

Potomac

**STREET FURNITURE SERVICE
PROVIDER CONTRACT**

between

THE COUNCIL

and

THE SERVICE PROVIDER



SIMPSON GRIERSON
LAW

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THIS AGREEMENT is dated the 21st day of February 1999 2000

BETWEEN The party whose details are set out in Schedule 1 of the one part (the "Council")

AND The party whose details are set out in Schedule 1 of the other part (the "Service Provider")

BACKGROUND

- A. The Council is wanting to promote an integrated suite of Street Furniture within its territorial jurisdiction. The Street Furniture is to be functional, safe, vandal and graffiti resistant, flexible in design to meet the requirements of the Council and improve pedestrian flow by minimising street clutter.
- B. The Service Provider operates a successful commercial operation involving the design, construction, installation and servicing of Street Furniture internationally and wishes to supply the Services (as defined below) to the Council.
- C. The Council has agreed to appoint the Service Provider, and the Service Provider has agreed to provide, the Services on the terms and conditions of this agreement.

THE PARTIES AGREE:

1. INTERPRETATION

In this agreement, unless the context otherwise requires:

1.1 Definitions:

"**Advertise**" means to make generally or publicly known any information in any way;

"**Advertising Code of Practice**" means the codes of practice issued and administered by the Advertising Standards Authority (or similar body) and as varied from time to time;

"**Bank**" means a bank registered as a bank within the meaning of the Reserve Bank of New Zealand Act 1989 which is providing the banker's undertaking (if any) under clause 26;

"**Business Day**" means any day of the week other than:

1.1.1 Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, New Zealand's anniversary day and the provincial anniversary day as observed at the place where the Council is situated; and

1.1.2 a day in the period commencing with the 24th day of December in any year, and ending with the 5th day of January in the following year;

A Business Day shall be deemed to commence at 9.00am and to terminate at 5.00pm.

“Chief Executive Officer” means the chief executive officer of the Council and the chief executive officer of Adshel Street Furniture Pty Limited;

"Commencement Date" means the date set out in Schedule 1;

"Contract Manager" means a person designated by the Council from time to time as being responsible for supervising the performance by the Service Provider of the Service Provider's obligations under this agreement which, at the date of this agreement, is the person nominated in Schedule 1;

"Correspondence" means those communications in writing, if any, between the Council and the Service Provider as attached as Appendix A to this agreement and signed by the parties for the purpose of identification;

"CPI" means the Consumer Price Index for New Zealand compiled by Statistics New Zealand, or such other index nominated by the Council in substitution of the same;

"Data" means all data and information gathered, created or developed by or on behalf of the Service Provider to enable it to provide, or as a result of providing, the Services or performing its obligations under this agreement;

"Encumbrances" means any mortgage, charge, lien, pledge, title retention, arrangement, trust, power or other encumbrance to secure the payment of a monetary obligation or the performance or observance of any other obligation;

"Financial Reports" means the reports specified in the Specification comprising such financial and other information required by the Council and if not so specified, comprising the information in the format required by the Council as varied from time to time by the Council;

"Implementation Plan" means the plan (attached as Part 5 of the Specification Forms compiled by the Service Provider) for the design, manufacture, installation and maintenance (the maintenance component of which will be the Maintenance Programme) of Street Furniture, (including

the removal of existing street furniture) and as varied from time to time in accordance with this agreement;

"Intellectual Property" means all inventions, patents, patent applications, trade marks (whether registered or not), brand names, designs, copyright (including copyright in any computer software or hardware or any works associated with such software or hardware), know-how, commercially sensitive or valuable information, trade secrets or other proprietary rights which may arise from intellectual activity;

"Licence Fee" means the amount payable by the Service Provider to the Council in accordance with clause 12 of this agreement;

"Licensed Operator" means any third party granted a licence by the Council to occupy any Service Area;

"Maintenance Information System" means a computerised street furniture management system created and managed by the Service Provider in accordance with the Specification and includes an on-line connection to the Council, which the Council may access at any time and which will produce all reports referred to in this agreement;

"Maintenance Programme" means the programme (attached as Part 6 of the Specification Forms compiled by the Service Provider) for the maintenance and management of the Street Furniture, including the maintenance and management of existing street furniture detailed in the Specification, as varied from time to time in accordance with this agreement;

"Milestones" means the time by which certain events must have occurred as set out in each of the Implementation Plan and the Maintenance Programme for the provision of relevant Services;

"Objectives" means the objectives and goals of the Council as set out in clause 2 of the Specification;

"Operational Reports" means the reports specified in clause 20 of the Specification comprising such management statistical or other information required by the Council and if not so specified, comprising the information in the format required by the Council as varied from time to time by the Council;

"Permit" means permits, consents, licences or approvals required from the Council or any other authority to enable the Service Provider to provide the Services;

"Performance Criteria" means the advertising obligations expressed in clause 4.10 and the time, quality and cost outcomes of the performance of

the Services (attached as Part 6 and Part 7 of the Specification Forms compiled by the Service Provider) that the Service Provider must satisfy;

"Performance Period" means the periods over which the Performance Criteria will be assessed;

"Public Safety" means any event which could be reasonably expected to cause or be likely to cause injury to any person;

"Representative" means the person appointed by the Service Provider in accordance with clause 3.7;

"Schedule of Fees and Rates" means the fees and rates set out in Schedule 3;

"Service Areas" means sites designated by the Contract Manager in accordance with the Specification and this agreement for the removal or installation of Street Furniture;

"Services" means the services and obligations to be performed by the Service Provider, as set out in this agreement and the Specification and shall include, but not be limited to, the design, construction, installation, removal, relocation, refurbishment, upgrade, maintenance of, and advertising on, not less than the minimum quantity of Street Furniture referred to in Table B of PART 2 of the Specification Forms. The minimum quantities of Street Furniture does not include existing street furniture already installed as at the date of this agreement under the terms of the existing agreements referred to in clause 31.15. Where provision is made in the Specification for Street Furniture to be provided by the Service Provider, references to Services shall be deemed to mean the provision of Services or Street Furniture and Services, as applicable;

"Service Provider" means the party set out in Schedule 1;

"Specification" means the Specification supplied by the Council and attached to this agreement as Appendix B and shall include the Specification Forms;

"Shareholders" means the shareholders of the Service Provider as at the date of this agreement, being APN News & Media Limited and Clear Channel Communications Incorporated;

"Specification Forms" means the forms attached to the Specification;

"Specified Personnel" means the personnel specified in Schedule 1;

"Street Furniture" means goods made available by the Service Provider as part of the Services supplied under this agreement, (being the types of

Street Furniture listed in the Specification and not less than the quantities of Street Furniture referred to in Part 2, Table B of the Specification Forms), and subject to the provisions of clause 31.15, excludes all goods that are of a temporary nature and existing street furniture that the Council determines is not part of Services to be provided by the Service Provider;

"**Term**" means the term set out in Schedule 1;

- 1.2 **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the schedules and appendices;
- 1.3 **Dollars and \$:** references to "dollars" and "\$" are references to New Zealand dollars;
- 1.4 **Gender:** words denoting a gender shall include any other genders;
- 1.5 **Headings:** clause headings and other headings are for ease of reference only and will not affect the interpretation of this agreement;
- 1.6 **Negative Obligations:** any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- 1.7 **Parties:** references to parties are references to parties to this agreement and will be deemed to include the assignees, transferees and successors of the parties;
- 1.8 **Persons:** references to persons will be deemed to include references to individuals, companies, partnerships, associations, trusts, government departments and local authorities in each case whether or not having separate legal personality;
- 1.9 **Plural and Singular:** words importing the singular will include the plural and vice versa;
- 1.10 **Schedules etc:** any schedules and appendices to this agreement and the provisions and conditions contained in such schedules and appendices will have the same effect as if set out in the body of this agreement; and
- 1.11 **Statutes and Regulations:** references to a statute include references to regulations, orders or notices made under that statute, and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise including a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.

2. APPOINTMENT

2.1 Appointment: The Council appoints the Service Provider to provide the Services within the territorial jurisdiction of the Council, subject to the terms of this agreement. The Service Provider accepts such appointment. If, during the Term of this agreement, the territorial boundary of the Council changes, the Council shall use its best endeavours to ensure that Service Provider can continue to provide the Services over the same geographic area as is administered by the Council at the date of this agreement.

2.2 Term of Appointment: The appointment shall be for the Term which shall commence on the Commencement Date and continue until the Term expires unless it is terminated earlier under clause 20.

2.3 Restriction: The Council grants to the Service Provider the exclusive right to advertise during the Term on all street furniture displaying advertising panels and other similar structures displaying advertising panels, but only to the extent the street furniture or other similar structures are on footpaths and open spaces owned and under the direct control of the Council. The maximum size of advertising panels shall be 1.8 metres by 1.2 metres unless another size is agreed to by the Council. The Service Provider's advertising rights shall be subject to:

2.3.1 Council Advertising: the rights of the Council to advertise any:

- (a) of its business activities;
- (b) events that in the opinion of the Council are of local, national or international importance;
- (c) entertainment events; or
- (d) community activities;

where such advertisement is on, over or adjacent to any footpath or road owned by the Council whether or not the Council uses the same or a similar format of advertising as used by the Service Provider (which advertising will include, but will not necessarily be limited to, the advertising medium of banners, sandwich boards, vending machines and community poster structures notwithstanding that such advertising medium may be the same or similar in size to the advertising panel approved by the Council pursuant to clause 2.3 and which at the date of this agreement is 1.8 metres by 1.2 metres);

2.3.2 Business Advertising: the rights of businesses to advertise (adjacent to their place of business) the goods, services or

business activity of such business on, over on any footpath or road owned by the Council whether or not the business uses the same or a similar format of advertising as used by the Service Provider (which advertising will include, but will not necessarily be limited to, the advertising medium of banners, sandwich boards and vending machines notwithstanding that such advertising medium may be the same or similar in size to the advertising panel approved by the Council pursuant to clause 2.3 and which at the date of this agreement is 1.8 metres by 1.2 metres);

2.3.3 Further Agreement: the rights of the Council to enter into agreements with third parties for the provision of automatic public toilets and street furniture that does not contain advertising, notwithstanding that such public toilets and Street Furniture may also be provided by the Service Provider under the terms of this agreement;

2.3.4 Advertising Panel Dimensions: the rights of the Council and third parties to advertise on structures not being street furniture using any advertising medium (including the medium used by the Service Provider) where the size of such advertising is outside a range of plus or minus 20% of the maximum dimensions of the advertising panel (currently 1.8 metres by 1.2 metres) used by the Service Provider under this agreement; or

2.3.5 Contractual Obligations: the current contractual rights of third party advertisers to advertise on similar structures, provided however the Council undertakes not to renew such contracts.

