

Contract 114.00023

Poster Bollard Advertising and Management

CONTRACT dated the _____ day of _____ 2017

PARTIES

1. **WELLINGTON CITY COUNCIL** (the "Council")
2. **PHANTOM BILL STICKERS LTD** (the "Company")

BACKGROUND

- A The Company has offered to maintain and upgrade a network of poster bollards, construct and install a number of New Bollards in Wellington City to provide advertising for Arts, community, and event organisations (The Target Market) and associated management services, at no cost to Council.
- B The Company is to arrange for advertising on all the Bollards and will collect all revenue from such advertising and pay to Council a licence fee.
- C The Company will maintain all Bollards during the term of the Contract and will, at Council's option, transfer ownership of the New Bollards to Council at the end or earlier termination of the Contract.
- D Subject to the terms of this Contract the Company is to have exclusive advertising rights to the Bollards.
- E The Council and the Company now wish to enter into this Contract to record the terms and conditions of their agreement.

IT IS AGREED AS FOLLOWS:

OPERATIVE PROVISIONS

1. Scope of Services

- 1.1 The Company shall perform the following tasks (herein referred to as "the Services") in accordance with the terms of this Contract
- (i) Renew and replace all Bollards and Business Information Poles
 - (ii) Install New Bollards and Business Information Poles
 - (iii) Maintain and repair Bollards and Business Information Poles
 - (iv) Manage advertising on all Bollards
 - (v) Design, install and manage business information poles
 - (vi) Manage illegal postering and graffiti surrounding Bollard locations
- 1.2 A more comprehensive description of the Services required to be performed are set out in Schedule 1.
- 1.3 The Company shall give notice to the Council within ten (10) Working Days of the

Company becoming aware of any matter which will change, or has the likelihood of changing or has changed the scope of the Services. The notice shall give reasonable detail of the nature of the change and the Company's planned response.

2. Grant of Licence

- 2.1 The Council shall, subject to the terms of this Contract, in consideration of the Company maintaining the Bollards and the Company transferring the ownership of the Bollards to the Council at the end or earlier termination of this Contract (should it choose that option):
- (a) Allow the Company to erect New Bollards;
 - (b) Grant to the Company licences on the terms and conditions set out in this Contract for the sites on which the Bollards (including the relocation of Bollards) are to be placed; and
 - (c) Grant to the Company an exclusive right to advertise on the Bollards.
- 2.2 The Council grants to the Company, as licensee, a licence to use the Sites to install New Bollards or to which New Bollards are to be relocated and a licence to advertise on all Bollards and Pole Poster Holders.
- 2.3 The Council grants and the Company, as licensee, accepts a licence to use the Sites for the term of this Contract (less one day) or such shorter term if the Contract is terminated prior to expiry of the term.
- 2.4 In respect of the licence, the Council and the Company covenant as follows:
- (a) the Company and its subcontractors, servants and agents shall have access to the Site(s) as provided for in this Contract;
 - (b) the Council will not interfere with the Company's reasonable use and enjoyment of the Site(s) during the term of this Contract; and
 - (c) the Council shall take no responsibility for loss or damage to the Bollards which are to occupy the Site(s), however caused.
- 2.5 The Company covenants:
- (a) to use the Site(s) for the purposes defined in this Contract and for no other purpose;
 - (b) not to assign the benefit of the licence for use of the Site(s) or to grant any sub licence for use of the Site(s) except as provided for under the terms of this Contract;
 - (c) to keep the Site(s) in a clean and tidy manner;
 - (d) To keep the surrounding area (up to 50m) of all Sites clear of graffiti and illegal postering as described in clause 4.5
 - (e) to comply with all statutes, regulations and ordinances regarding the provision of the Company's services and the use of the Site(s) for that purpose;

- (f) to keep the Council indemnified against any claims for liability for damage, loss or injury which may occur to the Site(s), the Company or to any other person; and
- (g) on expiry or termination of the licence for each Site, to ensure that the Site(s) are left in the condition required by the terms and conditions of this Contract.

2.6 The Company has no personal right of occupation on the terms specified under this Contract and has no interest in the land which form the Sites under this Contract. The legal right to possession and control over the Sites remains vested in the Council throughout the term of this Licence.

3. Bollard Installation Programme

3.1 Programme

The company will, at its sole expense (subject to the provisions of clause 15), renew or upgrade all Bollards and supply and install New Bollards as specified in Schedule 1 – Scope of Services at such sites as are identified and approved under the terms of this Contract

3.2 Bollard Locations

The Company may propose location(s) for the New Bollard(s) and the Council will either approve or reject the location at its sole discretion.

3.3 By entering into this Agreement, the Council does not offer any assurance that there are sufficient suitable sites available for the installation of the bollards proposed under clause 3.1 or 3.2, the final number of which shall be determined only following an investigation of available sites and the completion of the approval process described within this Agreement.

4. Term of Contract

4.1 Initial Term

This Contract commences on the Commencement Date first above written for a term of Three (3) years and, subject to clause 4.2, ends on the Expiry Date or earlier termination in accordance with this Contract or by operation of law.

4.2 Renewal

Subject to the conditions below being satisfied, the Company shall, upon the expiration of the Initial or Renewal Term, have the right to renew this Contract for a further term of two (2) years from the Renewal Date. The renewed Contract will be upon and subject to the terms and conditions contained and implied in this Contract, and shall include a right to renew the Contract for up to two (2) Renewal Terms of two (2) years each so that the Company's occupancy of the Sites will, in any event, expire on or before the Final Expiry Date. The conditions required to be satisfied prior to any renewal being granted are:

4.2.1 The Company requests the renewal in writing no more than twelve (12) months and no less than six (6) months prior to the expiration of the Term;

4.2.2 The Council policies, goals, objectives and bylaws continue to permit and be supported by the Services to be performed beyond the expiry of the Term.

4 4.2.3 The Company is not, at the expiration of the Term, in breach of any

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term or condition of this contract or any other contract between the Company and the Council;

4.2.4 The Company has promptly and fully observed and adhered to the terms of this Contract during the Term and including meeting the criteria for the successful conduct of the Services described in clause 4.3;

4.2.5 The Company pays the Council's reasonable costs in obtaining all necessary approvals and documentation for such renewal.

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The Parties agree that the Council shall only be required to grant extensions of term of this Agreement if it be satisfied, on reasonable grounds, that what it sought to achieve by granting a licence in the first place has and continues to be met.

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The Council's criteria for the successful conduct of the Services require the Company to satisfactorily comply with the terms and conditions of this Agreement including, in particular:

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The Bollards are kept looking tidy, displaying current posters only, that they are checked and maintained by the Company's personnel at least once a day on each day of the year including all Public Holidays.

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The Bollards are stripped and cleaned when required to maintain their clean and tidy appearance and to preserve their use.

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All postering paper and glues are cleaned up from the ground within 30 metres of the Bollards daily.

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No posters are displayed or allowed to remain on the Bollards that do not meet the Council's criteria of what constitutes an acceptable poster for the purposes of display on Bollards described in clause 11.3.

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The Company meets its obligations in respect of making available ten percent (10%) of the total space on all Bollards and a free postering service in accordance with the provisions of clause 11.9.

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(f)

The Company not placing posters illegally on Council or other property in the City subject to the clarification as to what is "illegal postering" described in clause 4.5.

(g)

There not be a significant growth in the level of illegal postering generally or demand in excess of the 10% provision in clause 11.9 that might be avoided by the Council increasing by a significant margin the available space on the bollards for what would otherwise be illegal posters. A "significant margin" would for this purpose be in excess of 30% of total space on all Bollards.

(h)

Illegal postering is removed from all sites described in clause 4.5 within a radius of 50m from an approved Bollard site.

(i)

Graffiti is to be removed within 50m of an approved Bollard site. This activity is to be monitored and recorded through the Council's "Stop Tag" app.

