. In order to incorporate the omitted figures to the total project costs, we added the excluded cost items in the following order:

EXECUTIVE SUMMARY

Introduction

1. This document is the report of First County Consultants on the review of the Build, Operate and Transfer Concession granted to Bi-Courtney Consortium relating to the New Domestic Terminal Building at the Murtala Muhammed International Airport Ikeja.

Scope of Assignment

2. The Scope of the review assignment which we were commissioned to undertake include the following:

   a carrying out due diligence investigation of project cost based on submissions client projections (feasibility report), expended costs and estimated cost to complete.

   b Carrying out revenue verification and audit as it relates to the project, evaluating the project's revenue potential including the identification of the optimal revenue profile of the project

   c determination of an optimal payback period of the BOT Project based upon (a) and (b) above.

   d verification of adequacy or otherwise of financing sources of the Concessionaire and advising on the effect on the BOT arrangement thus convincing the concessionaire to go for a debt-equity mix mode of financing rather than 100% debt financing.

Due Diligence Review of Project Cost

3. We carried out a Due Diligence Review of the project cost as required by the terms of reference given to us. Our review was based upon an indepth review of various costs estimates submitted by Bi-Courtney Consortium, James Cubit Associates as well as the Engineering Directorate of Federal Airports Authority of Nigeria (FAAN). Taking an holistic view of the project, we increased the project cost by the sum of N367,50,000 being the cost of various fixed assets to be used by the Concessionaire, (in running the terminal) which were not included in the cost estimates submitted.

4. In the determination of the project cost for the purpose of determining the optimal payback period, we took into consideration two versions of costs projection which are as follows:

   a) Estimated costs computed by James Cubit
   b) Estimated costs computed by the Engineering Services directorate of FAAN.

- Concessionaire's Overhead
- Cost of funds; and
- Value Added Tax

Debt-Equity Mix

7. We also took into consideration the provision that the project shall be financed by a combined mix of debt of (60%) and equity (40%).

8. With the certainty that, based on the revenue profile of the project, any debt-financed cost that is more than N9 billion will result to the project payback period going into perpetuity. We made representations to the Concessionaire during the course of our discussion. Based on this, an understanding was reached with Messrs Bi-Courtney, that the project cost be financed on a debt to equity ratio of 60:40.

9. This position is reinforced by Article 12.1 of the Concession Agreement which states that:
"The Concessionaire shall be solely responsible for obtaining all the finance, both equity and debt necessary to construct operate and maintain the terminal for the duration of the concession period"

Cost of Funds

10. Bi-Courtney Consortium in its feasibility study for the project submitted to FAAN itemised the pattern of disbursement for the loan to be obtained. The cost of fund is estimated at 25% as interest payable during the Construction period.

11. However, in the determination of the cost of funds during the construction period, a blanket rate of 20% was used in a report submitted to FAAN by Messrs James Cubit & Associates based on the firm's vetting of submissions made by Messers Bi Courtney of September, 2005 irrespective of the pattern disbursement. This rate of 20% was also adopted by us for the purpose of computing the construction period's cost of funds.

12. We however tried to consider different alternatives by flexing the cost of funds by using 25% as the blanket rate instead of 20% to accommodate an alternative computation in line with Bi-Courtney's feasibility report.

Determination of Project Cost

13. In the determination of the project cost incorporating both the debt equity mix, we approached the issue from two angles.

    a) The evaluation of the project cost from the viewpoint of both James Cubit and the Engineering Services Directorate of FAAN.

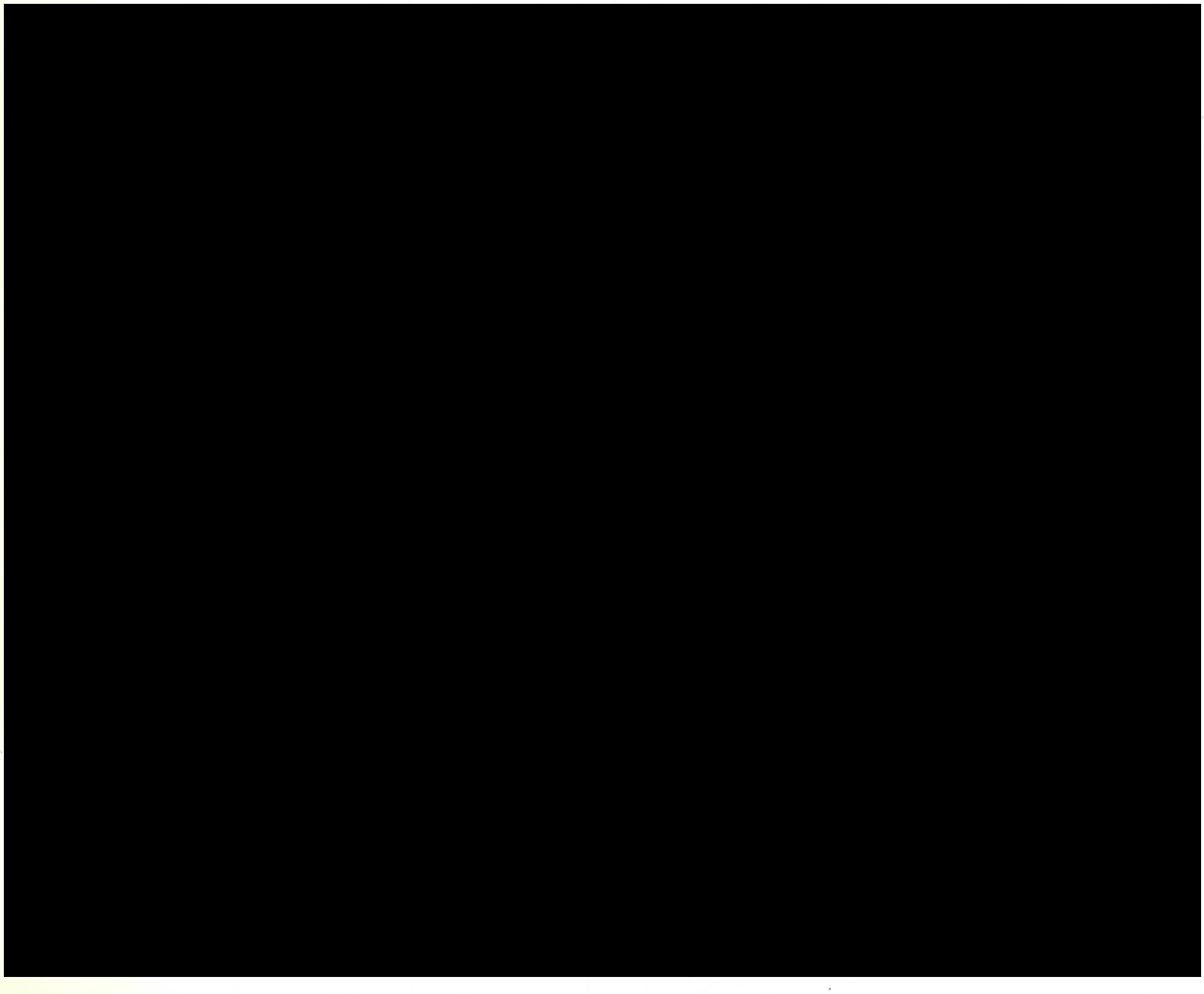
b) the consideration of the cost of funds during construction period as 20% on the one hand and flexing it to 25% on the other hand

c) the splitting of the pre-cost of fund project cost into the debt and equity mix and computing interest only on the debt portion. In this case the total debt will be 60% of the project cost plus interest expenses thereon. This however will distort the debt/equity mix formula of the project.

d) The alternative treatment of cost of funds as part of the total project cost before splitting the cost into debt and equity or as part of the project cost after splitting the pre-cost of funds project costs into debt and equity components of 60:40.

14. In all, these alternative considerations give eight different project cost scenarios which are used in carrying out this evaluation.

15. These eight perspectives of the project costs are as follows:



revealed that there are specific revenue sources allowed to be collected by the concessionaire. This led to a further evaluation of the revenue profile of the project taking into consideration appropriate economic variables and projected passenger and user traffic.

18. The revenue profile as contained in the Concession Agreement as contained in Article11.2 of the Concession Agreement is as follows:

"The aeronautical and non-aeronautical charges and tariffs collectible by the concessionaire from users of the terminal during the concession period will be derivable from the following sources approved by FAAN;

(a) passenger service charge-collectible from departing passengers including avio-bridge charges;
(b) VIP Lounge Usage Charges
(c) Car park charge
(d) Rents/concession franchise fees
(e) Service charge payable by concessionaires within the terminal
(f) Advertisement royalties payable by advert concessionaires within the terminal excluding advertisement royalties accruable from advertisements along the roads; and
(g) Associated revenue derivable from the use of associated facilities in the terminal."

19. The revenue sources considered for this report (based on the foregoing) and the basis of revenue recognition are as follows:

No		Unit/Basis	No of units
1	**Lounge Income/Airport Tax**		
1.1	Executive Lounge		
	Subtotal Lounge Income/Airport Tax		
2	**Space Rental Revenue**		
2.1	20 sq metres - Airlines Operators	Per sq metre	5,028
2.2			
2.3			
2.4	Service Recovery Charge	20%	
2.5	Electricity Recovery Charge	175%	
	Subtotal Space Rental Revenue		
3	Meeting/Conference Center		
3.1	4 Meeting Rooms	Rooms	
3.2	1 Conference Center - Wednesdays & Sundays	Center	

16. Our analytical approach shall include the evaluation of the project Payback Period based on the project cost alternatives identified above. From all the scenarios evaluated we shall recommend an appropriate Payback period and Concession period for the project.

Revenue Verification

17. We carried out a review of the revenue sources of the project based on existing sources of revenue collected by FAAN and revenue projections contained in the Bi-Courtney feasibility report obtained from FAAN. This formed the basis of the preliminary report issued by us. However a further review of the Concession Agreement between FAAN and Bi-Courtney

return on equity is computed on a flat basis rather than on reducing balance basis.

Determination of the Optimal Payback Period

23. We carried out a review of the revenue and cost profile of the project with a view to arriving at the optimal payback period.

24. The variables taken into consideration in the determination of the optimal payback period include:
    - The revenue profile of the project
    - The project cost up to completion
    - The Operating and Maintenance (O&M) costs to be paid to a contracted offshore O&M consultants
    - The project maintenance and replacement costs
    - The financing costs (interest charges) on the debt portion of the total project cost
    - The repayment of the debt portion of the total project costs
    - The recovery period for the equity finance portion of the total project costs
    - The recovery of the establishment (overhead) cost of the project
    - The recovery of the staffing/manpower costs of the project

Verification of the Adequacy of Financing Sources

25. The nature of the project funding which was initially planned to be 100% financed by debt necessitated a discussion on the financing structure on the project between us and the concessionaire. This however was prior to the obtainance of a detailed project cost figure from FAAN. It was agreed that 40% of the total project cost be agreed as equity financing while the balance of 60% be agreed as debt financing.