3. SERVICES

3.1 Service Performance: The Service Provider shall perform the Services:

3.1.1 Times: at the times and in the manner specified in the Specification;

3.1.2 Diligence: in a conscientious, diligent and professional manner, which is higher than or equal to the degree of skill, care and diligence normally exercised by recognised professional persons that supply services of a similar nature;

3.1.3 Objectives: in accordance with, and in order to achieve, the Objectives;

3.1.4 Fitness for Purpose: so that all Street Furniture is fit for its designated or intended purpose or purposes; and

3.1.5 Satisfaction of Criteria: in a way that satisfies the Performance Criteria.

Failure by the Service Provider to comply with this clause 3.1 shall entitle the Council to give notice to the Service Provider under clause 20.1.

3.2 Standard of Performance: The Service Provider shall fully inform itself of the Council's requirements from time to time and for that purpose shall consult with the Council throughout the Term. Without limiting clause 3.1 and this clause 3.2, the Service Provider shall supply the Services in accordance with:

3.2.1 Representations: the specifications and the representations made by the Service Provider in the Correspondence;

3.2.2 Specification: the requirements of the Council set out in the Specification, as amended, if at all, by the Council in the Correspondence; and

3.2.3 New Zealand Standards: all applicable New Zealand standards, including those standards, if any, specified in Schedule 1.

3.3 Further Information: If the Service Provider considers reasonably that it requires any information, documents or other particulars to be made available to it by the Council to enable the Service Provider to provide the Services in accordance with this agreement, the Service Provider will advise the Council of its requirements and the Council shall provide such information, documents or other particulars as the Council deems necessary in all the circumstances and the Service Provider shall satisfy itself as to the accuracy and adequacy of such information, documents or other particulars.

3.4 Permits: The Service Provider is required to obtain and hold at the Service Provider's cost any and all Permits required for the Services and shall hold such Permits throughout the Term and provide the Council with a copy of the same on request.

3.5 Compliance: The Service Provider shall in the discharge of its duties and in the exercise of its powers under this agreement conform to, observe and comply with the following.

3.5.1 Directions: The directions from time to time made or given by the Contract Manager.

3.5.2 Obligations: All statutory and regulatory obligations.

3.5.3 Council Policies: All applicable policies, procedures and codes of conduct of the Council (hereinafter referred to as "Council Policy"). However, where the Council amends or introduces a

Council Policy that in the opinion of the Contract Manager, may upon its introduction, reduce the net profit (after tax) of the Service Provider, then the Council shall give the Service Provider fifteen (15) Business Days notice in writing, (the "Notice Period"), of the Council's intention to introduce a new Council Policy. If the Service Provider believes that such Council Policy will, or is likely to, cause the Service Provider actual loss then it must give the Council notice, in writing, of such loss prior to the expiry of the Notice Period. If the Service Provider fails to notify the Council prior to the expiry of the Notice Period then the Service Provider shall be deemed to have waived its right to compensation.

The parties shall then negotiate for a period of not greater than twenty (20) Business Days ("Negotiation Period"). If, during the Negotiation Period, the Service Provider can demonstrate, (including the provision of supporting details showing how that loss has been calculated), to the reasonable satisfaction of the Council, that the Service Provider will, or is likely to, suffer loss then the Council shall pay to the Service Provider such compensation as the parties may agree. If, upon the expiry of the Negotiation Period, the parties have not reached agreement on the amount of compensation, if any, then the provisions of clause 27 shall apply. The Council may at any time prior to the introduction of the Council Policy, by notice in writing, advise that it does not wish to introduce the new Council Policy.

- 3.5.4 Code of Practice:** The Advertising Code of Practice.
- 3.6 No Payment or Benefit:** The Service Provider shall not accept any payment or other benefit in money or in kind from any person as an inducement or reward for any matter or business transacted by or on behalf of the Council or in the provision of the Services, unless otherwise provided in this agreement; and
- 3.7 Appoint Representative:** The Service Provider shall ensure that a senior contract manager of the Service Provider is appointed for the purposes of this agreement as the Representative, who shall at the date of this agreement be the person nominated in Schedule 1.
- 3.8 Failure to Comply:** The Service Provider shall be liable for any costs or expenses incurred by the Council in the event the Service Provider fails to comply with the provisions of clause 3.4.
- 3.9 Not Employees:** The Service Provider shall not represent itself, and shall ensure that its employees and sub-contractors do not represent themselves, as being employees or agents of the Council except where specifically authorised in writing by the Council to act as agent.

- 3.10 Performance in Accordance with Principles:** Subject to the rights of the parties to engage in the negotiation process referred to in clause 3.5.3 above, the Service Provider shall supply the Services in a manner which is consistent with, and in accordance with, the principles of the Council's annual plan and the Local Government Act 1974 (as amended from time to time) including the following principles:
- 3.10.1 Services and Facilities:** to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
 - 3.10.2 Environment:** to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which the Council is responsible;
 - 3.10.3 Effect of Decisions:** to have regard to the long term and cumulative effects of the Council's decisions; and
 - 3.10.4 Public Assets:** to bear in mind that the Council is the custodian and trustee of public assets and to effectively account for and manage the assets for which the Council is responsible.
- 3.11 Provide Materials:** The Service Provider shall provide all plant, equipment, tools, supplies and materials necessary for use in connection with the provision of the Services.
- 3.12 Materials in Good Condition:** The Service Provider shall ensure that all plant, equipment and tools are maintained in good working order, repair and condition at all times and are fit for the purpose of providing the Services.

4. STREET FURNITURE AND SERVICE AREAS

- 4.1 Provision of Services:** The Service Provider shall, in the course of the provision of the Services or otherwise, do the following.
- 4.1.1 Operation and Maintenance:** Operate and maintain the Street Furniture in accordance with the Specification and solely for the purposes for which they are designed and not damage or destroy them.
 - 4.1.2 Removal and Installation:** Remove street furniture existing at the time of this agreement and install Street Furniture at the Service Areas directed by the Contract Manager in accordance with the Implementation Plan and the Specification.

- 4.1.3 **Maintenance:** Maintain (including repair and replace) and manage all Street Furniture in an as new and clean and tidy condition at all times in accordance with the Maintenance Program and the Specification in a way that satisfies the Performance Criteria, at no cost to the Council.
- 4.1.4 **Report:** Provide any reports required by the Council from time to time.
- 4.1.5 **No Interference:** Not create a nuisance or interfere with the comfort of patrons or members of the public.
- 4.1.6 **Repair and Replace:** If an emergency situation should occur, undertake the repair or replacement of Street Furniture within the time periods detailed in clause 19 of the Specification and Part 6 and Part 7 of the Specification Forms, and where no time period is detailed, promptly repair or replace any part of the Street Furniture which is damaged during the Term to the condition that part of the Street Furniture was in immediately prior to the occurrence of the damage to the satisfaction of the Council, and to notify the Council immediately upon such damage occurring and such repair or replacement taking place. All repair and replacement will be undertaken by the Service Provider at no cost to the Council.
- 4.1.7 **Remove Waste:** Ensure that waste (of any kind) caused, allowed or created by the Service Provider in a Service Area is immediately cleared and removed.
- 4.1.8 **Specification:** Ensure that all Street Furniture is designed, manufactured and installed in accordance with the Specification.
- 4.2 **Trespass and Damage:** The Service Provider shall ensure that:
 - 4.2.1 **No Damage:** no injury or damage is caused to persons or to property; and
 - 4.2.2 **No Trespass:** no trespass to property is committed, arising out of or in connection with this agreement,by the Service Provider or any employee, agent or sub-contractor of the Service Provider in the course of the provision of the Services.
- 4.3 **Service Areas:** The Service Provider acknowledges that as at the date of this agreement, the Service Areas sites are those contained in the table attached to this agreement as Schedule 5. The Service Provider shall, at its discretion, allocate the initial quantity of Street Furniture among those sites. After the date of this agreement the sites shall be as agreed between the

parties and those sites so agreed shall, from time to time, be added to the table attached as Schedule 5. The parties agree that the provisions of clause 27 shall not apply if the parties cannot agree on sites. The Service Provider's rights of access to the Service Area shall be limited only to what is reasonably necessary for it to provide the Services in a prompt and efficient manner.