- 4.5 "Illegal Postering" is postering which is illegal under any law or bylaw, or placed without the permission of the Council or property owner on any Council or privately owned items including but not limited to: buildings, structures, street furniture, signal control cabinets, shelters, poles, parks, planter boxes and footpaths and road surfaces.

5. Company's Obligations

5.1 Comply with directions

The Company shall comply with all reasonable directions given by the Council's Representative.

5.2 Provide equipment and materials

The Company shall provide all equipment, tools, materials and supplies required to perform the Services unless otherwise specified in this Contract.

5.3 Personnel

- (a) The Company shall ensure that all its Personnel when providing the Services have a neat and tidy appearance. All Personnel shall wear identification, clearly displayed, showing that they are employed by the Company.
- (b) The Company shall ensure that the Personnel conducting the Services conduct themselves in a proper manner so that they not bring either the Company or the Council into disrepute. If the Council is concerned as to the conduct or appearance of any Personnel, the Council will provide particulars of its concerns to the Company and the Company shall immediately ensure its Personnel satisfy the Council's standards and requirements and if the Company is not able to satisfy the Council, the Company shall withdraw those Personnel not meeting Council's standards from carrying out the Services until the Council is satisfied those Personnel concerned will, in future, meet the Council's standards and requirements.

5.4 Co-operation

The Company shall in providing the Services co-operate, at its sole cost, with the Council, its employees, Council's contractors and third party utility operators.

5.5 Comply with legislation and Council standards

The Company shall comply with all applicable legislation including but not limited to, all Wellington City Council bylaws and Council's corporate policies that establish the standards and parameters within which it requires the Services to be performed. Relevant policies and current bylaws applicable to this Contract, specifically Part 17.4 "*Hoardings, Posters and Notices in Public Places*", can be found on the Council's website and may be revised and replaced from time to time.

The Company, its Personnel and any subcontractors engaged by the Company to carry out any part of the Services shall at all times comply with the requirements of Wellington City Council's "*Code of Practice for Temporary Traffic Management*" and "*Code of Practice for Working on the Road*". The latest versions of each of these Codes of Practice are available on the Council's website.

5.6 **Reporting**

5.6.1 The Company shall provide the Council with the reports detailed in Schedule 2 and keep such other reports and records that the Council may consider relevant and as advised by the Council in carrying out the Services and deliver these to the Council at the time(s) and frequency specified by the Council.

5.6.2 The Company shall ensure that it has sufficient technical and secretarial support to ensure the timely completion and submission of all reports and other information required to be provided under this Contract.

5.7 **Quality Assurance**

5.7.1 5.71 The Company shall comply with all reasonable quality assurance standards of the Council where notified by the Council to the Company in writing (to the extent that such standards are not contrary to any express provisions of this Contract).

5.7.2 The Company and Council shall meet regularly (as a minimum once every three months) to discuss and ensure that the Company is delivering the Services in compliance with:

- (a) elements of this Contract regarding the quality of the Services to be provided;
- (b) health and safety requirements under clause 5.15 of this Contract;
- (c) the Scope of Services, including but not limited to:
 - (i) reliability and timeliness in provision of the Services;
 - (ii) overall management of provision of the Services;
 - (iii) customer service and public relations;
 - (iv) compliance with confidentiality requirements;
 - (v) accuracy in all documentation and verbal communications;
 - (vi) complaints procedures; and
 - (vii) reporting procedures.

5.8 Consents

5.8.1 The Company shall obtain all necessary consents and permits to carry out the Services. The Company shall meet the costs of all consents and the cost of complying with any conditions of any consent.

5.8.2 Should the Company fail to meet any conditions or pay the cost of any consents, the Council may meet such conditions and costs. The Parties shall prior to incurring any costs discuss the work required, the basis of the fee and reach agreement as to what is appropriate prior to the work being undertaken. Any costs incurred by Council in that regard shall be paid by the Company to Council immediately upon receipt by the Company of written request for payment. Any costs or expenses incurred by Council under this clause shall be a debt due and owing from the Company to the Council.

5.9 Audit and monitoring of Services

5.9.1 The Company is responsible for monitoring the quality of the Services provided under this Contract and its compliance with the requirements of this Contract.

5.9.2 The Council may monitor and audit the performance of the Company from time to time. An audit may take the form of spot checks and/or a more formal audit. The objective of such audit shall be to ascertain the level of compliance by the Company with the requirements of this Contract, with a particular focus on the quality of the Service. The Council will give the Company reasonable notice if a formal audit is to be undertaken. The Company will make available all reasonable information requested by the Council for any formal audit.

5.9.3 Where, as a result of any audit undertaken by the Council, the Council is not reasonably satisfied that the Company is adequately performing any aspect of the Services the Council may inform the Company of its concerns and request by written notice that the Company remedy any part of the Services not being adequately provided.

5.9.4 If the Company does not comply with the terms of the written notice and rectify the Services provided within twenty (20) working days or such greater time period as is stated in the notice issued under clause 5.9.3, then the Council may terminate this Contract.

5.10 Access to adjoining properties

The Company shall obtain authority to have a reasonable right of entry upon and to do any act upon any adjoining property to Council property as may be necessary to remove, install or maintain any Bollard on any Site. All costs involved in obtaining such right shall be borne by the Company. The Company shall respect the rights of the adjoining property owners and shall make good as soon as practicable any damage to adjoining properties arising out of the Company's operations.

5.11 **Target market**

5.11.1 The Company shall ensure that during the term of this Contract it provides the target market (as described in Schedule 3) reasonable access to advertise on the Bollards. This includes free advertising space as described in clause 11.9

5.1.1.2 The description of the target market may be amended from time to time. Any such amendment must be agreed to between the parties. The Company's agreement to any such amendment shall not be unreasonably withheld. The Council's agreement to any such amendment shall be at its absolute discretion. Any such change shall not be effective until recorded in writing and signed by both parties as an amendment to Schedule 3.

5.11.3 The Company acknowledges that the level of advertising charges on Bollards enables the target market to have reasonable access to cost-effective advertising. The Company agrees that it shall only increase its advertising charges if it can be reasonably assured that the target market will continue to afford to have access to advertising on Bollards. If the Council is concerned the Company has used its position in the market to raise its prices beyond that which is reasonable in the light of the foregoing requirements, then the parties shall, at the discretion of the Council, refer the Company's pricing practices under dispute resolution procedures for expert determination with the intent that such determination shall be binding on the parties.

5.12 **Company's Representative**

5.12.1 The Company shall at all times during the term of this Contract appoint a competent person acceptable to the Council to be the Company's Representative. The Company's Representative shall be authorised to receive all directions and instructions in connection with the Company's provision of the Services.

5.12.2 The Company's Representative shall be contactable by the Council at all times (including by telephone, mobile telephone, facsimile, pager or other suitable communication device).

5.12.3 The Company may appoint a replacement Company's Representative with the Council's written consent and such consent will not be unreasonably withheld.

5.12.4 The Council may at any time by notice in writing to the Company object on reasonable grounds to the continuance of any person as the Company's Representative. The Council's notice shall state the grounds upon which the objection is based. The Company shall, subject to clause 5.12.3 as soon as practicable, appoint a replacement person to that position.

5.13 **Liaison with the Council**

5.13.1 All routine and day to day communications by the Company with the Council shall subject to any express contrary provision in this Contract be directed by the Company to the Council's Representative at the address shown in clause 6.2. The Council shall give its instructions and communicate to the Company's Representative or as the Company's Representative shall direct.

5.13.2 In accordance with clause 5.7.2 the Company and the Council shall engage in meetings and any additional meeting as reasonably requested by the Council's Representative to review the Services and discuss any issues relating to the performance of the Services and Council's requirements.

5.14 **Subcontractors**

5.14.1 The Company may engage subcontractors as have been approved in writing by the Council (such approval not to be unreasonably withheld) and as necessary to carry out part of the Services under this Contract. The Company will be responsible for the payment of the subcontractors' fees.