Preliminary Reports

26. At the onset of carrying out this assignment, we conducted a preliminary review of the project as regards its costs (both construction as well as operating and maintenance) with a view to getting a quick understanding of issues to be resolved to pave way for the final report. The Preliminary report issued was based upon the available information as at that time. It is noteworthy to understand that there was a relative paucity of information about project costs, data relating to revenue profile as well as the profile of the revenue permissible by the Concession Agreement for the Concessionaire to collect as the Commercial & Business Development Directorate as at then could not obtain a copy of the Concession Agreement.

27. The resolution of some of the issues raised in this Preliminary Report enabled the review of the Project costs (by James Cubit and FAAN's Engineering

3.3	1 Conference Center - 8 other days per month	Center	
	Subtotal Meeting/Conference Center		
4	Car Hire/Car Park		
4.1	Car Hire	Cars	100
4.2	Car Park	Cars	Bicourteney Estimate
4.3			
4.4	Cargo Vehicle Surcharge	Vehicles	9,125
	Subtotal Car Hire/Car Park		
5	**Passenger Related Charges**		
5.10	Passenger Service Charge	Passengers	2,000,000
5.2	Walk ways (Boarding Bridges)	Aircrafts	Bicourteney Estimate
5.3	Trolley Services	Passengers	
5.4	Left Luggage Surcharge	Luggage	
5.5	Avio Bridge Charges	Luggage	
	Subtotal Passenger Related Charges		
6	**Advert Related Income**		
6.1	Advert & Billboard Royalty		
	Subtotal Advert Related Income		

Loan Repayment

20. The loan repayment was evaluated at an annual interest rate of 20% per annum. This is based on the consideration that the Minimum Rediscount Rate (MRR) of the Central Bank of Nigeria is 17%. A spread of 3% above MRR is considered appropriate by us as an all inclusive cost of funds. Interest is computed on a compound basis while repayment is based on 80% of the net cashflows of the project after meeting up with overheads and other cash outflows.

Recoupment of Equity

21. In carrying out the determination of the optimal payback period, we took into consideration the need for the concessionaire to recoup its equity investments as it will have to hand over the project to FAAN at the end of the concession period and practically "walk away". Therefore it shall need to recoup its investment fully with appropriate opportunity cost as represented by the cost of equity. The cost of equity is evaluated at 20% per annum, equivalent to the cost of debt.

22. The residual cash flow after deducting the loan repayment for that year shall be applied to the recoupment of amount due to equity holders. However the

Current Substantive Report

35. This current report is based upon the new project cost figures made available to us by the Commercial & Business Development Directorate of FAAN. The two project costs figures were as submitted by
    - James Cubit Associates and
    - Engineering Services Directorate of FAAN.

36. A further review of the revenue profile especially as detailed in the Concession Agreement revealed some income sources that were either underestimated based on project capability (e.g. Car Park income) or omitted totally as a result of non inclusion in FAAN statistics given to us (e.g. Avio-bridge/Walkway Charges). The estimates used in this report for these revenue sources were derived from the KPMG Feasibility report submitted to FAAN by Bi Courtney, and taken by us as Bi-Courtney's estimate of revenue earnable from these sources.

Payback Period

37. The payback period is computed for each of the project cost options which is based upon the number of years it will take to recoup both debt capital and equity capital. It must be emphasised here that both recovery period for both debt and equity recovery takes place from the residual cash flow after a portion of the debt capital is being recovered. For each of the eight alternative project cost options considered, debt and equity recovery period are as follows:

PAYBACK IN YEARS

Directorate), the revaluation of the project financing structure as well as the proper determination of the revenue profile.

First Substantive Report

28. After in-depth project analysis and review of revenue and cost variables including meetings and discussions with FAAN and Bi Courtney officials, as well as a careful perusal of the Concession Agreement, we arrived at a substantive cost and revenue profile to enable us arrive at the optimal payback period.

29. The first substantive report was based upon the project cost of N15.1 billion given to us by the Commercial & Business Development Directorate of FAAN as the cost figure confirmed from the then Managing Director. The position we were made to accept was that that figure was the agreed upon figure between FAAN and Bi Courtney Consortium, and that its review was outside the scope of our services.

30. Based upon this figure, we discovered that the payment period shall be in perpetuity should the entire cost be treated as 100% debt financed. . This led to a consensus reached that the project cost be restructured at 60% debt (i.e. N9 billion) and 40% equity (i.e. N6.1 billion)

31. As a result of the foregoing, we were able to determine a 27 year period for the recoupment of the loan using an interest rate of 15% per annum. It is noteworthy that at that point any cost of fund above 15% based on the revenue profile would have been injurious to the sustainability of the project.

32. After considering various equity recovery options, we used the linear recovery method for the equity capital recovery taking a cue from the recovery period for the debt capital portion of the project cost. We computed the recovery period at 18 years. This was the basis of the 45 years recommended by us in the substantive report which we expected then to review with the management of FAAN before finalisation.

33. The effect of the report generated a further interest by FAAN management in review of the cost of the project. A review of the cost by the Engineering Service Directorate of FAAN and James Cubit Associate revealed that the project cost was well below the earlier N15.1 billion. In fact will all costs included, the maximum cost that can de estimated according to our independent review is N12.22 billion while the minimum cost was N9.63 billion.

34. It is these costs and the further reviewed revenue project that form the basis of this current substantive report.

Recommended Concession Period

38. Based on the result of the analysis presented above, details of which are attached as appendix to this report, the maximum payback period for the project is 23 years. As at this point, both equity and debt capital would have been recouped irrespective of the financing option adopted. We recommend (subject to negotiations) that additional 10 years be added to the payback period to arrive at a concession period of 33 years. We recommend that concession period for the project be put at 33 years.

~~ANNEX~~ VIII

BOT REVIEW REPORT

- The ascertainment of the management, operating and maintenance cost of the project; and
- The preparation of project cash flows to determine the optimal repayment period.

Project Background

5. This project to which the BOT arrangement relates consists of an ultra modern Airport Terminal Building with modern facilities and appurtenances as well as a multi-level car park. The BOT agreement dated April 24, 2003 was executed between the Federal Government of Nigeria and the Bi-Courtney Consortium. Under the Agreement, Bi-Courtney Consortium is to be granted full monopoly of all domestic aviation traffic under the control of FAAN in Lagos State during the period of the BOT concession. Therefore, Bi-Courtney Limited will have the market share of 100% as far as the Ikeja Domestic Terminal is concerned.

6. The following are the parties to the concession agreement signed:

   (i) Bi-Courtney Limited – The Concessionaire

   (ii) Stabilini Visinoni-Limited – The Sponsor

   (iii) Federal Airports Authority of Nigeria – The Grantor

   (iv) The Federal Government of Nigeria.

7. A supplementary concession agreement was executed on 26th June,2004 extending construction period to 33 years. The initially agreed upon concession period is 12 years after which the concessionaire, Bi-Courtney Limited, is to transfer the Terminal Building to the Federal Airports Authority of Nigeria (FAAN) in a well-maintained state.

8. The Concessionaire submitted to FAAN a Feasibility Study conducted on its behalf by KPMG which faulted the feasibility of the 12 years concession period, thus necessitating the review of the concession period. Some findings in this report are used as added inputs into this BOT report being submitted by us.

Method of Approach

9. In carrying out our assignment we obtained information from various sources. The figures used in this report were based on:

   - Data obtained from FAAN (provided on request) including project cost estimate submitted by James Cubit Associate
   - Data obtained from Bi-Courtney directly (during meetings) and indirectly (through the feasibility study prepared by KPMG)

(1)

Introduction

1. This document is the report of the review carried out by First County Consultants in line with the directives given to us by the Federal Airports Authority of Nigeria as Financial Adviser to the Authority to carry out a review of the Build-Operate and Transfer of the New Domestic Airport Terminal Building at the MMA, Lagos entered into by FAAN with the Bi-Courtney Consortium (BCC). The objective of the review is to advice FAAN on the optimal concession period for the BOT arrangement with the Bi-Courtney Consortium based on the project's revenue and cost profile.

2. The project review exercise was limited to financial evaluation and review of payback period determination only. It excluded any technical review or review of legal status of the project. Accordingly we did not carry out a legal or technical review of the project.

Scope of Assignment

3 The Scope of the review assignment which were commissioned to undertake are as follows:

- carrying out due diligence investigation of project cost based on client projections (feasibility report), expended costs and estimated cost to complete.
- carrying out revenue verification and audit as it relates to the project , evaluating the project's revenue potential including the identification of the optimal revenue profile of the project
- determination of an optimal payback period of the BOT Project based upon (a) and (b) above.
- verification of adequacy or otherwise of financing sources of concessionaires and advising on the effect on the BOT arrangements' thus convincing the concessionaire to go for a debt-equity mix mode of financing rather than 100% debt financing.

Objectives of the Report

4. The objectives of this review therefore include :

- The evaluation of the revenue profile of the project
- The evaluation of the cost of the project (which estimate is deemed at the time of this report to be inclusive of the cost to completion and associated finance charges)

- Demand potential and growth rate of revenue profile of the existing and proposed facilities.
- Contingency Cost .
- FAAN Tariff Structure.
- Evaluated capacity of the project facilities.
- Inflation rate (for adjustment of historical figures).
- The Concession Agreement.

10. In the determination of costs over the review period, the following costs were considered:

- Capital cost of equipment, design cost, building cost and other pre-operating cost. i.e the cost of the project
- Operating and maintenance costs including Material consumption, utilities consumption, manning/management personal requirements and their corresponding costs, both currently and over the first twelve years of operation.
- Operation and Maintenance fees payable to the O&M Manager under the O&M Agreement
- Concession fee payable to FAAN.
- Depreciation charge for the assets in the terminal building.

11. As a result of the foregoing, we obtained an estimate of:

(i) Project Cost derived from representation from FAAN and James Cubit Associates (Cost Consultants to FAAN)

(ii) The operating and maintenance costs adapted from the KPMG report, prepared for Bi-Courtney Consortium.