- 4.4 Access:** The Service Provider will be the owner of all Street Furniture, however in providing the Services, the Service Provider shall not have exclusive possession of the Service Areas and agrees to co-operate with all Licensed Operators in a matter which minimises the interruption to their operations.
- 4.5 On-line Screen Access:** The Service Provider will provide on-line screen access for the Council, at a location nominated by and at no cost to the Council, to the Maintenance Information System in accordance with the Specification including hard copy reporting capability for the duration of the Term. The Service Provider shall maintain the on-line service and shall be responsible for the cost of any associated hardware, software networks and equipment for such access and the hard copy reporting. The Service Provider shall, at its cost, provide all necessary training to the Council staff who are required to use the on-line service.
- 4.6 Continuation of On-line Access:** Upon the expiration or termination of this agreement for any reason, the Service Provider will for a period of at least one (1) year after the expiration or termination of this agreement and at no cost to the Council:
- 4.6.1** ensure that the Council's on-line access to the Maintenance Information System is continued;
 - 4.6.2** procure any licence or permit for the Council in this regard that may be required; and
 - 4.6.3** ensure that all systems and facilities to use the Maintenance Information System are provided to the Council.
- 4.7 Installation:** The Service Provider shall make available the Street Furniture and install Street Furniture in accordance with the Implementation Plan.
- 4.8 Quality and Description:** The quality and description of the Street Furniture shall be as specified in the Implementation Plan, the Specification and this agreement.
- 4.9 Compliance with Laws:** The Service Provider shall comply with all applicable laws, regulations and bylaws concerning the provision of the Services

- 4.10 Advertising:** The Service Provider must Advertise in accordance with the provisions in the Specification, particularly clauses 21, 22, 23 and 24 and the Advertising Code of Practice in each case at no cost to the Council.
- 4.11 Inspection and Testing:** The Service Provider shall not unreasonably refuse any request by the Contract Manager to inspect and test the Street Furniture during its manufacture, processing or storage on the premises of the Service Provider or any third party prior to dispatch and the Service Provider shall provide the Contract Manager with all facilities reasonably required for inspection and testing.
- 4.12 Failure of Testing:** If, as a result of inspection or testing, the Contract Manager is not satisfied that the Street Furniture will comply in all respects with this agreement (including the Specification), and the Contract Manager so notifies the Representative in writing within 14 days of inspection or testing, the Service Provider shall take such steps as are necessary to ensure compliance.
- 4.13 Care:** The Service Provider shall ensure that the Street Furniture is properly packed and secured to ensure that it is delivered and installed in the relevant Service Area in an undamaged condition.
- 4.14 Warranties:** The Service Provider warrants that the Street Furniture:
- 4.14.1 Consistent with Specification:** shall be of the quality and fit for any purpose set out in the Specification or otherwise made known to the Service Provider prior to delivery;
 - 4.14.2 No Defects:** shall be free from defects in design, material and workmanship;
 - 4.14.3 Correspond with Specification:** where appropriate, shall correspond with any relevant specification, prototype or sample (if any has been supplied); and
 - 4.14.4 Comply with Laws:** shall comply with all statutory requirements, regulations, bylaws and any applicable New Zealand standards.
- 4.15 Indemnity:** The Service Provider shall indemnify the Council in full against all liabilities, losses, damages, penalties, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of:
- 4.15.1 Breach of Warranty:** breach of any warranty given by Service Provider in relation to Street Furniture (including the warranties set out in clause 4.14);

- 4.15.2 Infringement of Intellectual Property Rights:** any claim that the Street Furniture infringes, or their importation, use or resale, infringes the Intellectual Property rights of any other person;
- 4.15.3 Breach of Legislation:** breach of any warranty implied under the Sale of Goods Act 1908 or other legislation, regulation or by-law in respect of the Street Furniture or under any other liability arising from a claim brought under such legislation; and
- 4.15.4 Other Acts or Omissions:** any act or omission of the Service Provider or its employees, agents or sub-contractors that is negligent or breaches, in any way whatsoever, any of the following.
- (a) The terms and conditions of this agreement or the Specification.
 - (b) The standards, procedures or processes of the:
 - (i) New Zealand Standards referred to in clause 3.2.3;
 - (ii) industry standard building or safety practices; or
 - (iii) international best practices for the provision of Services;
- 4.16 Election:** The Council may elect to either self insure or maintain appropriate public liability insurance to cover any liability it may incur in connection with this agreement.
- 4.17 Where public liability insurance held:** If the Council has elected to maintain public liability insurance in accordance with the provisions of clause 4.16 then the Service Provider shall pay:
- 4.17.1** one half of the amount of any increase in the insurance premium payable by the Council on its public liability insurance above the level at the date of this agreement increased as a result of liability it may incur in connection with this agreement; and
 - 4.17.2** one half of the amount of any excess payments in respect of claims under the Council's public liability policy that the Council is required to pay as a result of liability it may incur in connection with this agreement.

- 4.18 Liability:** The Service Provider shall also pay one half of the amount of any liabilities, losses, damages, penalties, costs and expenses (including legal expense) awarded against or incurred or paid by the Council arising from this agreement where such liabilities, losses damages penalties, costs and expenses could not have been insured against.
- 4.19 Obligations additional:** For the avoidance of doubt the parties agree that the obligations of the Service Provider set out in clauses 4.15 to 4.18 (inclusive) are in addition to those set out in the rest of this agreement and do not override any such provisions.

5. MILESTONES

- 5.1 Notice of Achievement:** The Service Provider shall give written notice to the Contract Manager upon achievement of each Milestone set out in the Implementation Plan. Such notice shall attach a report evidencing the achievement of the Milestone.
- 5.2 Enquiry about Achievement:** Upon receipt of a notice under clause 5.1, the Contract Manager shall carry out such enquiries in respect of that Milestone as may be reasonably necessary to determine whether the Milestone has been achieved.
- 5.3 Notice:** Subject to clause 5.5, the Contract Manager shall issue to the Service Provider within five (5) Business Days of receiving notice under clause 5.1:
- 5.3.1 Satisfactory:** a certificate which indicates that the Council is satisfied that the Milestone has been achieved; or
- 5.3.2 Not Satisfactory:** a notice which indicates that the Council is not satisfied that the Milestone has been achieved, setting out the reasons for refusal.
- 5.4 Further Attempt:** If a notice is issued by the Contract Manager under clause 5.3.2, the Service Provider will take such steps as are required to achieve the Milestone. Upon completion of those steps, the Service Provider shall issue a notice to the Council and the procedure set out in clauses 5.1 to 5.4 shall recommence.
- 5.5 No Waiver:** The Service Provider acknowledges that the issue of a notice under clause 5.3 does not waive any rights or remedies the Council may have arising from any act or omission of the Service Provider prior to the date of the certificate.

6. IMPLEMENTATION PLAN AND MAINTENANCE PROGRAM

- 6.1 Approval of Plan:** The Service Provider will submit an Implementation Plan and Maintenance Program for the whole period of the Term (prepared in accordance with the Specification) to the Contract Manager for his approval, within at least one (1) month of the Commencement Date. The Contract Manager will review and agree on the contents of the Implementation Plan and Maintenance Program with the Service Provider within ten (10) days of receipt. If agreement is not reached between the Service Provider and the Contract Manager within that ten (10) day period, the provisions of clause 27 shall apply.
- 6.2 Delay and Compensation:** The Service Provider 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 Service Provider in performing the Services.
- 6.3 Variation and Approval:** The Service Provider shall notify the Contract Manager of any variations it wishes to make to the Implementation Plan and Maintenance Program from time to time during the Term. The variations to the Implementation Plan and Maintenance Program shall not be implemented before they are first approved by the Contract Manager in writing. Except for the minimum quantity of Street Furniture and the time table for installation of Street Furniture contained in the Implementation Plan, (which shall not be varied without the approval of the Contract Manager first being obtained), where agreement is not reached between the Service Provider and the Contract Manager within 10 Business Days then the provisions of clause 27 shall apply.
- 6.4 Annual Review:** The Maintenance Program will be reviewed annually, on the anniversary of the Commencement Date, by the Contract Manager and appropriate changes may be made to it by agreement with the Service Provider. If the changes are not agreed within ten (10) days of notification of the changes sought by the Contract Manager to the Service Provider, the provision of clause 27 shall apply.
- 6.5 Performance:** The Service Provider shall perform the Services in accordance with the Implementation Plan and the Maintenance Program approved by the Contract Manager and in a manner consistent with the Performance Criteria.

7. CONTRACT MANAGER

- 7.1 Duties of Contract Manager:** The Contract Manager shall, without limitation:

- 7.1.1 **Review Performance:** review and monitor the performance of the Service Provider's obligations under this agreement and report thereon to the Council;
 - 7.1.2 **Identify Sites for Installation:** identify for the Service Provider the sites of the Service Areas where Street Furniture is to be installed and/or Services provided under this agreement in accordance with the Implementation Plan or otherwise;
 - 7.1.3 **Investigate Improvements:** investigate improvements to efficiency, quality, productivity and safety in relation to the Services; and
 - 7.1.4 **Perform Other Functions:** carry out such other functions as are set out in this agreement (including the Specification) or agreed to in writing between the parties.
- 7.2 **Meetings:** The Contract Manager and the Representative shall meet weekly, or at such times reasonably required by the Contract Manager, at the Council's offices (unless the parties agree otherwise) at a time agreed between the parties.
- 7.3 **Performance Assessment:** The Representative shall be suitably qualified and informed in relation to the matters in clauses 3 and 4 and shall provide sufficient information to the Council from time to time to enable the Contract Manager to properly assess the performance of the Service Provider under this agreement.
- 7.4 **Substitution for Representative:** The Service Provider may replace its Representative from time to time by nominating a senior manager to take the place of the Representative by notice in writing to the Council. The Council may reject the nominated person if it sees fit.
- 7.5 **Replacement of Representative:** The Council, may at its absolute discretion, give notice to the Service Provider requiring it to replace the Representative. The Service Provider shall promptly arrange for the replacement of the Representative with a senior manager acceptable to the Council.

8. OUTLAYS

- 8.1 **Payment of Costs:** Except as otherwise provided in this agreement, the Service Provider will pay all costs, charges, expenses, fees, taxes and duties (of any kind) arising out of or in connection with the Services or this agreement, except for:
 - 8.1.1 **Rubbish Bins:** emptying all rubbish disposal bins;

- 8.1.2 **Recycling Bins:** emptying all recycling bins;
 - 8.1.3 **Street Cleaning:** street cleaning, where the waste or rubbish is not caused or created by the Service Provider; and
 - 8.1.4 **Charges:** the charges associated with the use of gas, phone, power and water supplied to the Service Areas occupied by Licensed Operators.
- 8.2 **Reimbursement of Costs:** Notwithstanding clause 8.1, the Service Provider shall reimburse the Council for any costs, expenses and charges referred to in clause 8.1, or a reasonable estimate thereof, as may be determined by the Council acting reasonably, where they have been incurred by the Council as a result of an act or omission or wilful default of the Service Provider.
- 8.3 **Recover Debt:** Should the Service Provider fail to make any payment as referred to in clauses 8.1 or 8.2, the Council may make the payment and recover that amount from the Service Provider as a debt due and owing.