5.14.2 The Company shall not subcontract all of the Services to be provided by it under this Contract.

5.15 **Health and Safety**

5.15.1 The Service Provider has represented to the Council that it has the capability to comply with all relevant health and safety legislation and regulations in force from time to time or replaced, and the Council has relied on that representation when entering into this Agreement.

5.15.2 Each Party to this contract must, in connection with the performance of its obligations and the exercise of its rights under this contract, comply with its obligations under health and safety legislation including the Health and Safety at Work Act 2015, as amended, or replaced from time to time, and including any regulations, approved codes of practice (**HS Law**), and guidelines in force at the time.

5.15.3 The Council will notify the Service Provider of any known existing, new or changed hazards and information relevant to the health and safety of workers undertaking the Contracted Services.

5.15.4 The Service Provider will apply best industry knowledge to the management of its health and safety obligations under this Agreement and shall develop and maintain a Contracted Services-specific health and safety management plan. Based on the health and safety risks and nature of works being undertaken, or as requested by the Council, a site-specific health and safety management plan, or similar will be developed, prior to work commencing. The plan(s) and any updates and/or reviews of the plan(s) (at least annually and following contract and/or HS Law changes), are subject to Council approval and must as a minimum cover:

- a) The allocation of responsibilities for health and safety, including the responsibilities of sub-contractors
- b) Hazard and risk management processes including:
 - i. a hazard / risk register and job safety analysis (or similar) with preference provided to eliminating controls followed by minimising controls (i.e. substitution, isolation, engineering controls) and subsequent management of residual risk. This should

align with the Council hazard register's identified hazard categories and minimum controls, plus all additional hazards and controls identified by the Service Provider.

- ii. A description of what the contractor will do to ensure that new hazards that arise during the Contract Works are identified and their risks reduced as far as is reasonably practicable.
- iii. Requirements for the management of specific high risks e.g. electricity, traffic management, hazardous substances
- iv. Safety and personal protective equipment and/or clothing
- c) Training and competency of workers including general and site specific inductions
- d) Engagement and management of subcontractors, including sharing of Council's expectations under this contract
- e) Incident management
- f) Emergency management
- g) Plant and equipment calibration, maintenance, certification and use
- h) Safety in design principles (as appropriate)
- i) Supervision, inspections, and observations
- j) Worker participation
- k) Monitoring and reporting
- l) Drug and alcohol testing programme, including pre-employment; random; post incident and reasonable cause.
- m) Health and wellbeing strategies

5.15.5 In the second week of each month the Service Provider shall provide a monthly health and safety compliance report to the Council including the following health and safety performance indicators for the preceding month end:

- a) Hazard and control updates e.g. changes to the hazard register, Standard Operating Procedures
- b) Training and competency updates e.g. H&S courses or on-job assessments
- c) Audits, inspections, and safety observations completed
- d) Drug and alcohol testing updates
- e) Number of workers vs number of inductions completed
- f) Occupational health monitoring status e.g. due or completed
- g) Incident reporting including trend analysis; top 4 hazard categories
- h) Investigation updates including status of actions

5.15.6 The Council may carry out health and safety observations and/or inspections (planned and unplanned) during the term of the Agreement.

5.15.7 A review annually and at completion of the Agreement will be undertaken to review health and safety performance of the Service Provider.

5.15.8 The Service Provider must promptly notify the Council in writing after any of the following occurs as they relate to the provision of Contracted Services to the Council:

- a) a hazard may or does exist, or a situation may arise or has arisen where any person may not be safe or harm may result to any person;
- b) any accident, incident or notifiable event has occurred including those that, under HS Law, must be notified to a regulator;

- c) the preventative action taken or proposed in relation to any accident, incident or notifiable event; and/or
- d) any regulatory step taken against the Service Provider under HS Laws in response to any accident, incident or situation;

- 5.15.9 The Service Provider shall maintain a register of incidents, investigate them, identify causes and take all reasonably practicable steps to ensure all persons under the Service Provider's control or about the site are not at risk of harm.
- 5.15.10 The Service Provider will give the Council a copy of any report which the Service Provider is required to make to a public authority on any health and safety accident, incident or situation which is associated with the provision of the Contracted Services.
- 5.15.11 The Service Provider shall ensure their workers comply with duties placed on them under HS Law as it relates to this Agreement and the specific health and safety plan relating to the Contracted Services.
- 5.15.12 Where there are overlapping health and safety duties across the Person Conducting Business or Undertaking (PCBUs) then consultation, co-operation and coordination between the relevant Parties will occur to determine, agree, and record the health and safety management requirements for workers associated with the Contracted Services.
- 5.15.13 These health and safety provisions are in addition to, and do not replace or exclude, the Service Provider's obligation to comply with any other health and safety obligations either under this contract or at law.
- 5.15.14 To the extent permitted by law, the Service Provider indemnifies and shall keep indemnified the Council against all costs, damages, loss and expense incurred or suffered by the Council for any breach by the Service Provider of the requirements of the health and safety provisions of this Agreement and HS Law.

Key Performance Indicators

1. Monthly reports are on time and meet all of the criteria set out in the contract
2. Hazard management practices are dynamic and this is reflected in monthly reporting to Council as set out in the contract
3. All workers are supervised on the job until such time as they are deemed competent to work alone safely
4. Incidents reported to WCC within 24 hours of occurrence, or immediately for notifiable events.
5. Actions from investigations are reported to Council and closed out within agreed timeframe.

5.16 Council's Facilities

5.16.1 The Company and its Personnel shall not use any Council facilities unless provided under this Contract or with the prior written consent of the Council's Representative.

6. The Council's obligations

6.1 Provisions of information

If the Company requests the Council in writing, the Council will provide the Company with any further information or documents held by the Council which can reasonably be considered to be relevant or of assistance to the Company in the performance of the Services provided the provision of such information does not cause any conflict with the Council's statutory or other contractual responsibilities.

6.2 Council's Representative

6.2.1 The Council shall at all times during the term of this Contract appoint a competent and authorised representative to be Council's Representative. The Council's Representative is authorised by the Council to give and receive all directions and instructions in connection with the Services on behalf of the Council. As at the date of this Contract the Council's Representative is the party referred to in clause 25.16.

6.2.2 The Company and the Company's Representative shall at all times liaise with this person with regard to any aspects of this Contract.

6.2.3 The Council may replace the Council's Representative at any time by providing notice to the Company in writing.

6.2.4 The Company may object on reasonable grounds to the continuance of any person as the Council's Representative by giving notice in writing. The Company's notice shall state the grounds upon which the objection is based. The direct manager of the Council's Representative will review the objection and, subject to clause 6.2.3, appoint a replacement person to that position.

7. Designation of Sites

7.1 The determination and location of Sites is to be in accordance with the provisions of this Contract.

- 7.2 The Sites for the Bollards and other approved advertising locations are as listed in Schedule 5, which may be updated from time to time.
- 7.3 The Company may by written notice to the Council request consent for new Sites for the installation or relocation of Bollards or Pole Poster Holders. The Company's notice shall specify the details of the site and the type of advertising structure for which approval is being requested.
- 7.4 In determining the best position for a New or relocated Bollard the Council shall take account of:
- (a) the geographic distribution of Bollards;
 - (b) how the Bollard will sit with existing or proposed street furniture, pedestrian access and the aesthetics of the public spaces in relation to the proposed Site;
 - (c) maintaining safety line of sight for traffic and pedestrians; and
 - (d) such other factors as the Council shall determine in its discretion. The Company shall include information on these aspects in its notice under clause 7.3.
- 7.5 The Council will consider the suitability of each Site within fifteen (15) working days (subject to any difficulties that may arise in respect of a particular Site) and advise the Company in writing as to whether or not a Site is acceptable to the Council. The Council's consideration as to the suitability of a Site shall be determined by the Council in its sole and unfettered discretion and Council's decision in this regard shall be final.
- 7.6 The Company shall not commence work to install a New Bollard or to relocate a Bollard until it has obtained Council's written consent under this clause.
- 7.7 Once the Company has received written confirmation that a Site is acceptable and available to it, it shall proceed as soon as practicable with installation or relocation of the Bollard.
- 7.8 Any consent granted by Council under this clause shall lapse six months from the date of approval if the Company has not commenced physical construction/relocation of the Bollard on the approved Site(s).