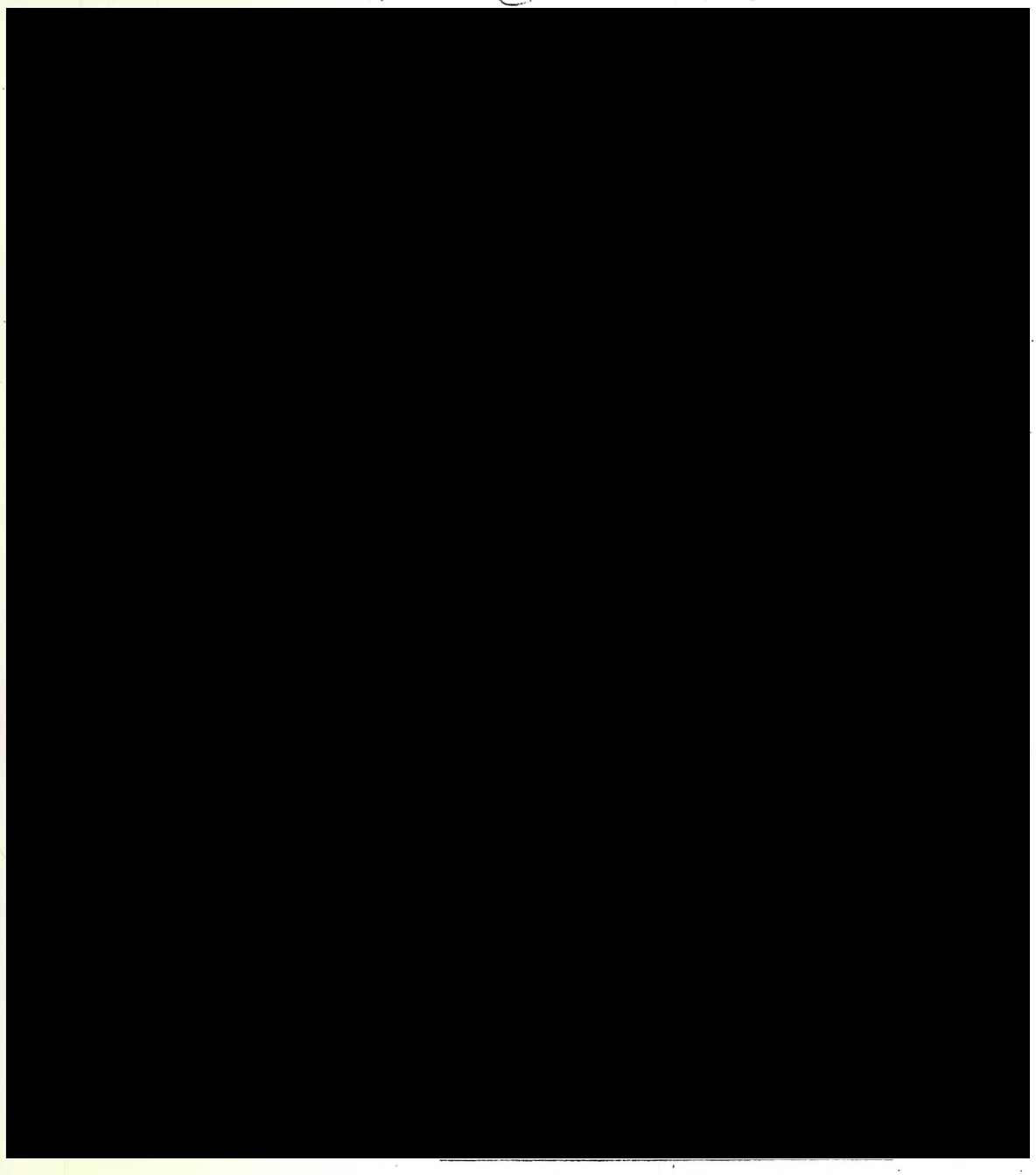
(iii) Revenue from the project using combined information from FAAN, the KPMG Report submitted by Bi Courtney and discussions with Bi-Courtney and

(iv) A forecast of cash flows, of the project to determine its payback period.

Project Scope

12. The total land area provided for both the terminal building and multi-storey car park is 25,000 square metres while the total car park space is 28,000 square metres The project shall provide the following facilities :

(5)



17. In the determination of project costs for the purpose of determining the optimal payback period, we took into consideration two versions of costs which are as follows:-

a) Estimated costs computed by James Cubit
b) Estimated costs computed by the Engineering Services directorate of FAAN.

These two estimates which are exclusive of

- Value Added Tax and

(4)

- An arrival and a departure hall on two levels with an appropriate holding capacity for passengers. This will include a general and executive lounges. The two levels shall be linked by a central escalator as well as by staircases in the wings.
- Four walkways (passengers Boarding Bridges) for passenger to embark and disembark from and into aircrafts.
- Information Display System.
- Rentable space to accommodate various businesses such as banks, post office, bookshops, jewellers, photographers, restaurants, bars, eateries, bureaux-de-change medical and allied services, hotel reservations, car hire/rental services and so on.
- Digital Voice Recorders and Public Address Systems.
- Ticketing offices, check-in counters, and baggage handling facilities
- Adequate parking facilities in multi-storey level car park.

Construction Period

13. The construction of the project was agreed to take approximately 33 months.

Project Cost

14. The estimated cost of the project was initially agreed at N9.235 billion. It was subsequently increased to N15.1 billion. This figure formed the basis of our earlier substantive report which put the concession period at 45 years.

15. The estimated period was deemed high enough to warrant a review of the project cost by FAAN. A meeting was thereafter held between FAAN's Management and First County Consultant whereby, it was observed that the cost of the project be reviewed as the figure of N5.1 billion seemed too high. Consequently, both James, Cubit and FAAN's Engineering Services Directorate were directed to determine the real cost of the project instead of simply using a Bi Courtney derived figure.

16. After extensive reviews the following project cost figures were submitted by both James Cubit and FAAN's Engineering Services Directorate:

(6)

- Concessionaire's Overhead
- Cost of funds

is as presented below:

[redacted]

18. In arriving at the total project costs, we added the above cost items in the following order:

- Concessionaire's Overhead
- Cost of funds; and
- Value Added Tax

(+)

Debt-Equity Mix

19. We also took into consideration the provision that the project shall be financed by a combined mix of debt of (60%) and equity (40%).

20. With the certainty that based on the revenue profile of the project, any debt financed cost that is more than N9 billion will lead to the project payback period going into perpetuity, an agreement was reached during our firm's meeting with Messrs Bi-Courtney, that the project cost be financed on a debt equity ratio of 60:40.

21. This is reinforced by article 12.1 of the Concession Agreement which states that:
"The Concessionaire shall be solely responsible for obtaining all the finance, both equity and debt necessary to construct operate and maintain the terminal for the duration of the concession period"

Cost of Funds

22. Bi-Courtney Consortium in its feasibility study itemised the pattern of disbursement for the loan to be obtained. This cost of fund is estimated at 25% as interest payable during the Construction period.

23. However, in the determination of the cost of funds during the construction period, a blanket rate of 20% was used in a report submitted to FAAN by Messrs James Cubit & Associates based on the firm's vetting of submissions made by Messers Bi-Courtney of September, 2005 irrespective of the pattern disbursement. This rate of 20% was also adopted by us for the purpose of computing the construction period's cost of funds.

24. We however tried to consider different alternatives by flexing the cost of funds by using 25% as the blanket rate instead of 20% to accommodate an alternative computation by Bi-Courtney.

Determination of Project Cost

25. In the determination of the project cost incorporating both the debt equity mix, we approached the issue from two angles.

a. the consideration of the cost of funds during construction period as 20% on the one hand and flexing it to 25% on the other hand

b. the splitting of the pre-cost of fund project cost into the debt and equity mix and computing interest only on the debt portion. In this case the total debt will be 60% of the project cost plus interest expenses thereon. This however will distort the debt equity mix formula of the project.

c. The evaluation of the project from the viewpoint of both James Cubit and the Engineering Services Directorate of FAAN.

d. The treatment of cost of funds as part of the total project cost before splitting the cost into debt and equity or as part of the project cost after splitting the pre-cost of funds project costs into debt and equity components of 60:40.

26. In all, these give eight different project cost scenario to be used in carrying out this evaluation. In all we evaluated the project from eight perspectives of the project costs which are as follows:

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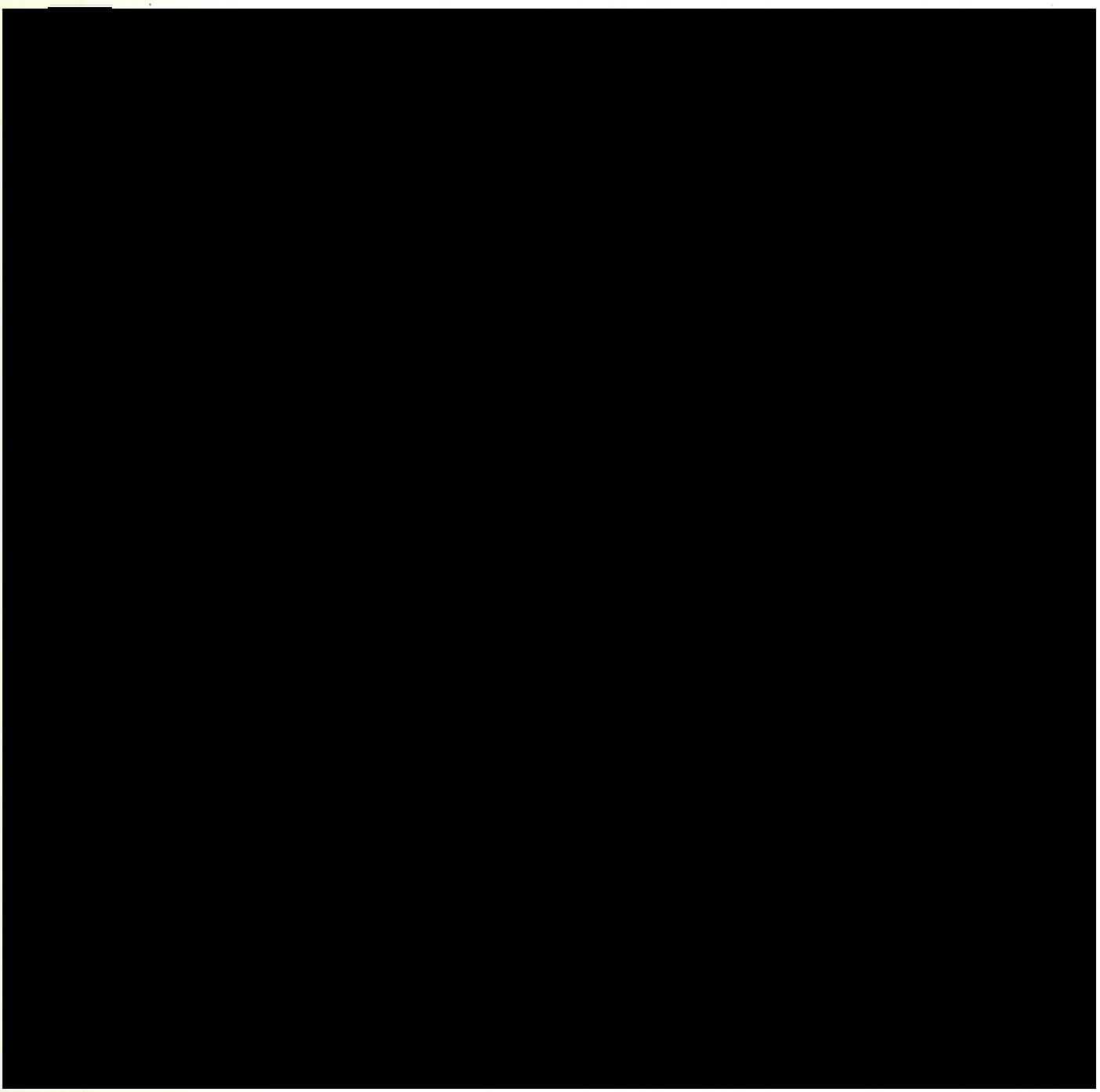
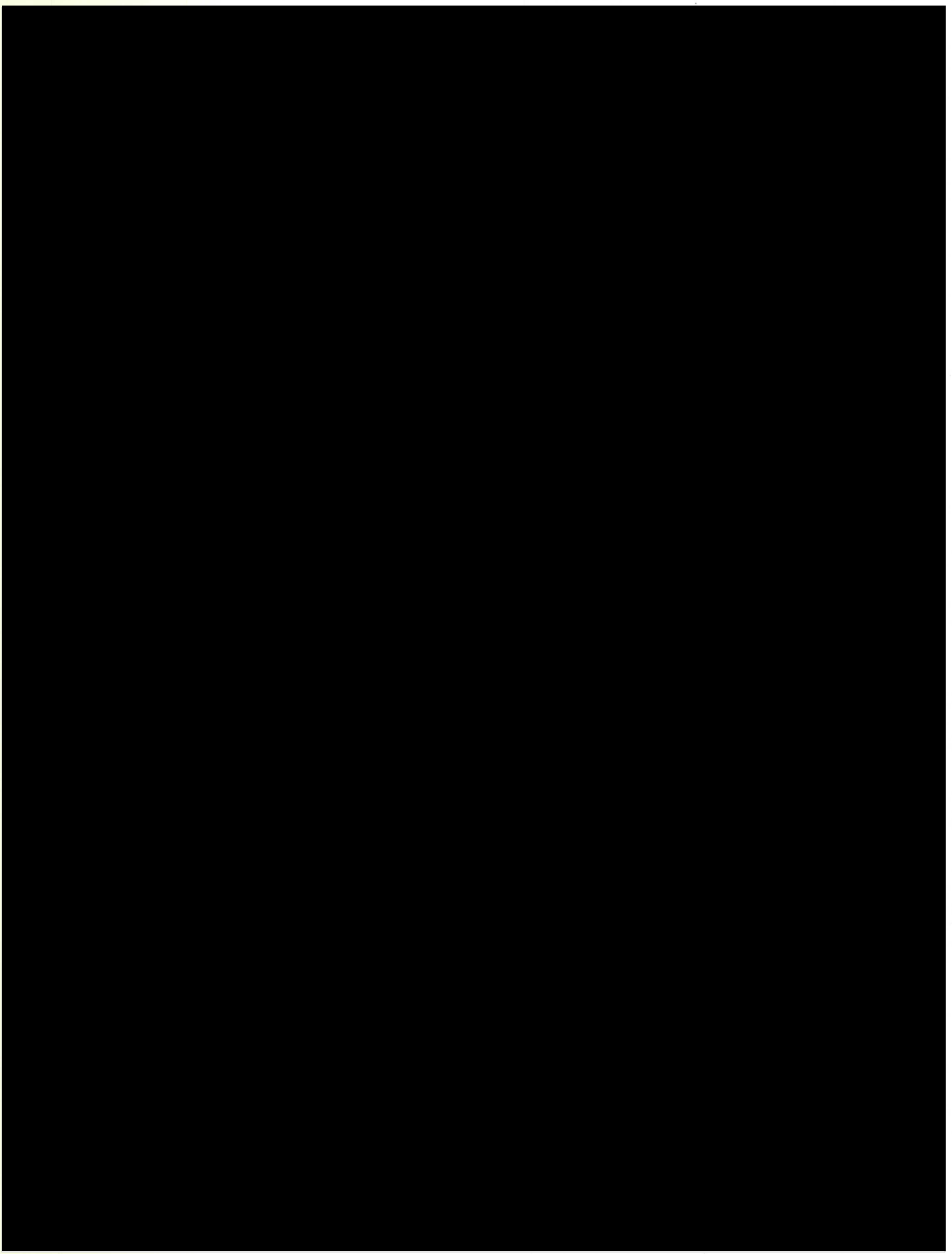
[redacted]

[redacted]

[redacted]

[redacted]





[redacted]

26. Our approach shall include the evaluation of the project Payback Period based on the project cost alternatives identified above and from all the scenarios evaluated recommend an appropriate Payback period.

Project Finance

27. Initially, the financing structure of the project has no equity content. Unlike most BOT projects which incorporates a specified percentage of the total cost as equity contribution by the concessionaire, the full cost of the project was projected borrowed from lenders. This scenario however was recommended for restructuring (and agreed upon) so that the project's financing structure will be made up of both debt and equity. Accordingly, 60% of the total project cost is recommended as long term debt financing while the balance of 40% shall be designated as equity. The recommended interest rate for the debt financing is recommended at 20% per annum based on a 3% spread above the prime lending rate of 17%. This rate is all-inclusive of all fees changeable on the loan.

Operation and Maintenance Management

28. The Concession agreement provides for an Operation and Maintenance Management (O&M) contract in order to ensure that the Murtala Mohammed Domestic Airport Terminal is operated and managed along the line of internationally acceptable standards. The O&M management firm will have the responsibility for the day-to-day management of the project. The O&M fee is 10% of turnover. In order to ensure that the airport is well maintained, 2.5% of the turnover is to be set aside and used for the cleaning and maintenance of the project in the first year..

Concession Fee

29. The concession agreement provides that the concessionaire shall pay to FAAN, 5% of its annual turnover from the project as Concession Fee.

Fixed Assets

30. It is projected that N367.5 million of the project cost will be used for the purchase of fixed assets (apart from the building) which will include vehicles, office equipment & computers, furniture & fittings and generating plant. This is made up as follows:

Item	Cost
Plant & Machinery	94,500,000
Motor Vehicles	52,500,000
Office Equipment	147,000,000
Furniture & Fittings	73,500,000
Total Project Cost	**367,500,000**

Depreciation

31. Depreciation of the various categories of assets is to be provided as follows:

Assets	Depreciation Rates
Buildings	10%
Vehicle	25%
Office Equipment & Computer	20%
Furniture and office Equipment	20%
Plant & Equipment	20%

Pre-Operating Costs

32. The pre-operating costs (as contained in the KPMG report, which is the only source of information for same) include expenses which are incurred before construction commences and those to be incurred during construction phase of the project. The pre-operation costs which are estimated at N1,382,569,918 include plan modification, feasibility study, legal advisory expenses and pre-operating administrative costs.

Preoperational Expenses include	N
Preliminaries	394,508,030
Professional Fees	288,500,000
Contingencies	50,000,000
Overheads	649,561,888
	1,382,569,918

General and Administrative Expenses

33. These are in respect of operational and logistics expense including training and travelling costs. The estimate for the first year after commencement of operation is as follows:

38. "The aeronautical and non-aeronautical charges and tariffs collectible by the concessionaire from users of the terminal during the concession period will be derivable from the following sources approved by FAAN:

a) passenger service charge-collectible from departing passengers including avio-bridge charges;
b) VIP Lounge Usage Charges
c) Car park charge
d) Rents/concession franchise fees
e) Service charge payable by concessionaires within the terminal
f) Advertisement royalties payable by advert concessionaires within the terminal excluding advertisement royalties accruable from advertisements along the roads; and
g) Associated revenue derivable from the use of associated facilities in the terminal."

Target Market

39. The target market for Bi-Courtney Limited-operated Domestic Airport Terminal include the following:

- Airlines (commercial and non commercial) operating on the domestic route. The facilities at the terminal and the quality of service will make it very attractive to Airlines to use the facilities to the maximum.
- Passengers going through the Terminal. The passenger traffic is quite high in Lagos Terminal and far higher than any other domestic Terminal in Nigeria. The passengers must receive value for the money they pay in form of airport tax by guaranteeing them comfort strong aesthetic appeal and quality service all the time.
- Business concerns – There are number of businesses that go on in the Domestic Terminal. Bi-Courtney Limited will grant tenancy to a number of businesses ranging from banking to trading to do their businesses. Therefore, Bi-Courtney Limited will have tenants that will also add value to the service offered in the Terminal. Good business relationship must be the watchword and the services offered to the businesses must be of high quality to ensure that the businesses are also contributing their quota to service offering.
- Visitors to the Domestic Terminal. Every Nigerian has the right to visit or travel through the domestic Terminal. Taxi parks are provided and visitors will also be provided with parking spaces at a fee. In fact, the parking space as provided in the architectural design is large enough and it is estimated that about 2000 visitors will be serviced daily. This is a large number for the company to make quite reasonable income.
- Meeting and conference rooms will be provided at the Airport. Passengers can converge from other parts of the country at the airport to

Stationery & Printing	1,600,000
Professional Services	18,000,000
Postage & Telephone	7,500,000
Marketing	6,200,000
Repairs & Maintenance	29,800,000
Power & Electricity	64,450,000
Insurance	89,000,000
Staff Training	5,630,000
Vehicle Repairs	6,300,000
Office Expenses	7,040,000
Medical	8,740,000
Sundry Expenses	80,000
	244,340,000

34. It is expected that the General and Administrative Expenses will increase by 5% per annum in the second and subsequent years.

Salaries

35. The projection for salaries as adapted from the KPMG feasibility report is as

Staff	**No**	N'000 **Annual Salary**	N'000 **Fringe Benefits**	N'000 **Total 2004**
Expatriate	2	4,900	4,900	19,600
Duty Manager	2	2,500	2,500	10,000
Shift Supervisors	4	1,250	1,250	10,000
Accountant	1	2,000	2,000	4,000
Chief Sec Officer	1	1,500	1,500	3,000
Airport Security	30	600	600	36,000
Cashier	2	720	720	2,880
Park Attendants	4	500	500	4,000
Driver	5	550	550	5,500
Total				**94,980**

36. The airport terminal shall operate on three shifts of eight hours per shift and this accounts for the large number of staff projected to manage the terminal. 100% of the basic pay is added as fringe benefits. Salary costs are estimated to increase at the rate of 10% per annum.