9. GENERAL OBLIGATIONS OF SERVICE PROVIDER

- 9.1 **General Duties of Service Provider:** Notwithstanding anything in this agreement or the Specification, the Service Provider shall:
- 9.1.1 **Pay Money Due:** pay any monies due under clauses 3.4, 4.15 and 8.2;
 - 9.1.2 **Comply with Policies:** comply at its own cost and expense with all applicable policies of the Council, including policies in relation to fees and charges, all legislation, regulations and by-laws, subject to the Service Providers right to negotiate with the Council where a Council Policy is to be introduced pursuant to the provisions of clause 3.5.3;
 - 9.1.3 **Comply with Specification:** comply at all times with the Specification;
 - 9.1.4 **Make Payments in a Timely Manner:** make all payments as they fall due under clause 12 and in the amounts and at the times prescribed in accordance with the Schedule of Fees and Rates; and
 - 9.1.5 **Pay Liquidated Damages:** pay liquidated damages in lieu of termination in accordance with clause 20.1.6 or 20.2.3.

and the Service Provider shall indemnify the Council from and against all actions, costs, charges, claims and demands arising from or in connection

with a breach of any obligation under this clause 9.1. Any monies payable under this clause 9.1 shall become a debt due and owing by the Service Provider to the Council.

9.2 Inspection of Accounts: The Council (or its nominated representative) shall be entitled to, between the hours of 9.00 am and 5.00 pm on a Business Day and upon two (2) Business Days notice, inspect any books of account or other records of the Service Provider to verify compliance with this agreement. The Service Provider grants the Council (or its nominated representative) access to any premises occupied by the Service Provider for such purpose.

9.3 Conduct and Appearance: The Service Provider shall ensure that:

9.3.1 Courteous and Safe: it renders the Services at all times in a polite and helpful manner and shall provide the Services in a safe manner;

9.3.2 Appearance: all persons engaged by it in the provision of the Services shall be of neat and clean appearance and shall comply with any specific dress and other requirements set out in the Specification; and

9.3.3 Uniform: all persons engaged by it in the provision of the Services shall wear such uniforms and identifying materials (eg name tags/badges) as may reasonably be requested by the Council from time to time.

9.4 No Reimbursement: The Service Provider shall not be entitled to reimbursement of expenses incurred by it in relation to the Services, save as set out in this agreement or save as arise from the Council's negligence.

9.5 No Agreement Without Consent: The Service Provider must not enter into any agreements or arrangements that will be contrary to the interests of the Council arising from or connected with this agreement or the Services, without obtaining the prior written consent of the Council. Such consent may be given or refused by the Council in its absolute and unfettered discretion.

9.6 Advertising: The Service Provider shall use its best endeavours to maximise advertising revenue, notwithstanding the advertising restrictions in clause 23 of the Specification.

10. PERFORMANCE CRITERIA

10.1 Performance Criteria: The Performance Criteria compiled by the Service Provider (and the Performance Period within which each Performance Criterion must be met):

- 10.1.1 Negotiation and Determination:** may, at the request of the Council, be further negotiated between the Service Provider and Contract Manager within two (2) months of the Commencement Date if, in the opinion of the Contract Manager, there is any inconsistency between the Performance Criteria and the Specifications, Implementation Plan and Maintenance Programme. If the Performance Criteria and Performance Periods cannot be agreed within two (2) months of the Commencement Date, then the provisions of clause 27 shall apply in order to determine the Performance Criteria and Performance Periods;
- 10.1.2 Review During First Six Months:** may be reviewed by the Contract Manager at any time during the first six (6) months following the Commencement Date and changes may be agreed with the Service Provider. Should changes to the Performance Criteria or Performance Periods not be agreed within ten (10) days of the written notice of the Contract Manager requesting change, then the provisions of clause 27 shall apply in order to determine the changes that will be made to the Performance Criteria or Performance Periods;
- 10.1.3 Further Reviews:** after the first six (6) months following the Commencement Date, the Performance Criteria or Performance Date will be reviewed by the Contract Manager, no more frequently than once every six (6) months and no less frequently than once every 12 months. Should the Contract Manager consider that changes should be made to the Performance Criteria or Performance Periods following review, the Contract Manager will notify those changes to the Service Provider in writing. If changes to the Performance Criteria or Performance Periods are not agreed with the Service Provider within ten (10) days of receipt of the notice from the Contract Manager, the Performance Criteria or Performance Periods will be determined in accordance with the provisions of clause 27.
- 10.2 Failure of Performance Criteria:** Subject to clause 10.3, if, during any Performance Period, the Service Provider fails to achieve the Performance Criteria (the "Default"), the Council may, by notice in writing, (the "Default Notice"), require the Service Provider to remedy such Default. The Default Notice shall be for the same period of time as required by the Performance Criteria. Each Default Notice must state the notice number it represents in each of the series as described in clause 10.4. Where the Service Provider fails to remedy the Default within the time period prescribed in the Default Notice then the Council may:
- 10.2.1 Grant of Time:** grant the Service Provider additional time to achieve the Performance Criteria;

- 10.2.2 Contract with a Third Party:** buy in services by contracting with a third party to carry out the work and the amount paid to any third party will be a debt due and owing by the Service Provider to the Council;
 - 10.2.3 Complete the Work:** have its own personnel carry out the whole or any part of the work and all costs incurred by the Council (including an allowance for overheads) will be determined by the Council and will be a debt due and owing by the Service Provider; or
 - 10.2.4 Recover Loss:** recover any loss or damage the Council determines it has incurred as a result of the Service Provider failing to achieve the Performance Criteria which will then be a debt due and owing by the Service Provider.
- 10.3 Public Safety Event:** Where an event occurs that in the opinion of the Council constitutes a Public Safety event then the Council may either direct its own personnel to make safe the Public Safety event at its cost, or wait for the expiry of the time period prescribed in the Performance Criteria and make safe the Public Safety event at the cost of the Service Provider where the Service Provider has so failed to make it safe.
- 10.4 Repeated Performance Criteria Defaults: If:**
- 10.4.1** the Council issues twelve (12) or more Default Notices under clause 10.2 on the Service Provider in any one month;
 - 10.4.2** the Council issues four (4) or more Default Notices per month under clause 10.2 on the Service Provider for three (3) consecutive months;
 - 10.4.3** the Council issues four (4) or more Default Notices per month under clause 10.2 on the Service Provider for any six (6) months;
 - 10.4.4** the Council issues four (4) Default Notices of the failure to achieve Milestones in any period of three (3) consecutive months; or
 - 10.4.5** the Service Provider fails to respond to and make safe any Public Safety event within the time period detailed in the Specification on four (4) occasions in any twelve (12) month period;

then the Council may do any one or more of the following.

- 10.4.6 **Contract with a Third Party:** Buy in services by contracting with a third party in accordance with the provisions of clause 10.2.2;
- 10.4.7 **Complete the Work:** Complete work in accordance with the provisions of clause 10.2.3;
- 10.4.8 **Liquidated Damages:** Seek liquidated damages pursuant to the Councils rights under clause 20.1.6; or
- 10.4.9 **Terminate:** Elect to terminate this agreement pursuant to clause 20.1.5. However the Council may not terminate unless it has first notified the Service Provider's Shareholders, upon the giving of the penultimate Default Notice or the occurrence of the penultimate occasion (as the case may be), of its right to terminate upon the issue of the next Default Notice or the occurrence of the next occasion.

11. FEES PAYABLE TO THE SERVICE PROVIDER

11.1 **Quarterly Invoices:** Within twenty eight (28) days of the expiry of each three month period during the Term, the Service Provider shall provide to the Contract Manager an invoice for the total fees due in respect of the Services provided during the previous three months calculated in accordance with the Schedule of Fees and Rates. The invoice shall set out all calculations of the fees due, including variations in respect of:

11.1.1 any adjustments for additional services requested by the Council, calculated pursuant to the agreement; and

11.1.2 any adjustment for services not performed and calculated in accordance with the agreement.

11.2 **Adjustment of Previous Fees & Rates:** All fees and rates payable in the last month prior to the first and every subsequent anniversary of the Commencement Date shall be adjusted in respect of any variation in CPI calculated as follows:

$$A = \frac{B \times C}{D}$$

where:

A. is the fees and rates payable during the following year;

B. is the fees and rates payable during the current year;

- C. is the CPI last published in the quarter prior to the anniversary of the Commencement Date; and
- D. is the CPI for the corresponding year in the quarter immediately preceding the year referred to in C.

11.3 Payment of Invoices: If the Council approves the invoice, the Council will pay the total amount of the invoice within thirty (30) days of receipt of the invoice.

11.4 Disputes over Amounts in Invoices: The Council shall, within fourteen (14) days of receipt of the invoice from the Service Provider, notify the Service Provider if the Council disputes any amounts noted in the invoice and will meet with the Service Provider to resolve any amounts in dispute. If all items in dispute are resolved within thirty (30) days of receipt of the invoice, then the Council will pay the full amount of the invoice, subject to any reduction as agreed. If the dispute cannot be resolved within the thirty (30) day period, then the Council will pay the invoice less any amounts in dispute and such amounts in dispute shall be subject to the dispute resolution procedure outlined in clause 27.

12. FEES PAYABLE TO COUNCIL

12.1 Licence Fee: The Service Provider shall pay to the Council the Licence Fee.

12.2 Calculation of Licence Fee: The Licence Fee payable by the Service Provider during the Term shall be calculated as the sum of:

12.2.1 any one-off lump sum or annual payment (if any) payable to the Council; and

12.2.2 advertising revenue payable to the Council by the Service Provider in any year in accordance with Part 2, PART A Table A and Part 2 PART B Table D of the Specification Forms being the percentage of gross revenue referred to in Table D up to the gross revenue forecast of the Service Provider in Table A, together with the percentage of gross revenue referred to in Table D above the gross revenue forecast of the Service Provider in Table A.