8. Design and installation

8.1 Design

8.1.1 The Design for all New Bollards and Pole Poster Holders shall be in accordance with the standard specifications contained in Schedule 4—Design specification

8.1.2 Any variation to the standard designs specified in Schedule 4 is to be approved by Council in writing prior to construction commencing in accordance with clause 8.1.4.

8.1.3 The Company warrants that the construction of the New Bollards and Pole Poster Holders will be in accordance with the specifications detailed in Schedule 5 and that the installation will be in accordance with all applicable laws, building standards and any conditions contained in any consents issued.

8.1.4 The Company may during the term of this Contract propose to the Council a new or amended Design for the Bollards. This may come from the renewal programme for all Bollards. Any new or amended Design shall be developed at the Company's cost. The Company shall not use any new or amended Design unless it has obtained prior written approval from the Council that such Design is acceptable to the Council. The Council is to have sole and unfettered discretion as to whether it consents to any new or amended Design.

8.1.5 Where any new or amended Design is used for the construction of New Bollards, the Company shall warrant that the Design will be fit for purpose. If any errors, omissions, inadequacies or other defects are found in any new or amended Design then that shall be corrected at the Company's cost notwithstanding any consent or approval given under this Contract by Council as a party to this Contract or Council as a regulatory body to the Design and installation of the New Bollards.

8.2 Installation

8.2.1 The Parties agree that subject to the availability of sites as determined in accordance with clause 7 and the proviso contained within clause 3.3, it is the general intention that New Bollards and Pole Poster Holders be erected to supplement existing Bollards according to the programme outlined in Schedule 1 – Scope of Services in order to provide a suitable coverage of advertising locations within Wellington City and eliminate illegal postering and postering on other Council owned infrastructure and items.

8.2.2 The Company will not be entitled to compensation of any kind should the Council, acting in its regulatory capacity, at any time, or for any reason, delay the Company in the installation of the Bollards.

8.2.3 The Company shall not install any New Bollards or relocate or replace any Bollards without prior written approval under clause 7.

8.3 The Company shall:

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- (a) install all Bollards in a good and workmanlike manner in accordance with the specifications set out in schedule 4;
 - (b) install all Bollards in compliance with any consents obtained for the installation of Bollards;
 - (c) use its best endeavours to prevent any danger or unreasonable or unnecessary nuisance being caused to any person or property as a result of the installation of the Bollards
 - (d) install all Bollards in a timely manner such that they be installed without disruption to the public
 - (e) comply with all building codes, permits, building consents, resource consents, and any other consents obtained or required to be obtained for the installation of the Bollards
 - (f) arrange for the searching of records to determine the existence and position of pipes, cables and other utilities on or about any Site(s)
 - (g) be responsible for physically locating the position of all utilities and shall arrange with the controlling authorities for any necessary exploratory work, location, protection, isolation, offsetting, reinstatement or alterations required;
 - (h) be responsible for protecting all utilities and for arranging for the reinstatement or repair of any damage resulting from its operations to such utilities;
 - (i) upon completion of installation remove all surplus plant and materials and debris and leave the Site(s) in a clean and tidy condition for use by the Council and the public; and
 - (j) furnish Council with the as-built records for the New Bollard indicating the exact location, the construction completion date and the total construction costs.
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8.4 The Council shall:

- (a) assist the Company where possible and as required to the best of its resources.

9. Bollard Design

- 9.1 The Company acknowledges that the Council is the sole and exclusive proprietor of the standard Design of its Bollards and that such Designs will only be used by the Company for the purpose of providing the Services under this Contract.
- 9.2 The Council acknowledges that where the Company designs a New Bollard without the benefit of the Council's Design, then the Company's Design shall remain the Company's property **provided that** the Council shall be entitled to use the Design or grant to other parties the right to use the Design within the City of Wellington free of any fees or breach of copy right both during the term of this contract and after its expiry or earlier termination.
- 9.3 Notwithstanding the foregoing, the Company may use its own Bollard Design in areas outside the City of Wellington both during the term of this contract and after its expiry or earlier termination.

- 9.4 The Company shall do all things necessary and/or required by the Council for the proper application or protection of any Bollard Design developed by the Council under this Contract, including but not limited to execution of all documents or assignments and provision of all necessary information, records or materials for the Council or any other party, provided that the Council shall bear the reasonable costs of such actions that may be incurred by the Company. The Company shall provide as soon as practicable written notice to the Council of any claim or action by any third party against either the Company or the Council in respect of the parties' Bollard Design rights that are the subject of this Contract.
- 9.5 The Company warrants that its Design of a New Bollard will not infringe any copyright design or other proprietary right of any third party. The Company indemnifies and holds the Council harmless from and against any and all loss, cost, damage and expense that the Council may suffer or incur as a result of any such infringement.

10. Exclusivity

- 10.1 The Council grants to the Company during the Initial Term and through two (2) subsequent renewals the exclusive right to advertise on all Bollards in Wellington City on land owned by the Council, subject to the qualifications herein contained.
- 10.2 If during the Initial Term and two (2) subsequent renewals of the contract, the Council wishes to install or grant licences to install bollards in Wellington City on land owned by the Council which the Company does not wish to include under the provisions of this Agreement, then the Council may, at its election, grant to third parties the rights in respect of such additional bollards as the Council shall determine in its discretion.
- 10.3 In the event of the Council granting a renewed term of this Contract then in respect of the then-existing Bollards the Council grants to the Company during the renewed term an exclusive right to advertise on such Bollards, subject to the qualification as to the 10% free use as defined in clause 11.9 with such right to continue on each renewal.
- 10.4 The Council may in a second renewed term and thereafter install or grant licences to install further bollards in Wellington City without the need of first offering them to the Company.

11. Advertising

- 11.1 The Company has exclusive right to advertise on all Bollards. All revenue obtained from advertising on the Bollards during the term of this Contract shall be to the account of the Company.
- 11.2 The following terms and conditions shall apply to advertising on Bollards:
- (a) it shall be the Company's responsibility to carry out all functions associated with advertising;
 - (b) the Company's exclusive rights to advertise are subject to the terms and conditions of this Contract; and

- (c) the Council may require the removal of any advertising that in the Council's opinion affects traffic safety. In such cases, the Company will not be compensated by the Council for any loss in revenue from the removal of such advertising.

11.3 The following advertising shall not be permitted:

- (a) advertising of tobacco and tobacco related products;
- (b) advertising containing words or images of a pornographic nature, or which would be deemed by the censor of the Indecent Publications Tribunal to be inappropriate;
- (c) advertising which would be deemed by the Race Relations Conciliator to be culturally insensitive or in any manner offend the principles of the Human Rights Act 1993;
- (d) advertising which the Children and Young Persons Service would find inappropriate because of the detrimental effect or exploitation it portrays of young people;
- (e) advertising which the Privacy Commissioner would find inappropriate or which would offend the principles of the Privacy Act 1993;
- (f) advertising which promotes or condones drink driving;
- (g) advertising targeted at promoting and/or encouraging underage drinking of alcohol, in particular, but not limited to, the advertising of any product containing alcohol on any Bollards within 200 metres of any primary, intermediate or secondary school;
- (h) advertising that promotes the commercial sex industry; and
- (i) any type of advertising that is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, offensive or obscene, as determined by the Council.

11.4 Any non-permitted material displayed or placed on any Bollards shall be removed as required by notification by the Council. Failure to do so within 24 hours of notification will entitle the Council to remove the material. Any costs incurred by Council for the removal of such material shall be payable by the Company to the Council.