Revenue Profile

37. The revenue profile as contained in the Concession Agreement as contained in Article11.2 of the Concession Agreement is as follows:

hold meetings and disperse to their various destinations without having to go into town. This is an innovation that will yield income for the project.

- Billboards and Posters. These will be provided for advertisement of products and services within the terminal building including the car park.

Revenue Verification

40. We carried out a review of the revenue sources of the project based on existing sources of revenue collected by FAAN. This formed the basis of the preliminary report issued by us. However a further review of the Concession Agreement between FAAN and Bi-Courtney revealed that there are specific revenue sources allowed to be collected by the concessionaire. This led to a further evaluation of the revenue profile of the project taking into consideration appropriate economic variables and projected passenger and user traffic.

Pricing & Tariffs

41. The pricing and tariff structure adopted by this report is based on the most feasible consideration of various data sources reviewed for the purpose of determining the realistic income to be earned by the project. Sources considered include the concessionaire's proposed pricing plan for its facilities and services, and FAAN tariff structure and revenue profile of FAAN in the past years. The pricing structure forming the basis of the revenue projections used in this report is as contained in the table below:

	ANALYSIS OF REVENUE				
	Revenue Sources				
No		**Unit**	**# of units**	**Unit rate (in NGN)**	**Amount (in NGN)**
1	**Lounge Income/Airport Tax**				
1.1	Executive Lounge				200,000,000
	Subtotal Lounge Income/Airport Tax				**200,000,000**
2	**Space Rental Revenue**				
2.1	20 sq metres - Airlines Operators	Per sq metre	5,028	45,000	226,260,000
2.2					-
2.3					-
2.4	Service Recovery Charge	20%			45,252,000
2.5	Electricity Recovery Charge	175%		64,450,000	112,787,500
	Subtotal Space Rental Revenue				**384,299,500**

3	**Meeting/Conference Center**				
3.1	4 Meeting Rooms	Rooms			
3.2	1 Conference Center - Wednesdays & Sundays	Center			
3.3	1 Conference Center - 8 other days per month	Center			
	Subtotal Meeting/Conference Center				-
4	**Car Hire/Car Park**				
4.1	Car Hire	Cars	100	25,000	2,500,000
4.2	Car Park	Cars	Bicourteney Estimate		216,000,000
4.3					-
4.4	Cargo Vehicle Surcharge	Vehicles	9,125	2,000	18,250,000
	Subtotal Car Hire/Car Park				**218,500,000**
5	**Passenger Related Charges**				
5.10	Passenger Service Charge	Passengers	2,000,000	500	1,000,000,000
5.2	Walk ways (Boarding Bridges)	Aircrafts	Bicourteney Estimate		189,000,000
5.3	Trolley Services	Passengers			12,000,000
5.4	Left Luggage Surcharge	Luggages			-
5.5	Avio Bridge Charges	Aircrafts			-
	Subtotal Passenger Related Charges				**1,201,000,000**
6	**Advert Related Income**				
6.1	Advert & Billboard Royalty				100,000,000
	Subtotal Advert Related Income				**100,000,000**
	TOTAL				**2,103,799,500**

Revenue Projection

42. There are several sources form which the project will generate income. These include Lounge Income, Space Rental, Car Park fares, Airport Tax, Rental from Conference and Meeting rooms, Adverts and Walkways. Some of these sources are as explained below:

(i) **Lounge Income**

Lounge Income shall be earned from VIP Lounge alone as the General Lounge earns no income. It is estimated that the revenue from this source for the first year of operations shall be N200,000,000.

(ii) **Space Rental Revenue**

The lettable space at the New M.M Domestic Airport Terminal is 5,028 sq metres made up of:

Ground Floor	268m^2
Upper Ground Floor	930 m^2
First Floor	2630 m^2
Upper First Floor	1200 m^2

According to FAAN Tariff structure the approved rate is N30,000 per square metre per annum. However a rate of N45,000 is used as a result of the upgraded facilities. This translates to N226,125,000 for the first year. This shall increase at the rate of 10% every two years.

(iii) **Electricity Recovery**

This is charged at NEPA bill plus 75% plus 300 per KVA demand. The electricity charge estimated for the project according to the initial KPMG report of 2004 was N64,450,000 for the first year. Recovery therefore shall be 175% of this amount. It is treated as an inflow/income since the electricity cost has already been regarded as an outflow as part of expenses.

(iv) **Service Recovery Charge**

This is charged at the rate of 20% on rent.

(v) **Conference Centre and Meeting Rooms**

These shall be assumed to be part of lettable space and therefore no separate revenue shall be recognised for the purpose of this report.

(vii) **Car Hire**

There is expected to be 100 cars on car hire at the rate of N25,000 per Car Hire Permit. This amounts to N2,500,000 per annum.

(viii) **Car Park Rental Revenue**

The facility has a multi storey car park. However we could not obtain the capacity of the car park. While Bi-Courtney estimated that only N20,400,000 can be earned from the new multi-storey car par, FAAN's records showed that the Authority earned N34,069,633 from the existing car park in 2005. With an envisaged bigger parking capacitywhich is a multiple of existing capacity, the new car park is expected to generate a multiple of what was earned by FAAN from the existing parking facility. We believe for the purpose of this report that car park fees will be N216 million for the first year of operations. This shall be expected to increase at the rate of 7.5% per annum.

(ix) **Car Stickers**

For conservatism purposes, no income is expected to be earned from car sticker revenue.

(x) **Cargo Vehicle Surcharge**

Cargo Vehicles entering the terminal building are expected to be 9,125 per annum (at the rate of 25 vehicles per day) with a surcharge rate of N2,000. Examples include those vehicles bringing in newspapers magazines etc to be air-freighted by passenger flights. This shall be N18,250,000 for the first year of operation. It shall increase at the rate of 7.5% per annum.

(xi) **Passenger Service Charge**

Passenger Service Charge is currently being charged at the rate of N350 per passenger. Total passenger traffic (domestic departures only) at the MMA for 2005 was 1,151,743.(2004:1,149,459). It is assumed that there will be 2,000,000 passengers when the enlarged facility is put in place and the rate of N500 per passenger is envisage as air fares are increasing. This put the revenue for the first year at N900 million. It is expected to increase like most other revenue at the rate of 7.5% per annum.

(xii) **Walkways (Boarding Bridges)/ Aviobridges**

Another significant source of income is the walkways through which passengers are expected to embark and disembark into and out of the aircrafts. The project has four such walkways. The airlines will be

charged a fee of N15,000 per aircraft using the walkways. The number of aircrafts expected to use the walkways per day is 90.This for a 350-day year shall be N472.5 million The number is expected to increase at an annual rate of 5%. However for conservatism purposes, Bi-Courtney figure as contained in the KPMG Feasibility Report of N189,000,000

(xiii) **Trolley Services**

This is estimated at N2,000,000 per annum. This shall be expected to increase at the rate of 7.5% per annum.

(xiv) **Left Luggage**

This is assumed to be so insignificant and difficult to forecast. It is therefore not taken into consideration for the purpose of this report.

(xv) **Advertising Space and Billboards**

There will be ample space for billboard of various sizes both at the car park and Terminal building. Professional opinion put the realizable income from this source at N100 million in the first year, growing at an annual rate of 7.5%