12.3 Payment of Licence Fee: The Service Provider must pay:

12.3.1 Free of Deductions: the Licence Fee to the Council free of any deductions;

12.3.2 Quarterly in Arrears: the Licence Fee throughout the Term, by three monthly instalments ("Instalment Period"). Such payments shall be paid in arrears and four such payments shall together

equal the Licence Fee that the Council was entitled to receive in the year immediately prior to the year in which the payments are being made. Each payment is to be made not later than the twenty-eighth day of the month following each Instalment Period. Within two (2) months of the conclusion of each anniversary of the Commencement Date during the Term a reconciliation of the Licence Fee paid for that year and the Licence Fee that the Council was entitled to receive for that year will be conducted by the Service Provider;

12.3.3 Due Date Not Business Day: where a due date for payment is not a Business Day, an instalment due on such date on the next Business Day succeeding the twenty-eighth day of that month; and

12.3.4 Manner of Payment: the Licence Fee in such manner as may be notified in writing from time to time by the Council.

12.4 Pre-Payment of Licence Fee: If, at the commencement of the Term, the Council requires it, the Service Provider shall pay the Licence Fee in advance for a period of up to six years ("Prepaid Period") in which case the Licence Fee shall be calculated based on a forecast of gross revenues and shall be discounted at a rate of 6.5% per annum. Within two (2) months of the conclusion of the Prepaid Period a reconciliation of the Licence Fee paid for the Prepaid Period that the Council was entitled to receive for that Prepaid Period will be conducted by the Service Provider. After consultation with the Contract Manager, the Service Provider and Contract Manager will agree on an adjusting payment (if any) to be made between the parties so that the Licence Fee paid for the Prepaid Period by the Service Provider equals the Licence Fee that the Council was entitled to receive for such period taking into account the 6.5% per annum discount rate. If agreement cannot be reached the payment will be resolved in accordance with clause 12.5.

12.5 Dispute Over Amount: If either party disputes, in good faith, the whole or any portion of the amount claimed by the Council, the Service Provider shall pay that portion of the amount stated which is not in dispute and shall notify the Council in writing of the reasons for disputing the amount claimed. If the parties are unable to reach agreement within five (5) Business Days of the Service Provider's notice, the dispute shall be determined in accordance with clause 27 of this agreement.

12.6 Agency Commission: If advertising agency commission, which as at the date of this agreement is 20% of gross revenue, either increases or decreases during the Term, the parties agree to adjust the Licence Fee accordingly to ensure that the benefit or burden (after tax), as the case may be, of such an increase or decrease, is distributed equally between the parties.

13. INTEREST

- 13.1 Interest on Unpaid Money:** Without prejudice to the rights, powers and remedies of the Council under this agreement, the Service Provider must pay to the Council interest calculated on a day to day basis on any monies due but unpaid by the Service Provider to the Council on any amount whatsoever pursuant to this agreement.
- 13.2 Rate of Interest:** Interest is to be at a rate equivalent to two per cent (2%) more than the Westpac Indicator Lending Rate as at the date the monies so due become due and payable to the Council and must be computed from the due date for the payment of the monies in respect of which the interest is chargeable up to and including the day of payment of such monies in full.
- 13.3 Interest Recoverable:** Interest is recoverable (without prejudice to the Council's other remedies in respect of non-payment) in the same manner as the unpaid monies as if such interest is in arrears and it is to be treated for the purposes of this agreement as non-payment of the monies.
- 13.4 Alternative Rate of Interest:** For the purposes of this clause 13, if the Westpac Indicator Lending Rate is discontinued or it ceases to be quoted then the rate of interest must be calculated as provided in this clause 13 based upon such other indicator of bank interest rates which in the opinion of the manager, for the time being, of Westpac Banking Corporation in Auckland (or its successors) has been substituted therefor, or in the absence of such substitute, the maximum overdraft rate per annum being applied by the Bank of New Zealand (or its successor) at its principal office in Wellington.
- 13.5 Certificate for Rate of Interest:** A certificate as to the rate referred to in this clause 13 given to the Council and signed by the manager of the relevant bank shall be final and binding on the parties to this agreement .

14. INTELLECTUAL PROPERTY

- 14.1 Intellectual Property of Council:** The Service Provider acknowledges that the Council is the sole and exclusive proprietor of all Intellectual Property provided to the Service Provider by or on behalf of the Council in the course of this agreement and that such Intellectual Property will only be used by the Service Provider for the purposes of providing Services under this agreement. The Council agrees to grant a licence to the Service Provider for the Intellectual Property that the Service Provider is required to use in order to undertake and complete the Services. This licence will terminate upon the expiry of the Term or termination of this agreement, whichever is the earlier.
- 14.2 Intellectual Property of Service Provider:** Subject to clause 14.3, the Council acknowledges that the Service Provider is the sole and exclusive

proprietor of all the Service Provider's pre-existing Intellectual Property that the Service Provider uses to provide the Services. Furthermore, the Service Provider agrees that it will, (at no cost to the Council), grant to or procure for the Council a licence to use any Intellectual Property (including a manufacturing licence) not owned by the Council so that the Council can, if required, manufacture an additional 25% above the quantity of Street Furniture provided, or that ought to be provided by the Service Provider, in the event of termination of this agreement due to the Service Provider's default.

- 14.3 Ownership of Intellectual Property Rights:** The Service Provider agrees that the Council will be the sole and exclusive owner of all rights and interests in any Intellectual Property developed by the Service Provider, its employees, agents and sub-contractors under this agreement.
- 14.4 Protection and Vestment of Ownership:** The Service Provider agrees to do all things reasonably required by the Council, at no cost to the Council, in order to protect and vest ownership of relevant Intellectual Property in the Council.
- 14.5 No Dispute:** The Service Provider agrees that it shall not dispute or oppose, or assist any party to dispute or oppose, the proprietorship of the Council in the Intellectual Property owned by the Council under this clause 14 or defend or resist, or assist any person to defend or resist, any action commenced by the Council or to which the Council may be a party, concerning infringement of the Intellectual Property.
- 14.6 Protection:** The Service Provider shall do all things necessary and required by the Council for the proper application or protection of the Intellectual Property developed by the Service Provider under this agreement including, but not limited to, execution of all documents or assignments and provision of all necessary information, records or materials to the Council or any other party, provided that the Council shall bear the reasonable costs of such action as may be reasonably incurred by the Service Provider. The Service Provider shall provide, as soon as practicable, written notice to the Council of any claim or action by any third party against either the Service Provider or the Council in respect of the parties' intellectual property rights that are the subject of this agreement.
- 14.7 No Right or Licence:** Except as otherwise expressly provided in this agreement, nothing contained in this agreement shall be deemed, by implication, estoppel or otherwise, to grant to the Service Provider any right or licence in respect of any of the Intellectual Property at any time.
- 14.8 No Infringement:** Where the Service Provider (including its employees, agents and sub-contractors) creates or develops any Intellectual Property or provides Intellectual Property for use by the Council, then the Service Provider warrants that the Intellectual Property, or use of it, will not

infringe upon any patent, trade mark, trade secret, copyright, design or other proprietary right of any third party. The Service Provider will indemnify and hold 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.

- 14.9 Database Property of Council:** Any Data or database created or developed by the Service Provider in the course of providing the Services to the Council shall be, and shall remain, the sole and exclusive property of the Council at all times during the Term of, and after the expiry of the Term, or the termination of, this agreement. At any time during the Term and upon request from the Council, the Service Provider shall, (at no cost to the Council), provide a copy of the relevant Data or database on disk in a format compatible with the Council's computer system or any other format requested by the Council, acting reasonably. Upon expiry of the Term, or termination of this agreement, the Service Provider will provide to the Council a copy of all Data and the entire database on the media and in the format reasonably required by the Council and shall delete the Data and the database from its own computer system. The Service Provider acknowledges that the Data and the database constitutes Information for the purposes of clause 22.

15. EMPLOYEES AND SUBCONTRACTORS

- 15.1 Qualified Personnel:** The Service Provider shall engage, employ and maintain qualified, skilled and efficient staff to perform its obligations under this agreement.
- 15.2 Specified Personnel:** The Council, acting reasonably, may nominate personnel of the Service Provider to be Specified Personnel for the purposes of this agreement. The Service Provider shall employ such Specified Personnel to carry out the Services.
- 15.3 Replacement Specified Personnel:** Where Specified Personnel are unable to carry out the Services or cease to be employed or engaged by the Service Provider then the Service Provider shall notify in writing the circumstances to the Council as soon as the Service Provider becomes aware of the same and shall provide replacement personnel of equivalent skill and experience that are acceptable to the Council (which shall act reasonably in granting its approval) at no additional charge as and when necessary to provide Services in accordance with this agreement. A failure by the Service Provider to provide replacement personnel acceptable to the Council shall be deemed to be a breach on the part of the Service Provider for the purposes of clause 20.2.
- 15.4 Satisfactory Conduct:** All persons employed or engaged by the Service Provider for the purposes of this agreement shall exhibit high standards of work performance and conduct. If, in the opinion of the Council, any

person is not performing his or her work satisfactorily or a person's conduct is not satisfactory, the Council may request the Service Provider to remove such person in accordance with clause 15.5.

15.5 Removal of Personnel: The Council may, at its absolute discretion, give notice to the Service Provider requiring it to remove personnel from work in respect of the Services. The Service Provider shall promptly arrange for the removal of such personnel from the work, and their subsequent replacement with personnel acceptable to the Council. The need for the Service Provider to substitute personnel shall not relieve the Service Provider of any of its obligations under this agreement.

15.6 No Approaches to Council Personnel: Save where required in the Specification or where otherwise required by the Council under this agreement, the Service Provider shall not solicit or approach and offer employment to or employ any employees of the Council who are connected in any way with this agreement or the provision of the Services during the Term and for a period of twelve (12) months after the expiry of the Term, or from the date of termination of the agreement.