11.5 During the term of this Contract, Special Events may occur. The Company acknowledges that advertising restrictions may be imposed on it during the period of such Special Events either by statute, regulation or (on the authority of the Council first given) at the direction of the governing body of the Special Event and the effect of such restriction may include a requirement that:

- (a) part of the advertising be removed from the Bollards to be replaced by Special Event advertising for the Special Event from locations which are on or near the location of the Special Event;

official sponsors obtain preferential advertising rights; and

(b) restrictions apply as to the parties entitled to advertise and/or the nature of advertising allowed during the Special Event.

11.6 Where the Company has advertising restrictions imposed upon it pursuant to these clauses, the Company shall not be entitled to claim compensation or reimbursement from the Council for any expenses, costs or losses whatsoever. The Company shall be entitled to require payment for its advertising charges for advertising on the Bollards that may be required for the Special Event.

11.7 The Company will comply with all directions from Council in relation to advertising during any Special Event period identified above. The Company shall have no claim against Council in relation to revenue foregone or additional costs incurred in complying with any such requirements.

11.8 The Company shall ensure that it does not display advertisements for goods or services that compete either directly or indirectly with the goods or services provided by retailers adjacent to the Bollards. The Council shall be entitled in its absolute discretion to determine compliance with this restriction.

11.9 **The Company shall:**

(a) Provide 10% of the total space on all Bollards, where the total available space is greater than or equal to four (4) square metres, for posters installed by third parties other than the Company and/or by the Company where they do not charge their customer for such posters where it be for charitable purposes or where they be so directed by the Council to provide space available to parties approved by the Council. Such posters shall:

(i) be distributed equitably amongst the various locations of Bollards or as otherwise required by the Council;

(ii) be proportionally placed on the appropriate Bollards with other posters; and

(iii) remain on the Bollards for a period of up to 7 days.

(b) Promote and provide a paste up service for up to 25 A3 sized posters for the target market at no cost for each event

The Company shall not receive any payment from the Council or any other party for these posters.

- 11.10 The Company shall maintain a record of the number of posters that are placed on the Bollards by third parties and the Company free of charge with such records to be available to the Council to ensure that the Company provides 10% of the total space on all bollards without charge. The Company will use its best endeavours to ensure that the Bollards are utilised as much as possible and discourage illegal posterage.
- 11.11 Should the Company be required to remove any advertising material from any Bollard upon request from any advertising complaints authority, the Company will immediately, at its cost, remove such material. The Council shall not be liable to the Company for any loss of revenue from the removal of such material.

12. Alteration and additions

- 12.1 The Company may choose to or be required to carry out alterations or additions to the Bollards.
- 12.2 The Company shall not carry out any alterations or additions to any Bollard without prior written consent from Council. Consent by Council under this clause shall not be consent by the Council as a regulatory body which, where required, needs to be separately sought by the Company. The costs of any consents, alterations and additions to the Bollards are to be borne by the Company, other than where request for alterations or additions is made by the Council in which case the Council will be responsible for the cost of the same.

13. Relocation and Removal

- 13.1 At any time during the term of this Contract the Council may require the Company to remove or relocate a Bollard by giving written notice to the Company to that effect.
- 13.2 Where the Council requests the Company to remove or relocate a Bollard, the cost of doing so shall be borne by the Company.
- 13.3 The Company may from time to time request Council's approval to relocate a Bollard. Any request to relocate a Bollard must be in writing. The Company shall not relocate Bollards until it has obtained prior written approval. The cost of removal and installation of a Bollard pursuant to this clause 13.3 shall be borne entirely by the Company.
- 13.4 Removal and/or relocation of Bollards by the Company will be undertaken in accordance with the terms of this Contract.
- 13.5 Where the Council requires the Company to relocate a Bollard pursuant to clause 13.1 of this Contract, the Council will, subject to the requirements of approval of a Site, work with the Company to find a replacement Site for the Bollard. Where the parties cannot agree on a replacement Site the Council will nominate a Site.
- 13.6 No compensation shall be paid for any loss or damage to any Bollard including loss of advertising revenue as a result of the removal and relocation. The costs of repair as a result of any damage to any Bollard during the removal or relocation by the Company is to be borne by the Company. The Company will as soon as practicable repair any such damage.
- 13.7 Where a Bollard has been removed from any Site, the Company shall, at its sole cost, reinstate any damage that has occurred as a result of the removal and reinstatement of the area of the Site shall be to the same condition as the surrounding area.

13.8 Where the Council requires the Company to permanently remove a Bollard pursuant to clause 13.1 of this Contract, the Council will, subject to the requirements of approval of a Site, work with the Company to find a replacement Site for the Bollard. Where no options for its replacement exist the site shall be deleted. Council shall not be liable for any loss of revenue due to the permanent removal of any Bollards.

14. Council Bollards

- 14.1 The Council owns the Bollards referred to as "**Council Bollards**" listed in Schedule 6 as well as any New Bollards erected at its cost. Ownership of Council Bollards shall at all times remain with the Council.
- 14.2 The Company is to have exclusive advertising rights on Council Bollards. All advertising on Council Bollards must comply with the advertising restrictions set out in this Contract.
- 14.3 The Company is to receive all revenue from advertising on Council Bollards during the term of this Contract.
- 14.4 The Company is to maintain Council Bollards in accordance with clause 16 of this contract.

15. Licence Fee to Advertise on Bollards

- 15.1 The Council shall be entitled to charge the Company a Licence Fee for the use of each Bollard whether Council or Company owned. Such Licence Fee is to be determined in the manner set out below.
- 15.2 The Company shall pay a Licence Fee for each Bollard at the rates specified in clause 15.3, paid by quarterly instalments with the first instalment due on the 20th of the month following the first quarter after the Commencement Date and quarterly thereafter.
- 15.3 Rates for the Licence Fees will be based on the rate bid in the tender for each bollard for the first two years of the Initial Term. Thereafter, the Licence Fees will be adjusted annually based on the percentage change in the average advertising charges for the preceding year. (See schedule 6 for tendered licence fees and advertising rates)
- 15.4 The Company is to report its Advertising fees structure each quarter
- 15.5 While the Company is responsible for promoting, managing and maintaining business information poles there will be no charge for their use.

16. Maintenance

- 16.1. The Company shall, at its sole cost, repair and maintain all Bollards. Subject to fair wear and tear, all Bollards and Pole Poster Holders shall be maintained to keep them in the condition that reflects them being renewed or replaced at the start of the Contract.
- 16.2 In maintaining the Bollards, the Company shall:
 - (a) keep each Bollard clean of graffiti;
 - (b) as and when required to maintain both use and appearance of the Bollards to remove all posters from all parts of the Bollards;

- (c) ensure that protective material is laid on the immediate area around each Bollard when affixing advertisements to the Bollards, or that any glue or other materials resulting from the advertising is removed from the pavement;
- (d) repair any structural damage (howsoever caused) to any Bollard within 48 hours of receiving notice of the damage;
- (e) where any damage to a Bollard creates a hazard, remove that hazard and make the Bollard safe within 24 hours of receiving notice of the damage;
- (f) use its best endeavours to ensure that the Bollards do not become a danger to members of the public; and
- (g) ensure that at all times the use of the Bollards does not interfere with any utility operators' assets or Council assets.

16.3 Where the maintenance of a Bollard is likely to affect the traffic flow (including both vehicular and pedestrian traffic), the Company shall submit to Council for Council's approval a traffic plan defining how traffic flows will be impeded and how that will be dealt with under the traffic plan. All costs associated with any traffic control required as a result of repairs and maintenance to any Bollard shall be borne entirely by the Company.

16.4 In the event the Company fails to comply with the maintenance requirements, the Council may undertake such maintenance and/or repair work and shall notify the Company of the cost incurred by Council in undertaking such work. The Company shall reimburse the Council for any costs incurred by Council in this regard. Such costs shall be payable immediately upon receipt by the Company of notification of the amount of such costs.