Findings

3. After in-depth project analysis, our findings include the following:

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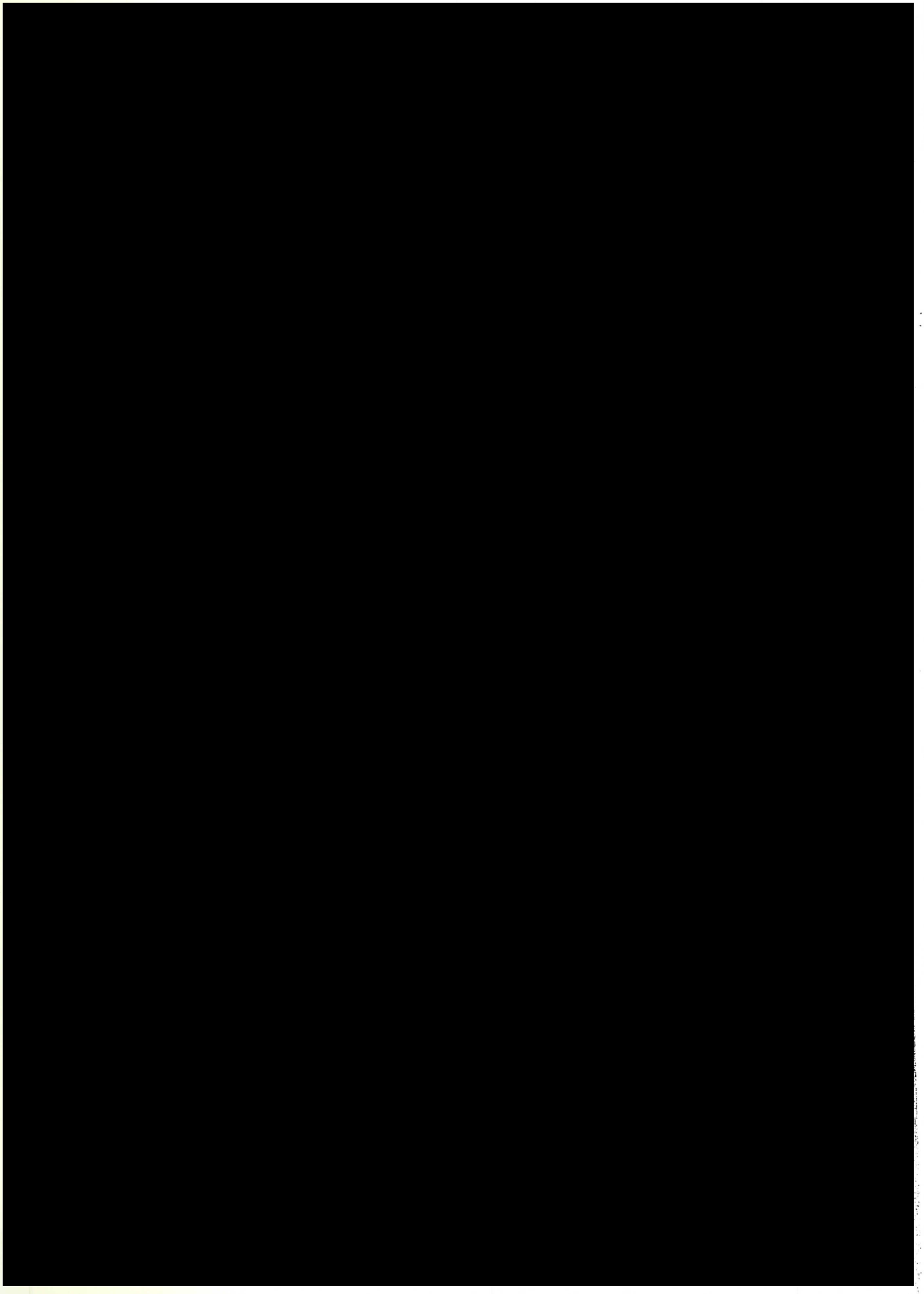
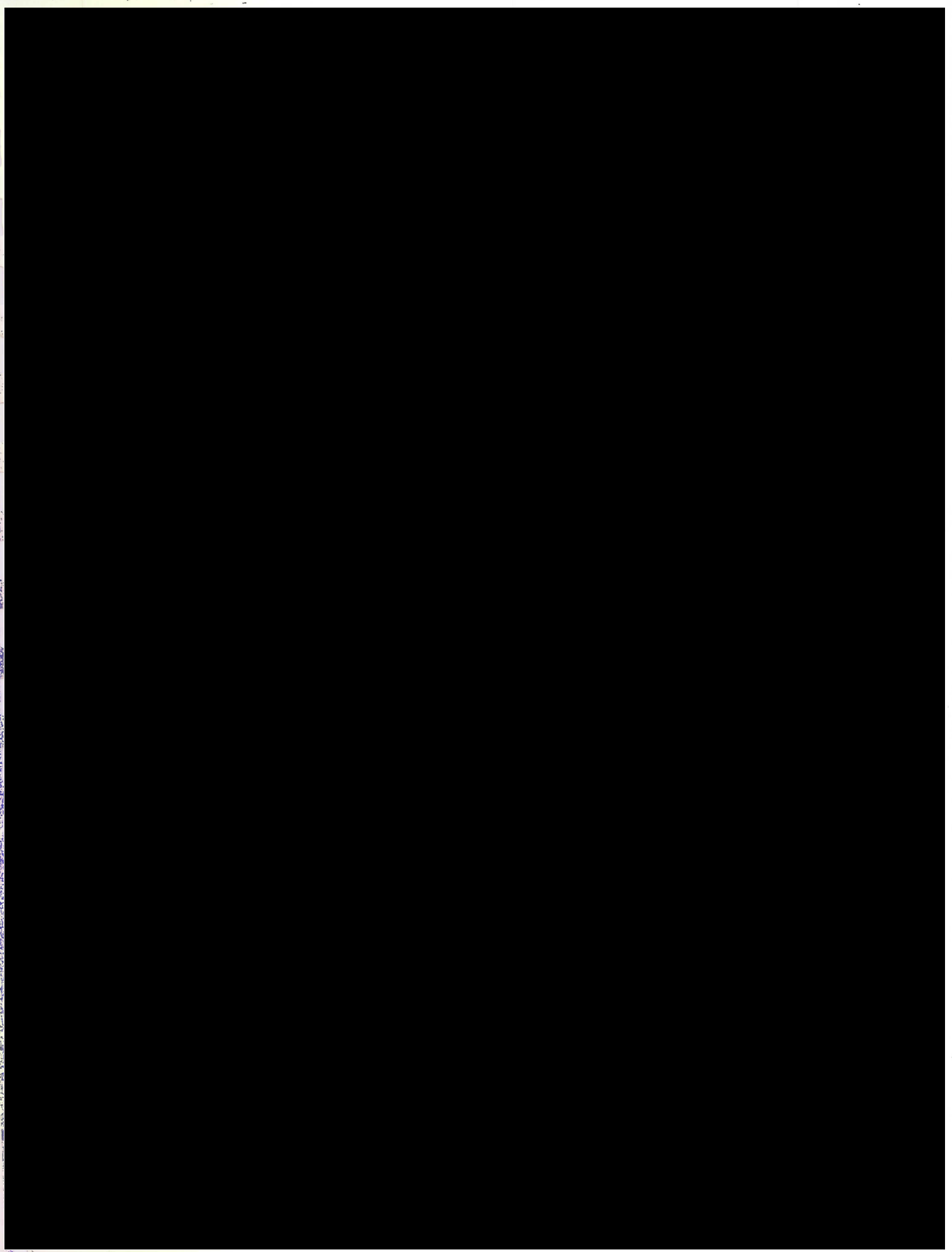




A Working Paper from FAAN for Preparation of Ministerial Memorandum to the Federal Executive Council on the Re-Consideration of the Tenure Granted Messrs Bi-Courtney Limited on the Murtala Mohammed Airport Domestic Terminal One (MMADT1) developed on A Build, Operate and Transfer (BOT) Business/Financial Arrangement.

HIGHLIGHTS

1. A Main Concession Agreement dated 24th April, 2003 had been signed between:

   a. The Federal Government of Nigeria (FGN) and

   b. Federal Airports Authority of Nigeria (FAAN), on the one side and

   c. Bi-Courtney Limited (BCL) and

   d. Stabilini Visioni Limited (SVL), on the other.

   in respect of the MMA Domestic Terminal, Ikeja to be built by Messrs Bi Courtney Limited (BCL) on a Build, Operate and Transfer (BOT) Business/Financial arrangement (**APPENDIX 1**).

2. The main agreement contained a tenure of 12 years for the concession.

3. A Supplemental Agreement dated 26th June, 2004 was executed between the contracting parties in (1) above in respect of the tenure (**APPENDIX 2**).

4. Clause 2.8 of the Supplemental Agreement provided thus:

   "The Concessionaire (i.e. BCC Ltd) shall not later than May 31st, 2004 deliver to the Grantor (i.e. FGN/FAAN) copies of a feasibility studies report essential for costing the project as well as determining the scope of the project and the concession period to be granted".

5. In fulfillment of (3) above, Bi-Courtney Ltd submitted to FAAN a feasibility study report prepared by its consultant, KPMG, which put the recommended concession tenure at 36 (Thirty Six) years. The approved/initial tenure was put at 12 (twelve) years as in (2) above.

6. The feasibility report as submitted by BCL used an estimated project cost of ₦9,235,254,000.00 and a projected revenue of ₦2,232,000,000.00 per annum to arrive at the 36 years tenure recommended.

7. In order to objectively consider the submission of BCL, especially with respect to the tenure of the concession, FAAN engaged the services of an independent consultant, Messrs First County Consultants Limited (FCC Ltd) to work on the submission in order to arrive at an appropriate tenure.

8. The bone of contention in the determination of the concession tenure were the project cost and the revenue projections from the concession.

9. A memo from a former DCPI to the MD/CEO dated 8th April, 2006 requested for the project cost to enable the tenure to be determined.

10. The then Acting MD/CE commented on the memo in (9) above and gave the project cost at ₦15, 084,926, 176.51 (APPENDIX 3).

    This cost was used by the consultant engaged by FAAN (i.e. FCC Ltd) in computing the tenure which is put at 45 (Forty Five) years (APPENDIX 4).

11. Later, in a memo dated 30th September, 2006, the Directorate of Airports Safety and Engineering Services gave a vetted project cost of ₦7,995,132,129.01. (APPENDIX 5).

12. This cost of ₦7,995,132,129.01 was communicated to the consultant (FCC Ltd) by the then DCBD through a letter dated 6th October, 2006 requesting the consultant to recompute the tenure using the present cost of ₦7,995,132,129.01. (APPENDIX 6).

13. While awaiting the report of the consultant (FCC Ltd), FAAN in a letter dated 12th October, 2006 made BCL an offer of 36 (thirty Six) years concession tenure (APPENDIX 7) which the company accepted on 13th October, 2006 (APPEDIX 8).

14. The consultant's submission dated 9th November, 2006 was received recommending a tenure of 33 (Thirty Three) years as highlighted in clause 45 of the report (APPENDIX 9).

15. With the offer and acceptance, an addendum to the concession Agreement was executed on 2nd February, 2007. (APPENDIX 10).

FAAN'S POSITION FOR RE-CONSIDERATION OF CONCESSION TENURE

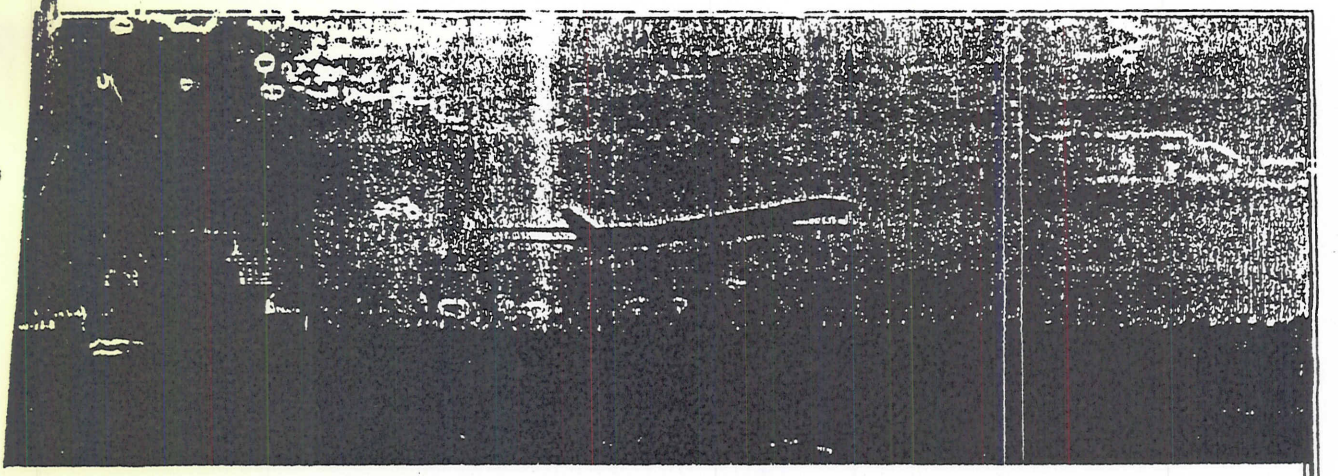
1. We are inclined to align with the report/submission of the FAAN appointed Consultants, Messrs First County Consultants Limited (FCC Ltd), on the project cost (option 8, Page 31 of Appendix 9 as attached), the cash flow analysis on page 42 of Appendix 6 and A- G of the same Appendix 6 (all attached).

2. The Consultant recommended a re-coupment/payback period on debt capital and equity of twenty-three (23years) and an additional ten (10) years to be added making a total concession period of 33 (thirty three years).

3. We hereby recommend that the additional ten years added by the Consultant after the 23 (twenty three) years re-coupment/payback period be expunged.

   However, for equity, we recommend additional 2 to 5 years to the 23 years re-coupment period.