15.7 Qualifications and Training: Without limiting the generality of the foregoing, the Service Provider shall:

15.7.1 Qualifications and Training: ensure all employees, agents and sub-contractors of the Service Provider involving in providing the Services are fully qualified or trained for the work and satisfactorily complete any training required by the Council from time to time;

15.7.2 Compliance: ensure all employees, agents and sub-contractors of the Service Provider comply with any lawful direction of the Contract Manager in the event such direction is given for the safety of the public (such as in the case of fire);

15.7.3 Responsibility: be fully responsible for the acts and omissions, whether negligent or otherwise, of its employees, agents and sub-contractors and shall ensure that all of them fully comply with the terms of this agreement;

15.7.4 Evaluations: evaluate the performance of all personnel engaged in connection with the provision of the Services from time to time as requested by the Council and at least annually and provide a copy of all such evaluations to the Council within ten (10) Business Days of their completion by the Service Provider; and

15.7.5 Safety: establish (to the extent not established at the date of this agreement) and maintain an effective occupational health and safety system to ensure a safe system of work.

- 15.8 Employment of Sub-Contractors:** The Service Provider shall advise the Council of the changes to, or the details of, any sub-contractors which it wishes to engage to provide Services. No sub-contractor shall be engaged by the Service Provider to provide Services without the prior consent of the Council. The Service Provider shall be fully responsible for the performance of the Services notwithstanding the consent of the Council or that the Service Provider has sub-contracted the performance of any part of the Services. The approved details of the sub-contractor shall be recorded in the schedule attached as Part 10 of the Specification Forms.
- 15.9 Consent:** The Council shall be deemed to have consented to the engagement by the Service Provider of the sub-contractors referred to in Schedule 1 and attached as Part 10 of the Specification Forms, to provide Services.
- 15.10 Suitability:** The Service Provider shall be responsible for ensuring the suitability of any proposed sub-contractor for any specific work envisaged and that all work performed by sub-contractors meets the requirements of this agreement.
- 15.11 Assignment:** The Service Provider shall not assign or sub-contract any of its rights or obligations under this agreement without the prior written consent of the Council, which consent shall not be unreasonably withheld.
- 15.12 Change of Control:** For the purposes of clause 15.11 a change in the control of the Service Provider will be deemed to be an assignment. The Service Provider being "controlled" by another person means that the other person owns beneficially more than 50% of the equity share capital or voting rights of the Service Provider or has the power to appoint and/or remove a majority of the directors of the Service Provider, and "control" and "change in control" will be construed accordingly. A change of control will not include either an internal re-organisation of shareholdings so long as the holding company remains the same or any transfer of shares between the Shareholders of the Service Provider as at the date of this agreement.

16. HEALTH AND SAFETY IN EMPLOYMENT ACT

- 16.1 Compliance:** The Service Provider shall take all practicable steps to ensure that in respect of the provision of Services no act or omission by it or its employees, agents, sub-contractors, invitees, visitors or licensees:
- 16.1.1 Hazard:** causes a hazard, significant harm or serious harm to any employee of the Council or any other persons; or
- 16.1.2 Act:** is in breach of any duty or obligation of the Service Provider under the Health and Safety in Employment Act 1992 ("HSE Act"); or

16.1.3 Notice: does or is likely to give rise to the issue of any improvement or prohibition notice, enforcement proceedings or a prosecution under the HSE Act against the Service Provider.

16.2 Indemnity: The Service Provider shall indemnify and keep indemnified the Council, its employees, consultants and contractors from all costs, damages, fines, penalties, loss and expense incurred or suffered by the Council in respect of any breach of the HSE Act, or any conviction of or proceedings instigated against the Council, as the case may be, pursuant to the HSE Act directly or indirectly related to a breach by the Service Provider of any of the provisions set out in clause 16.1.

16.3 Notification of Breach: If the Service Provider becomes aware that it is or may be in breach, or is likely to be in breach of any of the provisions in clause 16.1, the Service Provider shall immediately notify the Council of such a breach or anticipated breach.

17. ACCOUNTS, FINANCIAL AND OTHER REPORTS

17.1 Maintenance of Financial Records: The Service Provider shall:

17.1.1 Accurate Records: keep and maintain complete and accurate records of all income and expenditure of the Service Provider arising from the management, conduct and performance of the Services and such other records required by the Council during the term of this agreement and for seven (7) years afterwards;

17.1.2 Separate: keep and maintain the records in clause 17.1.1 separately from any other accounts and records maintained by the Service Provider; and

17.1.3 Accordance with Principles: keep and maintain the records and accounts referred to in clause 17.1.1 in accordance with generally accepted New Zealand accounting principles from time to time in force.

17.2 Financial Reports: The Service Provider shall provide to the Council the Financial Reports on the dates and in the format set out in this clause.

17.3 Balance Sheet and Profit and Loss Statement: Without limiting clause 17.2, the Service Provider shall provide to the Council, at the cost of the Service Provider, for each of its financial years which fall in whole or in part within the Term, an audited balance sheet and profit and loss statement for that financial year relating to the provision of Services under this agreement, such reports to be provided within four (4) months of the end of the relevant financial year.

- 17.4 Operational Reports:** The Service Provider shall provide to the Contract Manager the Operational Reports on the dates and in the format set out in clause 20 of the Specification and if no such dates are specified, the Operational Reports are to be provided monthly in arrears on or before the fifth Business Day of each month.
- 17.5 Audit and Inspection:** The accounts and records referred to in clause 17.1 will be open to audit and inspection by the Council or any person authorised by the Contract Manager between the hours of 9.00 am and 5.00 pm on Business Days, and upon two (2) Business Days notice, and will be kept and maintained in a format which will allow convenient auditing and inspection of such accounts. Upon the Council's request from time to time, the Service Provider shall grant the Council, (or its nominated representative), access to any premises occupied by the Service Provider for such purpose. The Service Provider will not destroy any of the accounts and records for a period of seven (7) years from the date of termination of the agreement unless having first obtained prior written consent from the Council. The Service Provider shall keep all records in a safe location.
- 17.6 Defects in Accounts:** If the Council forms the reasonable opinion that:
- 17.6.1 Non-disclosure:** any matter which should be disclosed in such accounts is not in fact so disclosed;
 - 17.6.2 Irregularity:** there is any material defect or irregularity in the accounts referred to in clause 17.1; or
 - 17.6.3 Inaccuracy:** such accounts do not contain a true and fair report of the matters with which they purport to deal;
- the Council may serve a notice under clause 20.2 on the Service Provider.
- 17.7 Separate Records and Accounts:** The Service Provider shall keep separate records and accurate accounts of all Services provided and fees due under this agreement and shall:
- 17.7.1 Provide Copy:** provide a copy of those records and accounts to the Council upon request; and
 - 17.7.2 Permit Inspection:** permit the Council (or its representatives) to inspect those records and accounts and take copies, if requested.
- 17.8 Report by External Auditor:** The Service Provider shall, if requested by the Council, at its expense provide to the Council, for its review, a report from its external auditor as to the accuracy of the information contained in the records referred to in clause 17.7.

17.9 Underpayment or Overpayment: If, following the inspection or review referred to in clauses 17.7 or 17.8, or otherwise, a payment is found to have been incorrectly made, any underpayment or overpayment shall be recoverable from or by the Service Provider, as the case may be and without limiting recourse to other available means, as a debt due and owing.

17.10 Information: All records, accounts and reports referred to in this clause 17 and any other documents created or used in the course of providing the Services shall be deemed to be Information for the purposes of clause 22.

18. WARRANTIES

18.1 Warranties of Service Provider: The Service Provider warrants that at the date of this agreement and at all times during the Term:

18.1.1 Authority to Enter agreement: it has the right and authority to enter into this agreement and to do all things which it is required to do by this agreement;

18.1.2 Binding and Enforceable agreement: all action has been taken by the Service Provider to render the agreement binding upon it and legally enforceable against it in accordance with its terms;

18.1.3 Execution and Performance: the execution of this agreement and its performance in accordance with its terms by the Service Provider:

(a) complies with all necessary consents, registrations, approvals, licences or permits required by statute, regulation, governmental policy or administrative requirement or by any agreement, order or arrangement binding upon the Service Provider; and

(b) does not violate any law, regulation, government order or decree or any consent, registration, approval, licence or permit referred to in subparagraph (a) above or any agreement or arrangement binding upon the Service Provider;

18.1.4 Ability to Perform: the Service Provider is not aware of any matter which may materially affect the Service Provider's ability to perform its obligations under this agreement;

18.1.5 Accurate Information: all information provided by the Service Provider and set out in the Specification Forms or the Correspondence is complete, true and accurate and not misleading in any respect; and

18.1.6 No Encumbrances: all Street Furniture will be owned by the Service Provider and is not subject to any Encumbrance;

18.1.7 No Material Information Omitted: to the best of the Service Provider's knowledge and belief there is no material information that it has failed to disclose in discussions with the Council that if disclosed would be likely to lead the Council to reassess the ability of the Service Provider to provide the Service,

and a breach of any of the warranties in this clause 18.1 shall entitle the Council to give notice to the Service Provider under clause 20.2.

18.2 Indemnity: The Service Provider shall indemnify, and shall at all times keep indemnified, the Council, its Contract Manager and employees from and against any breach by the Service Provider of any of the warranties contained in clause 18.1 including all damages, expenses (including legal costs on a solicitor/client basis) and other liabilities arising in relation thereto.

18.3 No Warranty by Council: The Service Provider acknowledges that all information provided by the Council was provided for the assistance of the Service Provider and that no representation or warranty has been made by or on behalf of the Council concerning that information. Further, the Service Provider acknowledges that in entering into this agreement, it has relied entirely on its own knowledge and enquiries and has not relied on any warranties or representations made to it by the Council and that the Council shall not be responsible for the omission of any relevant information.