16.5 Should the Company fail to comply with any of the maintenance requirements of this Contract, the Council may give written notice of any failure on the part of the Company to comply with those requirements and specify a reasonable time period in the notice for the Company to remedy the failure set out in the notice. Should the Company fail to remedy the failure recorded in the notice then, without prejudice to Council's other rights and remedies, expressed or implied, the Council may, by its employees and/or companies, carry out such maintenance the Company has failed to do under this Contract. Any costs expended by the Council in executing such maintenance will be payable by the Company to the Council upon demand.

17. Emergency situations

17.1 If by reason of accident, failure or other event occurring to or in connection with the Bollards, and if the Company's Representative cannot be contacted or is unwilling or unable to act in time to secure the Bollards, the Council may, on behalf of the Company, take such emergency action as the Council's Representative considers necessary. The Company shall be entitled to take control of such operations as soon as it is willing and able to do so.

17.2 If the emergency action involves work which the Company was liable to do at its own cost under this Contract, the reasonable cost of that work shall be recoverable from the company by the Council. As soon

as practicable after the taking of the action, the Council shall notify the Company of the emergency, and thereafter confirm in writing its extent and cost.

- 17.3 The taking of any emergency action by the Council shall not relieve the Company of any of its obligations under this Contract.

18. Liability Indemnity

- 18.1 The Company shall indemnify Council for any damages, costs, loss or expense incurred by the Council to the extent that damage, cost, loss or expense is caused by any breach by the Company of any of its obligations or warranties under this Contract or as a direct result of any other act, error, or omission on the part of the Company and provision of the Services. The Company's liability to indemnify the Council shall be reduced proportionately to the extent any act or omission of the Council or its employees, agents or other Companies of the Council contributes to the damage, cost, loss or expense.

19. Insurance

19.1 Contract works insurance

19.1.1 The Company shall ensure that any contractor engaged to carry out physical works under the Services effects insurance for the contract works together with insurance for materials in the care or possession of the contractor.

19.1.2 The sum insured for contract works shall not be less than the total cost of each new Bollard and cost of installation and/or relocation of Bollards.

19.2 Public liability insurance

19.2.1 The Company shall effect public liability insurance for at least the sum of one million dollars (\$1,000,000.00) for any one claim or series of claims arising out of the same occurrence with no limit on the total number of occurrences payable.

19.2.2 All public liability insurance effected by the Company must cover liability for loss or damage to any property, injury or death or illness to any person occurring anywhere in New Zealand arising out of the performance of the Services.

19.3 General insurance requirements

19.3.1 All insurances required by this Contract:

- (a) shall be effected with reputable insurers acceptable to the Council and on terms approved by the Council. The Council's acceptance and approval shall not be unreasonably withheld;
- (b) shall be in effect prior to the Company commencing the Services;

- (c) must continue in force until expiry or earlier termination of this Contract; and
- (d) shall provide that:
 - (i) if a claim is made and accepted, the amount of cover shall automatically be reinstated to the full cover required by this Contract;
 - (ii) the insurance shall not be cancelled for non payment of premiums without prior notification by the insurer in writing to the Company; and
 - (iii) default by an insured does not prejudice the rights of the other insured parties;

19.3.2 The Company shall, if requested by the Council, provide to the Council verification from the insurer that the insurance required by this Contract is in force.

19.3.3 The Company shall notify the Council in writing of any change to the status of any insurance required under this Contract within five (5) Working Days of becoming aware of the change.

19.3.4 If the Company fails to arrange or keep in force any insurance required by this Contract, the Council may after notifying the Company in writing, arrange or keep in force the insurance. The Council may pay any premium due and recover that amount from the Company.

20. Dispute Resolution

20.1 Without limiting the application of the clauses below relating to dispute resolution, in the event of a dispute, disagreement or difference of opinion ("**Dispute**") arising under the Contract, as to:

- (a) the meaning or application of any part of the Contract; or
- (b) any other matter touching or concerning the Contract;

the Parties shall actively and openly endeavour to amicably settle such Dispute themselves, with a view to achieving prompt resolution.

20.2 Notice of Dispute

A party claiming that a Dispute has arisen must give written notice to the other party specifying the nature of the Dispute. On receipt of such a notice, the Parties shall endeavour to resolve the Dispute amicably and expeditiously using informal Dispute resolution techniques agreed by them.

20.3 Dispute resolution technique

If the Parties do not agree within ten (10) Working Days of receipt of a notice given under clause 21.2 as to:

- (a) the Dispute resolution technique and procedures to-be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique;

then those matters shall be determined by the President of the Arbitrators and Mediators Institute of New Zealand Inc.

20.4 Referral to senior management

If the Parties are unable to settle a Dispute amicably under clause 20.2 by conference or negotiation, either party may issue a notice referring the Dispute to the senior management of the Parties to resolve.

Within ten (10) Working Days of service of such a notice, senior management representatives of each party shall meet and attempt to resolve the Dispute. Any resolution shall be unanimous, recorded in writing and binding when signed by both Parties.

20.5 Referral to mediation

If the senior management representatives either fail to meet or fail to resolve a Dispute within ten (10) Working Days of its referral to them, or where neither party requires referral to senior management within twenty (20) Working Days of the giving of notice of a Dispute under clause 20.2, either party may at any time subsequently by notice in writing to the other require the Dispute to be submitted to mediation.

20.6 Mediation

If any Dispute is submitted to mediation under clause 20.5, the following shall apply:

- (a) the mediation shall be conducted by a single mediator;
- (b) the Company and the Council shall endeavour to agree on a mediator;
- (c) if the Company and the Council cannot agree on a single mediator within five (5) Working Days of service of notice of intention to commence mediation, Institute of New Zealand Incorporated to appoint a sole mediator; either party may request the President of the Arbitrators and Mediators
- (d) the mediator shall discuss the matter with the Company and the Council (separately or jointly as the mediator may determine) and endeavour to resolve the Dispute by agreement;
- (e) all discussions in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce settlement concluded by mediation, be referred to in any later proceedings; and
- (f) the Company and the Council shall bear their own costs in mediation and shall pay the cost of the mediator in equal shares.

20.7 Arbitration

If the parties can not resolve the Dispute by mediation then either party may by written notice to the other refer the Dispute to arbitration in accordance with the Arbitration Act 1996 on the following terms:

- (a) a single arbitrator shall be appointed;
- (b) if the parties fail to agree on an arbitrator, then the President of the Arbitrators and Mediators Institute of New Zealand Incorporated shall appoint the arbitrator;
- (c) the place of arbitration shall be Wellington;
- (d) no person who has participated in an informal Dispute resolution of the Dispute shall act as arbitrator;
- (e) the arbitrator will proceed promptly to deliver an award. The parties shall cooperate fully in this respect;

- (f) the parties agree that the arbitrator's decision shall be final and binding; and
- (g) the Company and the Council shall bear their own costs in arbitration and (in the absence of an arbitrator's award to the contrary) shall pay the costs of the arbitrator in equal shares.

20.8 **Performance of obligations**

Pending the settlement of any Dispute, the parties shall continue to perform all their obligations under the Contract except neither party shall be obliged to pay any money which is the subject of the Dispute.

20.9 **Compliance with Dispute resolution regime**

A party to the Contract may not commence any court or arbitration proceedings relating to a Dispute unless it has complied with the clauses above relating to Dispute resolution (except where the party seeks urgent interlocutory or injunctive relief).