4. Please note that the Consultant (FCC Ltd) who prepared the report is yet to be paid and we have used the content of the report.



NEW MURTALA MOHAMMED AIRPORT
DOMESTIC TERMINAL
IKEJA

SUPPLEMENTAL
CONCESSION AGREEMENT

PREPARED BY:

Professor Oluwole Akanle

Oluwole Akanle & Co.

Allied House [5th Floor]
155/161 Broad Street
Lagos

SUPPLEMENTAL CONCESSION AGREEMENT

THIS SUPPLEMENTAL AGREEMENT hereinafter referred to as "**this Agreement**" is made and entered into this 26th day of June 2014

BETWEEN

THE FEDERAL GOVERNMENT OF NIGERIA represented by **THE MINISTER OF AVIATION** (hereinafter referred to as "**the FGN**", which expression shall wherever the context so admits include its successors-in-title and assigns) of the first part;

FEDERAL AIRPORTS AUTHORITY OF NIGERIA, a parastatal established by statute having its headquarters situate at Murtala Muhammed Airport, Ikeja, Lagos, (hereinafter referred to as "**FAAN**" which expression shall wherever the context so admits include its successors-in-title, nominees, appointees, agents, servants and assigns) of the second part;

AND

BI-COURTNEY LIMITED, a limited liability company duly incorporated under the Laws of the Federal Republic of Nigeria and having its registered office situate at the Rooftop, 8th – 10th Floors, 24A, Campbell Street, Lagos, (hereinafter referred to as "**the Concessionaire**" which expression shall wherever the context so admits include its successors-in-title, appointees, agents and assigns) of the third part;

STABILINI VISINONI LIMITED, a limited liability company duly incorporated under the Laws of the Federal Republic of Nigeria, having its registered office situate at Kilometre 5, Apapa-Oshodi Expressway, Adeyanju-Daniel Street, Awodi Ora, Kirikiri, Apapa, Lagos, (hereinafter referred to as "**the Sponsor**" which expression shall wherever the context so admits include its successors-in-title, appointees, agents and assigns) of the fourth part.

WHEREAS:

1. The Parties herein entered into a Concession Agreement [herein "**the Concession Agreement**"] dated 24th day of April, 2003 for the design, engineering procurement, construction, completion, commissioning, operation and transfer of a new domestic terminal at the Murtala Mohammed Airport, Ikeja on Build, Operate and Transfer terms;

4887

2. The Grantor is concerned at the slow pace of work on the Project which has resulted in Construction Works being ten (10) months behind the Project Implementation Schedule;

3. The Parties have held consultations, meetings and negotiations to address all the problems and issues that have arisen and have resolved to give the Project a new boost and have therefore agreed to vary the said terms of the Concession Agreement in the manner herein set out

NOW IT IS HEREBY AGREED as follows:

ARTICLE 1 NEW CONSTRUCTION COMPLETION DATE

1.1 The Construction Period for achieving the completion of Construction Works is hereby extended to 33 months instead of the original Construction Period of 18 months from the Construction Commencement Date fixed by the Concession Agreement.

1.2 The provisions of Clause 1.1 of this Supplemental Agreement shall be effective and binding only if a Certificate of Full Compliance is issued to the Concessionaire by the Appointed Consultants certifying that the Concessionaire has fully complied with the provisions of Article 2 of this Supplemental Agreement.

1.3 The Appointed Consultants shall issue the Certificate of Full Compliance not later than seven (7) days after the delivery of the last document of compliance with the last condition prescribed in Article 2 of this Supplemental Agreement.

1.4 Where the Concessionaire fails to or is unable to achieve full compliance as stated herein the Appointed Consultants shall notify both the Concessionaire and the Grantor of the failure or inability by issuing a Certificate of Non Compliance stating the nature of the condition(s) that has not been complied with.

ARTICLE 2 CONDITIONS PRECEDENT TO THE ISSUANCE OF CERTIFICATE OF FULL COMPLIANCE

The Concessionaire shall –

2.1 not later than August 15, 2004, deliver to the Grantor copies of all duly executed and binding Financing Agreements such as loans, bank guarantees, equipment leases and, other forms of financing agreements acceptable to the Grantor and equity contributions for the full amount of the total cost of the project;

2.2 not later than May 31, 2004, submit to the Appointed Consultants the Concessionaire's programme for the completion of all Architectural, Structural Engineering and M & E Services Drawings and

Documentation:

2.3 not later than May 31, 2004 submit to the Appointed Consultants a Preliminary Design Report, Outline Specification and Construction Programme incorporating a Time Table for all M & E Services including Plant and Equipment;

2.4 not later than May 31, 2004 deliver to the Grantor a detailed description of the Project Scope of Works;

2.5 not later than May 31, 2004, submit to the Grantor all the preliminary design, architectural, structural, electrical and mechanical drawings and engineering specifications incidental to the commencement and continuation of the Modified Construction Works;

2.6 not later than October 15, 2004, deliver to the Grantor copies of all necessary and appropriate certificates of insurance as required by Clause 15.12 of the Concession Agreement;

2.7 not later than *October 15, 2004*, deliver to the Grantor a duly executed and binding Operation and Maintenance (O & M) Agreement with an O & M contractor acceptable to the Grantor as required by Clause 10.9 of the Concession Agreement;

2.8 not later than May 31, 2004, deliver to the Grantor copies of a Feasibility Studies' Report essential for costing the Project as well as determining the scope of the Project and the Concession Period to be granted;

2.9 not later than September 15, 2004 submit to the Appointed Consultants all Detailed Design and Working Drawings (Architectural, Structural Engineering, M & E Services, Engineering Specifications) Priced Bills of Quantities, Detailed Programme for Procurement and Installation of all M & E Plant and Equipment including Airport specific equipment;

ARTICLE 3 CONSEQUENCES OF NON COMPLIANCE WITH ARTICLE 2 REQUIREMENTS

3.1 If any of the requirements prescribed in Article 2 of this Supplemental Agreement is not fully complied with within the specified period the right of the Grantor to terminate the Concession Agreement and this Supplemental Agreement shall immmediately accrue on the due date and may terminate the Concession Agreement and this Supplemental Agreement immediately:

Provided that a termination under this Article arising from non-compliance with any of the requirements of Clauses 2.2 – 2.9 shall not take place unless the Grantor, acting through the Appointed Consultants, has given the Concessionaire a period of fourteen (14) days within which to fully comply with the requirement.

5.2 The Parties herein undertake to renegotiate Clause 2.3 of the Concession Agreement within 30 days of the Concessionaire complying with Clause 2.8 of this Supplemental Agreement.

5.3 In this Supplemental Agreement,

"Concession Agreement" means the Concession Agreement executed between the Parties herein and dated the 24th day of April 2003.

Without prejudice to the foregoing, all terms used in the Concession Agreement shall *mutatis mutandi* apply to this Supplemental Agreement.

5.4 Subject only to the variations herein contained and such other alterations (if any) as may be necessary to make the Concession Agreement consistent with the Supplemental Agreement the Concession Agreement remains in full force and effect and shall be read and construed and be enforceable as if the terms of this Supplemental Agreement were inserted therein by way of addition or substitution as the case may be.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be signed by their duly authorised representatives on the dates first above written.

SIGNED, SEALED AND DELIVERED

BY THE HONOURABLE MINISTER OF AVIATION

For and on behalf of

THE FEDERAL GOVERNMENT OF NIGERIA

15/06/04

In the presence of:

Name: THOMAS ADEPO OYELAJE

Address: MINISTRY OF AVIATION ABUJA

Occupation: CIVIL SERVANT

Signature: 15.06.04

THE COMMON SEAL OF THE
FEDERAL AIRPORTS AUTHORITY OF NIGERIA
Was hereunto affixed in the presence of:

15/06/04

DIRECTOR

SECRETARY

THE COMMON SEAL OF
BI-COURTNEY LIMITED
Was hereunto affixed in the presence of:

25/06/2004

DIRECTOR

25/6/04

SECRETARY

THE COMMON SEAL OF
STABILINI VISINONI LIMITED
Was hereunto affixed in the presence of:

DIRECTOR

SECRETARY

PREPARED BY:
Oluwole Akanle & Co.
Allied House [5th Floor]
155/161 Broad Street
Lagos

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY THE 3RD DAY OF MARCH, 2009
BEFORE HON. JUSTICE A. I. CHIKERE
JUDGE

FHC/ABJ/CS/50/2009

BETWEEN

BI-COURTNEY LIMITED ..... PLAINTIFF

AND

THE ATTORNEY-GENERAL OF THE FEDERATION ..... DEFENDANT

JUDGMENT ORDER

UPON THIS Originating Summons dated and filed on the 23rd day of January, 2009 coming before His Lordship Hon. Justice A. I. Chikere, Judge, Federal High Court, Abuja praying this Honourable Court for the following reliefs:-

1. A DECLARATION that the Federal Government and its agents/agencies [including but not limited to the NCAA, NAMA and FAAN] are bound by the provisions of the Concession Agreement executed on 24th April, 2003 with the Plaintiff in respect of the MMA2.

A. I. CHIKERE
JUDGE

2. A DECLARATION that by virtue of Article 1 of the Addendum to the Concession Agreement signed by the Plaintiff and the Federal Government on 2nd February 2007, the

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FEDERAL HIGH COURT
ABUJA
Sign
Date

FEDERAL HIGH COURT
ABUJA
CASHIER'S OFFICE

Concession Period granted to the Plaintiff by the Federal Government is 36 (thirty-six) years commencing from the Start Date till the thirty-sixth anniversary of the Start Date.

3. A DECLARATION that by virtue of Clause 2.2 (b) & (c) and Clause 3.2 (c) of the Concession Agreement the Federal Government, and all of its agents/agencies [including but not limited to the NCAA, NAMA and FAAN] are, contractually bound to the Plaintiff not to permit or allow any airline to operate scheduled domestic flights into or out of Lagos State at any airport terminal other than MMA 2 or an airport terminal owned/operated by the Plaintiff from the date the Concession Period commenced as contemplated by the Concession Agreement.

4. A DECLARATION that by continuing to allow and/or failing to restrain airlines operating scheduled domestic flights from any airport terminal in Lagos State other than MMA 2 or an airport terminal owned/operated by the Plaintiff, from the date the Concession Period commenced as contemplated by the Concession Agreement, the Federal Government and its agents/agencies [including but not limited to the NCAA, NAMA and FAAN] are in breach of the Concession Agreement.

5. AN ORDER of mandatory injunction directing and compelling the Federal Government and its agents/agencies in the aviation sector [including but not limited to the NCAA, NAMA and FAAN] to give effect to the provisions of the Concession Agreement executed on 24th

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FEDERAL HIGH COURT
Sign ...
Date ...