19. INDEMNITY AND LIABILITY

19.1 Indemnity Against Claim or Proceeding: The Service Provider shall indemnify, and shall at all times keep indemnified, the Council, the Contract Manager, and the Council's employees, agents and other service providers (and their employees and agents) from and against any loss, damage, expense (including legal costs on a solicitor/client basis) and other liability which they may incur or sustain arising from any claim, demand, action, suit or proceeding that may be made or brought by any person against the Council, its Contract Managers, employees and other service providers for, or as a consequence of, any negligence or any act or omission by the Service Provider, its employees, agents or sub-contractors where such act or omission breaches, in any way whatsoever, the terms and conditions of this agreement, the Specification or the standards, procedures or processes of the New Zealand Standards referred to in clause 3.2.3, the industry standard building or safety practices or international best practices for the provision of Services and including all loss, damage or injury to persons or property caused or contributed to by the Service Provider, its employees, agents or sub-contractors and including any personal injury to or the death of any person.

- 19.2 Risk:** The use by the Service Provider of the Service Areas shall be at the sole risk of the Service Provider and it hereby releases to the full extent permitted by law the Council, the Contract Manager, the Council's employees, agents and other service providers (and their employees and agents), in the absence of any negligent act or omission or wilful default on the Council's part, from all claims and demands of every kind (including prosecution or claims brought by any authority of any nature) resulting from any accident, damage, death or injury. The Service Provider agrees that in the absence of any such negligent act or omission or wilful default the Council will have no responsibility or liability for any loss of or damage to Street Furniture, furniture, fixtures, equipment and property of the Service Provider.
- 19.3 Negligence or Default by Council:** The Service Provider's liability to indemnify the Council shall be reduced proportionally to the extent that any negligent act or omission or wilful default by the Council or its employees or agents may have contributed to any loss, damage, death or injury referred to in clauses 19.1 and 19.2.
- 19.4 Insurance Policies:** The Service Provider shall maintain insurance policies as follows:
- 19.4.1** a public liability policy with coverage of not less than \$10,000,000 (or such other amount as the Council may require from time to time in accordance with the advice of the Council's appropriate consultant following a regular review) for each occurrence;
- 19.4.2** a professional indemnity insurance policy with coverage in the sum of \$10,000,000 (or such other amount as the Council may require from time to time in accordance with the advice of the Council's appropriate consultant following a regular review); and
- 19.4.3** such other insurances that the Council may reasonably require the Service Provider to take out from time to time.
- 19.5 Provisions of Policies:** Each insurance policy referred to in clauses 19.4.1 and 19.4.2 shall be in the joint names of the Council and the Service Provider. All insurance policies in clause 19.4 shall contain a provision or endorsement that no cancellation or material change in coverage shall be made without giving the Council sixty (60) days prior written notice thereof. Each such insurance policy shall have a notation showing the rights and interests of the Council. The Service Provider shall provide certificates of currency in respect of the insurances in clause 19.4 and upon request by the Council the Service Provider will provide complete copies of such policies to the Council. Such insurance policy procured in accordance with clause 19.4 shall provide that the insurer waives, where applicable, any

and all rights of subrogation against the Council, its Contract Manager, employees, agents and other service providers and any excess or deductible payable under such policy shall be paid by the Service Provider.

19.6 Respectable Insurer and Date of Commencement: Insurance required under this agreement shall be taken out with reputable insurers approved by the Council so that all of such insurances commence at a date no later than 4.00pm on the day prior to the Commencement Date.

19.7 Additional Premiums: The Service Provider shall reimburse the Council for any additional premium payable under policies of insurance of the Council arising directly or indirectly from acts, omission or negligence of the Service Provider, its agents, employees and other service providers (and their employees and agents).

20. TERMINATION AND LIABILITY FOR INSOLVENCY AND DEFAULT

20.1 Termination: In addition to the Council's rights to seek damages or terminate this agreement pursuant to the provisions of clause 10.4.8 and clause 10.4.9 respectively, in the event of the Service Provider:

20.1.1 Insolvent: becoming insolvent;

20.1.2 Arrangement with Creditors: making an assignment of its estate for the benefit of its creditors or any arrangement, compromise or composition with its creditors;

20.1.3 Liquidation or Winding Up: being a company and;

(a) an application is made to a Court for an order and an order is duly made appointing a liquidator, provisional liquidator, interim liquidator, receiver, manager, receiver and manager, administrator, administrator receiver, trustee in administration, statutory manager or similar officer in respect of the company or one of them is appointed;

(b) the members of the company pass a special resolution or the board of the company resolves to appoint a liquidator or formal notice of a proposed resolution to do so is given or any other steps are taken evidencing an intention to do so;

(c) the company stops or threatens to stop payment of creditors generally or is deemed to be unable to pay its debts as they fall due, has a compromise proposed in respect of it, commences negotiations with any one or more of its creditors with a view to the general re-

adjustment or re-scheduling of its indebtedness, makes a general assignment for the benefit of or composition with its creditors or proposes a re-organisation, moratorium or other administration involving them;

- (d) the company ceases or threatens to cease to conduct all or a substantial part of its business or disposes of or threatens or agrees to dispose of (either by a single transaction or series of transactions whether related or not and whether voluntary or involuntary) all or a substantial part of its assets;
- (e) if a statutory demand is served on the company for an amount exceeding 1% of its gross assets as shown in the accounts of the company for the most recently completed financial year of the company and expires unremedied unless such statutory demand relates to an amount which is the subject of a bona fide dispute by the company; or
- (f) a creditor of the company, which creditor's rights are intended to be subordinate to the obligations of the company under this agreement, attempts to exercise any rights in respect of, or to gain any specific rights to that company's interests, in the company's assets;

other than where, in the case of any of the events referred to in subclauses (a) to (f) above, such event takes place for the purposes of and is followed by a reconstruction, amalgamation or reorganisation (not involving or arising out of insolvency) approved in writing by the Council; or

20.1.4 Judgment Against: having a judgment entered against it which remains unsatisfied or unappealed for a period of ten (10) Business Days;

then the Council shall be entitled by notice in writing to either:

20.1.5 Immediate Termination: immediately terminate this agreement in which case the provisions of clause 21 shall apply; or

20.1.6 Damages: require the Service Provider to pay to the Council damages against all actions, costs, charges, claims and demands by way of liquidated damages in accordance with the table attached as Schedule Four to this agreement and where Schedule Four is silent as to the amount the Service Provider is required to pay then as shall be determined by the Council, in its absolute and unfettered discretion, and shall become a debt due and owing by the Service Provider. If the Service Provider disputes, in good

faith, the whole or any portion of the amount claimed by the Council, the Service Provider shall pay that portion of the amount stated which is not in dispute and shall notify the Council in writing of the reasons for disputing the amount claimed. If the parties are unable to reach agreement within five (5) Business Days of the Service Provider's notice, the dispute shall be determined in accordance with clause 27 of this agreement.

20.2 Additional Rights of the Council: In the event of the Service Provider committing any act or omission constituting a breach of any obligation required on its part to be performed or observed under this agreement then the Council may serve notice in writing to the Service Provider giving the Service Provider not less than ten (10) Business Days to remedy the breach. If the breach is not remedied to the satisfaction of the Council within such period then the Council, subject to clause 20.3, may elect to do any one or more of the following:

20.2.1 Complete the Work: remedy the breach in accordance with the provisions of clause 10.2.3;

20.2.2 Contract with a Third Party: buy in services by contracting with a third party in accordance with the provisions of clause 10.2.2;

20.2.3 Liquidated Damages: seek liquidated damages pursuant to the Council's rights under clause 20.1.6; or

20.2.4 Terminate: give ten (10) Business Days notice to the Service Provider's Shareholders of the Council's intention to terminate this agreement and where such notice to the Shareholders has been given and the Service Provider has failed to remedy the default prior to the expiry of the notice period then the Council may terminate this agreement (in which case the provisions of clause 21 shall apply).

20.3 Remedial Program: Where the Service Provider does not remedy the breach referred to in clause 20.2 prior to the expiry of the notice period but:

20.3.1 Program: the Service Provider can demonstrate, to the reasonable satisfaction of the Council, that it has implemented a remedial program that is acceptable to the Council; and

20.3.2 Progress: the Service Provider, in the opinion of the Council, has made reasonable progress towards remedying the breach

then, notwithstanding the Council's rights to seek liquidated damages pursuant to clause 20.2.3, the Service Provider shall be permitted to continue to rectify the breach in a manner consistent with the performance

milestones in the remedial program. In the event that the milestones in the remedial program are not met to the satisfaction of the Council, then the Council may give notice to the Service Provider's Shareholders pursuant to clause 20.2.4.

- 20.4 Notice of Breach:** The Service Provider shall give written notice to the Council within two (2) Business Days of the occurrence of any act or omission which constitutes a breach of any obligation on its part to be performed or observed under this agreement.

21. CONSEQUENCES OF TERMINATION

- 21.1 Retention of Persons on Termination:** Upon termination of this agreement, the Council may employ or retain other persons and pay those persons to provide the Services and the Council and/or those other persons may:
- 21.1.1 Purchase Materials:** purchase any of the materials and Street Furniture from the Service Provider used in connection with the provision of the Services (including any interest of the Service Provider in Street Furniture installed, manufactured or in the course of manufacture in accordance with this agreement) at the purchase price determined under clause 21.2 and do anything else necessary to perform the Services; and
 - 21.1.2 Retain Sub-Contractors:** retain the services of sub-contractors to perform the Services.
- 21.2 Deduction from Sum Due:** Upon termination of this agreement, payments made under clause 21.1 for the purchase of materials or Street Furniture or provision of Services may be deducted by the Council from any sum due to the Service Provider or, where those payments exceed the amount due to the Service Provider, recovered by the Council from the Service Provider as a debt due and owing. The purchase price payable by the Council for materials and Street Furniture in clause 21.1 shall be determined in accordance with clause 27.2 of the Specification.
- 21.3 Election by the Council:** Upon the expiry, or termination in accordance with the provisions of clause 20, of this agreement, the Council may elect to either:
- 21.3.1 Purchase:** purchase the Street Furniture at the market value calculated in accordance with clause 27.2 of the Specification, less the cost of reinstatement of the sites. Such purchase price is to be paid by the Council to the Service Provider within twenty (20) Business Days of determining the price; or