21. Transfer of ownership of Company owned Bollards

21.1 Upon expiry or early termination of this Contract the Council may elect to either:

- (a) require the Company to remove all or any of the Bollards owned by the Company listed in schedule 5 or installed by the Company pursuant to this Contract and restore the Site(s) in accordance with the terms of this Contract; or alternatively
- (b) require the Company to transfer its ownership of Bollards installed by the Company listed in schedule 5 or installed under this Contract to the Council and the Council will pay to the Company such sum calculated on the basis of the original cost price less provision for depreciation (straight line) based on a term of 16 years. (A schedule of Bollard installation dates and costs must be maintained by the Company at all times during the Contract)

21.2 The Council will notify the Company which option under clause 21.1 the Council wishes to take. Should the Council choose the second option (clause 21.1(b)) then the Company will do all things necessary and provide all documentation to confirm transfer of ownership to the Council as soon as practicable.

21.3 Notwithstanding the provisions of clause 21.1 should the Council terminate this Agreement as a consequence of the Company breaching its obligations hereunder giving rise to the Council's entitlement to terminate, then in such an event the Council shall be entitled to require the Company to transfer its ownership of Bollards to the Council without any obligation on the Council to pay for the purchase of the same. In such an event, the Council is to pay to the Company the depreciated value of the assets being transferred consistent with clause 21.1(b) less any reasonable costs arising from or due to the breach of obligations including (but not limited to) the reinstatement of all Bollards consistent with clause 2.5(f), any legal or administrative costs associated with the early termination and any costs attributable to or resulting from the breach of obligations.

22 Termination

22.1 Early termination

22.1.1 Either the Council or the Company may terminate this Contract immediately by notice in writing where provided for in this Contract or if a party commits or allows to be committed any material breach of a term of this Contract and fails to remedy the breach or fails to provide a solution to the breach acceptable to the non-defaulting party within twenty (20) Working Days of receiving written notice of such breach.

22.1.2 The Council may immediately terminate this Contract, by giving written notice of termination to the Company, if any of the following events occur:

- (a) the Company having a petition presented or an order made or an effective resolution passed or analogous proceedings taken for its bankruptcy, liquidation, dissolution or winding up (except for the purposes of solvent reconstruction);
- (b) the Company having an encumbrancer, receiver, liquidator, trustee or similar officer take possession of or be appointed with respect to all or any part of its business, assets, or undertakings;
- (c) the Company persistently failing or refusing to observe or perform any of the duties or obligations required of it or made by it under this Contract and such default has not been remedied within twenty (20) Working Days of the Company receiving notice from the Council requiring that the default be remedied;
- (d) the Company engaging in or its Personnel engaging in any conduct or practice which is detrimental or harmful to the good name, goodwill or reputation of the Council;
- (e) the Company abandons or repudiates this Contract; or
- (f) over a period of twenty (20) Working Days the Company commits a breach of this Contract which, even although remedied, continues to occur and is in Council's opinion impacting on, or interfering with, the delivery of the Services.

22.1.3 Termination of the Contract shall not prejudice or affect the accrued rights and liabilities of either party under this Contract **subject to** the qualification set out in clause 21.3.

22.2 Force Majeure

22.2.1 Neither party will be liable for any act, omission or failure to fulfil its obligations under this Contract if such act, omission or failure arises from any cause reasonably beyond its control (Force Majeure Event), which includes floods, earthquakes and other acts of God, but which excludes:

- (a) any industrial actions;
- (b) any power, gas and other service failures;
- (c) any riots or public demonstrations; and
- (d) any governmental action which in any way may affect the provision of the Services.

22.2.1 The party who cannot carry out its obligations under this Contract must give the other party to this Contract notice as soon as practicable of the cause and insofar as it is known the probable extent to which the party giving the notice will be unable to perform or will be delayed in performing its obligation under this Contract.

22.2.2 On the issue of notice of a Force Majeure Event the obligations of the party giving the notice will be suspended insofar as that party is prevented during the continuation or intervention of such cause to carry out its obligations under this Contract.

22.2.3 The party giving notice which is affected by the Force Majeure Event must take all reasonable steps to mitigate the effects of and eliminate the intervening event and must resume performance of the Services as properly and practicably as possible.

22.2.4 Should the Force Majeure Event continue for a period exceeding twenty (20) Working Days from the date the party is unable to comply with the obligations under this Contract has given notice to the other party, then the party being the recipient of that notice may terminate this Contract by giving written notice to the other party.

22.3 **Handover report**

22.3.1 On expiry or earlier termination of this Contract the Company shall provide to Council a handover report. The report shall contain all the details as to the current position of all Bollards, a detailed description of the condition of each Bollard, and any other information regarding such Bollards reasonably required by Council as directed by Council's Representative.

23. **Assignment**

23.1 The Company will not assign this Contract (or any part of it) or otherwise part with the possession of any of the Sites without first obtaining the written consent of the Council, which the Council will give if the following conditions are fulfilled:

- (a) The Company proves to the satisfaction of the Council that the proposed assignee is (or in the case of a company, the shareholders of the proposed assignee are) respectable, responsible and have the financial resources to meet the Company's commitments under this Contract and the relevant experience to properly conduct the Services;
- (b) There is no subsisting breach of any of the Company's covenants hereunder;

- (c) A Deed of Covenant in customary form approved or prepared by the Council is duly executed and delivered to the Council; and
 - (d) The Company pays the Council's proper costs and disbursements in respect of the approval or preparation and stamping of any Deed of Covenant and all fees and charges payable in respect of any reasonable enquiries made by or on behalf of the Council concerning any proposed assignee.
- 23.2 Any change in the legal or beneficial ownership of any of the Company's shares or issue of new capital whereby in either case there is a change in the effective management or control of the Company will be deemed to be an assignment of this Contract.
- 23.3 Unless specifically stated to the contrary in any written consent to an assignment or subcontract, no assignment or subcontract shall release or discharge the Company from any liability or obligation under this Contract.

24. General

24.1 Set off

Council by this clause is authorised by the Company to deduct any monies payable by the Company to the Council under this Contract from any monies payable by the Council to the Company under this Contract.

24.2 Council as a regulatory body

24.2.1 The Company acknowledges that the Council in terms of its regulatory function as a local authority is obliged to and shall act as an independent local authority and not as a party to this Contract. The Company expressly acknowledges that it shall have no right or claim against the Council in its capacity as party to this Contract as a result of any lawful action, decision or determination made by the Council in the performance of its regulatory function as a local authority except in the case of bad faith by the Council in its capacity as a party to this Contract.

24.2.2 Any consent or approval of the Council acting in its regulatory capacity shall not be construed as a consent or approval of the Council as a party to this Contract.

24.2.3 Any consent or approval of the Council acting as a party to this Contract shall not be construed as a consent or approval of the Council in its regulatory capacity.

24.3 Publicity and publication

Unless otherwise specified the Company shall not release public or media statements or publish material related to the Services without the prior written approval of the Council, which shall not be unreasonably withheld.

24.4 Confidentiality

The Company agrees that Confidential Information shall be treated as confidential. The Company shall take all reasonable precautions to ensure that the Confidential Information is not in any way disclosed to any third party (other than as is required to perform the Services or to obtain any consent or approval of any other party the Company may need to consult with in order to provide the Services) during or after the term of this Contract. The Company shall not use or attempt to use any Confidential information in any manner which may injure or cause loss to or likely to injure or cause loss to the Council.

24.5 Official Information Legislation

24.5.1 The parties acknowledge that Council is subject to the Local Government Official Information and Meetings Act 1987 and that 'under that Act the Council may be required to release information about the Services and the Company.

24.5.2 In addition, the Company agrees to comply with the requirements of the abovementioned Act in relation to all information relating to the Council held by the Company or its employees.

24.5.3 The Company will only release information where it has been requested to release information pursuant to a request to the Council under the Local Government Official Information and Meetings Act directly to a third party through the Council unless compelled by a competent authority, in which case it will immediately advise the Council as to the information released.

24.6 Changes in Council Policy and legislative changes

24.6.1 During the term of this Contract there may be changes in Council Policy and/or legislative changes (which shall include changes to any bylaw relevant to the Services) which may affect provision of the Services. The parties will in good faith co-operate to make any amendments to this Contract that may be required as a consequence of any such changes.