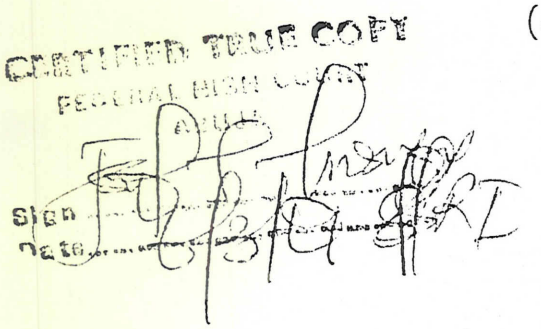
April, 2003 and to comply with and implement the unanimous decisions of the Co-ordinating Committee (constituted by the parties hereto pursuant to Article 22.1.1 of the Concession Agreement) contained in the Committee's Report dated 10th October 2008 by:

(i) forthwith relocating all scheduled domestic flights in and out of Lagos State to the MMA 2 or an airport terminal owned/operated by the Plaintiff during the Concession Period.

(ii) preventing, prohibiting and/or disallowing the operation of any scheduled domestic flights in and out of Lagos State from any airport terminal other than the MMA 2 or an airport terminal owned/operated by the Plaintiff during the Concession Period.

(iii) forthwith rendering an account and remitting to the Plaintiff all income and revenue that accrued to the Federal Government and its agents/agencies in the aviation sector [specifically FAAN] from scheduled domestic flight operations conducted from any terminal in Lagos State other than MMA 2 after MMA 2 became operational on 7th May 2007 which income and revenue include but are not limited to:

(a) Virgin Nigeria domestic flight operations at the Murtala Mohammed International Airport, Lagos from 7th May 2007 to 14th August, 2008.

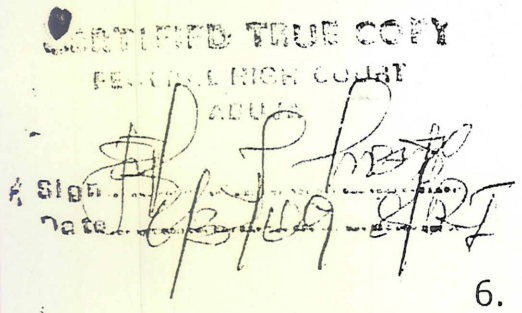


(b) Arik Airways domestic flight operations at the Murtala Mohammed International Airport, Lagos from 7th May 2007 to February 2008.

(c) Arik Airways domestic flight operations at the General Aviation Terminal of the Murtala Mohammed Airport, Lagos from February 2008 till the date of their relocation to the MMA2.

(v) forthwith delivering up possession of the General Aviation Terminal of the Murtala Mohammed Airport, Lagos to the Plaintiff for the purpose of extending operations at the MMA2 as contemplated by the Concession Agreement.

(vi) forthwith rendering an account and remitting to the Plaintiff all levies and surcharges collected by the Federal Government and its agents/agencies in the aviation sector [specifically FAAN] from fuel marketers delivering fuel to airlines operating scheduled domestic flights into and from MMA2 from 7th May 2007 (when MMA2 became operational).



6. AN ORDER of injunction restraining the Federal Government and its agents/agencies [including but not limited to the NCAA and FAAN] forthwith, from developing and/or constructing, establishing, concessioning,

licensing, authorising or permitting the development, construction, establishment, concessioning and/or licensing of any other airport or airport terminal in Lagos State for use for any operation of scheduled domestic flights whatsoever other than MMA 2 without giving the right of first refusal and consideration to the Plaintiff.

7. AN ORDER directing and compelling all security and law enforcement agencies in Nigeria, including but not limited to the Commission of Police, Murtala Mohammed Airport Command, the Air Force Commandant of the Airport and other similar agencies stationed and operating at all airport terminals in Lagos State, to give effect to the Concession Agreement by restraining, preventing, or prohibiting any scheduled domestic flights in and out Lagos State from operating from any airport terminal other than MMA 2 or an airport terminal owned/operated by the Plaintiff during the Concession Period as contemplated in the Concession Agreement.

8. A DECLARATION that the Federal Government and its agents/agencies [including but not limited to the NCAA, NAMA and FAAN] are bound by virtue of the Concession Agreement to comply with and implement the unanimous decisions of the Co-ordinating Committee (constituted by the parties hereto pursuant to Article 22.1.1 of the Concession Agreement) contained in the Committee's Report dated 10th October 2008 on the disputes and claims referred to the Committee by the Plaintiff in its letter dated 20th June 2008.

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FEDERAL HIGH COURT

9. A DECLARATION that the Federal Government and its agents/agencies [including but not limited to the NCAA, NAMA and FAAN] are in breach of Clause 22.2 of the Concession Agreement executed on 24th April 2003 with the Plaintiff by its failure, refusal and/or neglect to comply with and implement the unanimous decisions of the Co-ordinating Committee (constituted by the parties hereto pursuant to Article 22.1.1 of the Concession Agreement).

AND FOR SUCH ORDERS OR FURTHER Orders as this Honourable Court may deem fit to make in the circumstances.

UPON READING the Affidavit in support of the Originating Summons sworn to by BOONYAMEEN BABAJIDE LAWAL, male, Adult, Moslem, Nigerian Citizen of 24A Campbell Street, Lagos Island, Lagos State, together with the Exhibits attached thereto;

AND AFTER hearing O. A. Akoni Esq. (SAN) with A. S. Oyinloye Esq., K. E. Akanbi Esq., B. B. Lawal Esq. and O. I. Arasi Esq. of Counsel for the Plaintiff urging the Court to grant the reliefs as sought; A. A. Malik Esq. of Counsel for the Defendant opposing the Application on point of law;

AND THE COURT having given it Judgment this 3rd day of March, 2009;

IT IS HEREBY ORDERED AS FOLLOWS:-

1. That the Federal Government and its agents/agencies [including but not limited to the NCAA, NAMA and FAAN] are bound by the provisions of the Concession Agreement

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FEDERAL HIGH COURT
ABUJA
Sign
Date

executed on 24th April, 2003 with the Plaintiff in respect of the MMA2.

2. That by virtue of Article 1 of the Addendum to the Concession Agreement signed by the Plaintiff and the Federal Government on 2nd February 2007, the Concession Period granted to the Plaintiff by the Federal Government is 36 (thirty-six) years commencing from the Start Date till the thirty-sixth anniversary of the Start Date.

3. That by virtue of Clause 2.2 (b) & (c) and Clause 3.2 (c) of the Concession Agreement the Federal Government, and all of its agents/agencies [including but not limited to the NCAA, NAMA and FAAN] are, contractually bound to the Plaintiff not to permit or allow any airline to operate scheduled domestic flights into or out of Lagos State at any airport terminal other than MMA 2 or an airport terminal owned/operated by the Plaintiff from the date the Concession Period commenced as contemplated by the Concession Agreement.

4. That by continuing to allow and/or failing to restrain airlines operating scheduled domestic flights from any airport terminal in Lagos State other than MMA 2 or an airport terminal owned/operated by the Plaintiff, from the date the Concession Period commenced as contemplated by the Concession Agreement, the Federal Government and its agents/agencies [including but not limited to the NCAA, NAMA and FAAN] are in breach of the Concession Agreement.

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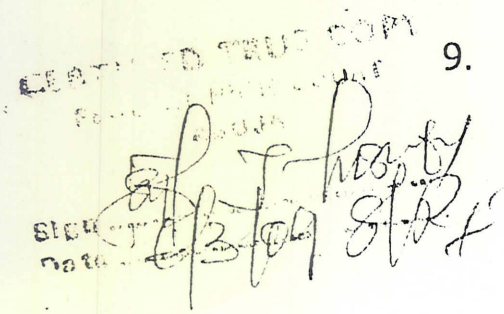
FEDERAL HIGH COURT
ABUJA
Sign
Date

5. That the Federal Government and its agencies in the aviation sector howsoever named or called are forthwith ordered to relocate all scheduled domestic flights in or out of Lagos State to MMA 2 or an airport terminal owned/operated by the Plaintiff during the Concession Period.

6. That the Federal Government and its agencies howsoever called/named are prohibited or disallowed from operating domestic flights in and out of Lagos State from any other Airport other than MMA 2 or any airport terminal owned/operated by the Plaintiff during the Concession Period.

7. That, however, in the event that for any reason the entire scheduled domestic flight operations of any airline operating in Lagos cannot be moved to MMA 2 immediately such portions of their operations as are carried out from other terminals should be operated by the Plaintiff.

8. That the Plaintiff is entitled to all revenue arising from scheduled domestic flight operations of any airline operating in Lagos State and outside of the MMA 2 after same became operational accruing to benefit of the Plaintiff.



9. That the Defendant is to immediately render an account of all such revenues that has accrued to it from scheduled domestic flight operations conducted from any terminal other than MMA 2 in Lagos State after MMA 2 became operational on 7/5/07 and all such

revenue shall be remitted to the Concessionaire.

10. That the Federal Government is to immediately deliver up possession of the General Aviation Terminal (G.A.T.) at the Murtala Mohammed Airport Lagos to the Plaintiff for the purpose of extending operations at MMA 2 as contemplated by the Agreement.

11. That the Federal Government is to forthwith render an account and remit same to Plaintiff of all levies and surcharges collected by it and its agents/agencies howsoever called/named in the aviation sector from fuel marketers delivering fuel to airline operating scheduled domestic flights into and from MMA 2 from 7/5/07 when MMA 2 became operational.

12. That the Federal Government and its agents/agencies howsoever called/named are hereby restrained from developing and or constructing, establishing, concessioning, licensing, authorising, permitting the development, construction, establishment, concessioning and or licensing of any other airport or airport terminal in Lagos State for use for any operation of scheduled domestic flights whatsoever other than MMA 2 without giving the first right of refusal and consideration to the Plaintiff.

13. That the Federal Government and its agents/agencies howsoever called are bound by virtue of the Concession Agreement to comply with and implement the unanimous decisions of the Co-ordinating Committee

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FEDERAL HIGH COURT
ABUJA
Sign
Date 6/3/09

Report dated 10/10/08 on the disputes and claims referred to it.

14. That the Federal Government is to take immediate step to ensure that it does not grant any rights or privileges that are inconsistent with or conflict with or would limit or interfere with the exercise and enjoyment by the Plaintiff of the Concession Rights and if any such rights or privileges have been granted, same should cease henceforth.

ISSUED AT ABUJA UNDER the Seal of the Court and the Hand of the Presiding Judge this 3rd day of March, 2009.

A. ISAAC
REGISTRAR

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
Sign ...
Date ... 6/3/09