24.6.2 Where the parties cannot agree on changes required then Company may elect rather than to continue the Contract amended as proposed by the Council to terminate this Contract. Where the Contract is terminated by the Company under this clause, the provisions of clause 22 shall apply.

24.7 No partnership

Nothing in this Contract constitutes the parties as partners or as agents for each other. No party has any authority to bind the other or act on its behalf except to the extent expressly provided for in this Contract.

24.8 No employment contract

The parties expressly acknowledge that this is not a contract of employment but rather requires the Company to supply specific Services.

24.9 Amendment

This Contract cannot be amended, modified or varied or supplemented except in writing signed by duly authorised representatives of the parties.

24.10 Severance

The illegality, invalidity or unenforceability of any provision in this Contract will not affect the legality, validity or enforceability of any other provisions.

24.11 Waiver

24.11.1 No right under this Contract shall be deemed to be waived except by notice in writing signed by each party.

24.11.2 A waiver for either party will not prejudice its rights in respect of any subsequent breach of this Contract by the other party.

24.11.3 Subsequent to any failure by either party to enforce any clause of this Contract, or any forbearance, delay or indulgence granted by the other party will not be constructed as a waiver of either party's rights under this Contract.

24.12 Governing law and jurisdiction

This Contract will be governed by and construed according to the law of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

24.13 Cost

Notwithstanding the provisions of clause 22.3, each party shall carry their own legal or administrative costs arising out of or in relation to negotiation and preparation of this Contract together with any costs for any renewal or variation of this Contract.

24.14 Interest Payments

The Company shall pay interest calculated at the Default Interest Rate to the Council on all amounts owing by the Company to the Council which have not been paid by the date required under this Contract. Interest shall accrue from the date of default of payment to the date of payment.

24.15 Entire Agreement

This Contract represents the entire agreement between the parties. No party shall be bound by any prior warranty or representation unless included in this Contract.

24.16 Notices

All notices and other communication provided for or permitted under this Contract which are required to be in writing, will be sent by registered mail with postage prepaid or by hand delivery or by facsimile.

Such notice given:

- (a) in person, is deemed to be served upon delivery
- (b) by facsimile, is deemed to be served upon the receipt of the correct electronic confirmation that the facsimile has been transmitted successfully; or
- (c) by registered post, is deemed to be served upon acceptance of the registered item.

Any such notice which has been served on a non-Working Day is deemed served on the first Working Day after that day.

The addresses for notices are:

The Council: **Wellington City Council**
Council's Representative: Stephen Harte
Implementation Manager,
Network Improvements.

Address: PO Box 2199
Wellington
Telephone: 04 499 4444
Facsimile: 04 801 3009
Mobile: 021 227 8084

Email: stephen.harte@wcc.govt.nz

The Company: **Phantom Bill Stickers Ltd**

Company's Representative:

Address

Telephone:

Facsimile:

Mobile:

Email:

or such other each party may notify in writing from time to time.

25. Definitions and Interpretation

25.1 Definitions

In this Contract the following definitions apply:

Bollard(s) means all Council-owned and Company-owned existing and new advertising bollards and pole poster holders.

Bollard Design means all copyright, Design (registered or unregistered) documentation, know-how or other protectable right.

Commencement Date means

Company's Representative means such person as the Company may nominate and as may be approved by the Council (such approval not to be unreasonably withheld) in accordance with clause 5.12 and as named in Clause 24.16.

Confidential Information means any Council information relating to the Services other than information which:

- (a) has been published or otherwise has become part of the public domain other than through acts or omissions of the recipient; or
- (b) has been furnished to the recipient by persons other than the Council (which term includes persons employed by or acting for the Council) as a matter of legal right and without restriction on disclosure; or
- (c) was already in the possession of the recipient without restriction on disclosure; or
- (d) is required to be disclosed by any law or in relation to any proceedings or action before any court, tribunal, or other competent authority or body.

Contract means this Contract and includes the Schedules and any additional documents specified in this Contract.

Council Design means the standard bollard design used by Council.

Council Bollards means all Bollards erected at the cost of, and owned by, the Wellington City Council.

Council's Representative means the representative of the Council as defined in clause 6.2 and as named in clause 25.16.

Default Interest Rate means the commercial overdraft rate charged on commercial accounts by the Bank of New Zealand.

Expiry Date means:	Initial Term:	30 January 2020
(if applicable)	First Renewal Term:	30 January 2022
Final Expiry Date means:	Second Renewal Term:	30 January 2024

GST means Goods and Services Tax in terms of the Goods and Services Tax Act 1985 at the rate prevailing from time to time.

GST Act means the Goods and Services Tax Act 1985.

HS Law means the Health and Safety at Work Act 2015, regulations and approved codes of practice.

Installation Programme means the programme for the installation of the New Bollards as set out in Schedule 1.

New Bollard(s) means the Bollard(s) to be designed and installed (and relocated as may be required) by the Company as per the requirements of this Contract.

Personnel means the personnel required to carry out the Services under this Contract and as employed or contracted by the Company to place advertisements on the Bollards.

Renewal Date means:

(if applicable)	First Renewal Term:	30 January 2020
(if applicable)	Second Renewal Term:	30 January 2022

Services means the Services set out in Schedule 1.

Scope of Services means the Scope of Services set out in Schedule 1.

Site(s) means the area under, over and above the areas described in Schedule 6 and as may be added to or deleted from time to time under this Contract.

Special Event means those public events designated by the Council as having local, regional or national significance that requires use of the Bollards in proximity to the Special Event to display its advertisements.

Wellington City means that land owned by the Council suitable for the placement of Bollards.

Working Day means a day on which registered banks are open for business in Wellington excluding Saturdays and Sundays and Wellington Anniversary day.

25.2 Interpretation

In this Contract:

- (a) all monetary amounts are stated exclusive of GST and in New Zealand dollars unless provided otherwise;
- (b) where the context permits the singular includes the plural and vice versa;
- (c) references to any party means the parties to this Contract and includes their respective successors and permitted assignees (as the case may be);
- (d) references to clauses, schedules and to any attachments are to clauses in the schedules and attachments (if any) to this Contract (unless otherwise stated);
- (e) where the context permits references to the Company this includes the Company's employees, agents and officers;
- (f) all references to legislation include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation;

- (g) references to a person include a natural person, firm, corporation, association or other entity whether incorporated or not and whether or not having a separate legal personality;
- (h) the headings in this Contract shall not be used in its interpretation;
- (i) joint and several obligations that bind more than one person shall bind those persons jointly and severally;
- (j) any consent granted by Council under this Contract shall not be held to be consent by Council as a regulatory body unless such consent is given expressly by Council in that capacity;
- (k) reference to the Council and the Company include their respective successors and assigns;
- (l) where either party's consent or approval is required pursuant to any provisions of this Contract, unless it be specified otherwise, that consent or approval shall not be arbitrarily or unreasonably withheld or delayed.

27. Business Information Poles

- 27.1 The parties acknowledge that at the date of this Agreement the design and possible installation of Business Information Poles is under development.
- 27.2 The Company agrees that it shall provide its advice in respect of the design, installation and location of such Business Information Poles.
- 27.3 Where the design and installation of such Business Information Poles is approved, the provisions of this Agreement shall apply insofar as the Company shall erect, maintain and advertise on such Business Information Poles in compliance with all standards and obligations as set out in this Agreement as for Bollards unless otherwise stated.

28. Other Services

Any add value services identified through the tender process will be specified and incorporated under this clause.

EXECUTION

IN WITNESS WHEREOF this Contract has been executed by the parties as an agreement as of the date first appearing above.

SIGNED for and on behalf of
WELLINGTON CITY COUNCIL

by:

.....
under delegated authority

in the presence of:

Signature:)
Name:)
Position:)
Address:)

SIGNED for and on behalf of
PHANTOM BILL STICKERS LTD

by:

.....

in the presence of:

Signature:)
Name:)
Position:)
Address:)