- 21.3.2 Require Removal:** require the removal of the Street Furniture from the Service Area in accordance with clause 21.5 of this agreement.
- 21.4 Purchase:** Where the Council makes an election under clause 21.3.1, notwithstanding that the Council may not yet have paid the purchase price (less the cost of reinstatement) to the Service Provider, title in the Street Furniture shall be deemed to have transferred absolutely to the Council at the point in time when either this agreement expired or any of the events in clauses 20.1 or 20.2 occurred (whichever is the earlier).
- 21.5 Removal:** Where the Council makes an election under clause 21.3.2, the Service Provider must, when directed by the Contract Manager in writing (but not before), remove from the Services Areas the Street Furniture that it has been notified by the Council to remove; any of its materials; any Advertising material and all other goods of the Service Provider, or any part thereof, in accordance with the provisions of the Specification. If the Service Provider fails to comply with a direction under this clause 21.5 within ten (10) Business Days of the date of the direction, then the Council may:
- 21.5.1 Remove or Sell:** remove or sell any such property of the Service Provider (without being responsible for any loss or damage); and
- 21.5.2 Retain Proceeds of Sale:** retain to the credit of the Service Provider the proceeds of sale less reinstatement and all other reasonable costs incurred.
- 21.6 Other Rights and Remedies:** Termination of this agreement shall not affect the other rights and remedies of either party arising prior to the date of termination. The parties agree that the obligations contained in clauses 4.6, 4.15, 8, 9, 12, 13, 14, 17, 18, 19, 21, 22, 26, 27, 28 and 31.13 shall survive termination of this agreement.
- 21.7 Receipt of Notice of Termination:** Upon the receipt of a notice of termination, the Service Provider shall:
- 21.7.1 Cease Work:** cease work with effect from the end of the period specified in the notice; and
- 21.7.2 Minimise Loss:** take all available steps to minimise loss resulting from termination.

22. CONFIDENTIALITY

- 22.1 Receipt of Information:** The Service Provider acknowledges that in the course of performing the Services or as a result of this agreement it may receive or be exposed to certain information which is confidential to the

Council, including trade secrets, confidential information and commercially sensitive information such as information concerning costs and the Council's requirements, internal documents and proposals (the "Information").

- 22.2 Maintain Confidentiality:** The Service Provider hereby undertakes to the Council and agrees to treat the Information as secret and confidential and that, subject to this clause 22, the Service Provider shall not disclose it directly or indirectly to any other party and shall take all reasonable steps to prevent Information coming into the possession of any other person which steps shall be at least as stringent as any internal procedures of the Service Provider to maintain the confidentiality of its own confidential information. The Service Provider acknowledges that it shall not obtain any rights to the Information other than use for the purposes of providing Services under this agreement.
- 22.3 No Obligation in Certain Circumstances:** The obligations contained in this clause 22 shall not apply to any part of the Information which:
- 22.3.1 In Public Domain:** is in the public domain;
 - 22.3.2 Comes into Public Domain:** hereinafter comes into the public domain otherwise than as a result of any unauthorised act or omission of the Service Provider;
 - 22.3.3 Service Provider's Possession:** was already in the possession of the Service Provider at the time of disclosure and is not subject to obligations of confidentiality and was not obtained from the Council; or
 - 22.3.4 Law:** is required to be disclosed by law.
- 22.4 Written Undertaking:** The Council may, at any time, require the Service Provider to give a written undertaking, in a form prescribed by the Council, relating to the non-disclosure of the Information, and to promptly arrange such written undertakings to be given by its employees or sub-contractors engaged in the performance of the Services.
- 22.5 Unauthorised Disclosure of Information:** The Service Provider must:
- 22.5.1 Notify Disclosure:** notify the Council immediately upon the discovery of any apparent unauthorised use or disclosure of any Information and take all reasonable steps to enforce the confidentiality obligation imposed or required to be imposed by this clause 22, including diligently prosecuting at its cost any breach or threatened breach of any such confidentiality obligations by any person to whom it has disclosed to or allowed access to the Information or at the Council's option making all

reasonable efforts to assist the Council to help regain possession of the Information and prevent any further unauthorised disclosure or use;

22.5.2 Deliver Information: deliver to the Council or, at the Council's option, destroy forthwith on demand all physical or written records containing or relating to or concerning the Information (but only to the extent that it contains such Information), including any copies then in existence, regardless of who prepared the records or documentation;

22.5.3 Delete Electronic Database: delete forthwith, if requested by the Council, the Information from any electronic or computer database retained by or on behalf of the Service Provider; and

22.5.4 Certify Compliance: certify in writing to the Council that it has complied with its obligations under clauses 22.5.2 and 22.5.3 immediately after doing so.

22.6 No Destruction without Consent: The Service Provider shall not destroy all physical or written records containing or relating to or concerning the Information (but only to the extent it contains such Information), whether during or after the Term without the prior written consent of the Council. The Service Provider shall notify the Contract Manager of any intention to destroy any such Information.

22.7 Media Disclosure: The Service Provider shall not make any comments relating to the Council, its relationship with the Council, or the terms or existence of this agreement to the public, the media or any person without the prior approval of the Contract Manager.

22.8 Enquiries: Subject to the Council's statutory obligations under the Local Government Official Information and Meetings Act 1987, should any enquiry be made by any third party on any matter arising from or connected with the Services, the Council will (as between itself and the Service Provider) deal with the enquiry and the Service Provider will, as soon as practicable, provide all information that the Council may reasonably request to answer that enquiry (if the Council decides to do so), at no cost to the Council. The Council shall notify the Service Provider within five (5) Business days of any such request having been received.

23. REMOVAL OR RELOCATION OF STREET FURNITURE

23.1 Removal or Relocation: At any time, and from time to time during this agreement the Council may remove or relocate or require the Service Provider to remove or relocate any Street Furniture by giving notice in writing to the Service Provider. Such removal or relocation will be undertaken in accordance with the Specification.

- 23.2 Compensation:** Upon receipt of a notice by the Service Provider from the Council under clause 23.1, the compensation payable to the Service Provider will be determined in accordance with the formula in clauses 11 and 27.2 of the Specification.

24. VARIATIONS

- 24.1 Permitted Variations:** Subject to the rights of either party to use the dispute resolution procedure in clause 27, the Contract Manager may direct the Service Provider to do any one or more of the following:
- 24.1.1 Increase:** increase any part of the Services under this agreement;
 - 24.1.2 Change Character:** change the character or quality of any material or Services or of anything described in this agreement;
 - 24.1.3 Change Design:** change the design including the levels, lines, positions or dimensions of anything described in this agreement after approval in accordance with this agreement; and
 - 24.1.4 Additional Services:** include additional Services.
- 24.2 No Variation:** For the avoidance of doubt, variations do not include changes to the sequence, timing or programming of the Services under this agreement.
- 24.3 Notice of Request for Variation:** The Service Provider may request to the Contract Manager that the Services under this agreement be varied. The Contract Manager's direction or approval for a variation shall be sought at least 10 Business Days prior to the need for undertaking the variation of Services by notice in writing detailing:
- 24.3.1 Reasons:** the reason for the variation;
 - 24.3.2 Cost:** the cost of the variation (if any);
 - 24.3.3 Effect:** the effect of the variation on the Implementation Program; and
 - 24.3.4 Milestones:** the achievement of Milestones.
- 24.4 No Variation without Approval:** The Service Provider shall not vary the Services under this agreement except as directed or approved by the Contract Manager in writing pursuant to this clause 24. For a direction or approval to be valid as a direction or approval to undertake a variation, that direction or approval must approve the agreed cost (if any) of the variation or state that the variation will be valued in accordance with clause 24.13.

- 24.5 Variation in Accordance with Specification:** The Service Provider is only bound to execute a variation which is within the general scope of the Specification.
- 24.6 Milestones:** Except where otherwise provided in this agreement, the Contract Manager shall not direct a variation to the Services after the date of the Milestone for that part of the Services.
- 24.7 Variation without Approval:** If the Service Provider is of the opinion it has been required to carry out a variation but the Contract Manager has not given a written direction or approval for a variation the Service Provider must give written notice to the Contract Manager of:
- 24.7.1 Direction:** its opinion that it has received a direction or approval for a variation; and,
- 24.7.2 Effect:** the effect which the Service Provider anticipates that the variation will have on the:
- (a) Implementation Plan;
 - (b) time for Milestones; and
 - (c) costs (if any).
- 24.8 Variation without Notice:** If the Service Provider does not give the notice referred to in clause 24.7 prior to commencing Services affected by the variation, and in any event within two (2) days of receiving the relevant instruction from the Contract Manager or the Service Provider does not obtain a direction or approval in accordance with clause 24.3, notwithstanding clause 24.10, the Service Provider will not be entitled to have the valuation of the variation determined under clause 24.13 or to make any claim whether for money or otherwise in respect of the variation.
- 24.9 Variation which can be Effected:** Upon receipt of a notice in writing from the Contract Manager notifying the Service Provider of a proposed variation under clause 24.1, the Service Provider shall notify the Contract Manager whether the proposed variation can be effected. If the variation can be effected, the Service Provider shall:
- 24.9.1 Notification:** notify the Contract Manager of the effect which the Service Provider anticipates that the variation will have on the Implementation Program and the time for Milestones; and
- 24.9.2 Estimate:** provide an estimate of the cost of the proposed variation.

- 24.10 Price of Variation:** Unless the Contract Manager and the Service Provider agree upon the price for a variation, the variation directed or approved by the Contract Manager pursuant to clause 24.3 shall be valued under clause 24.13.
- 24.11 Quotation:** The Contract Manager may direct the Service Provider to provide a detailed quotation for the Services of a variation supported by measurements or other evidence of cost.
- 24.12 Conditions:** Variations that are for the convenience of the Service Provider will be subject to the following conditions.
- 24.12.1 Conditional Approval:** If the Service Provider requests the Contract Manager to approve a variation for the convenience of the Service Provider, the Contract Manager may do so in writing. The approval may be conditional.
- 24.12.2 Valuation Approval:** Unless the Contract Manager otherwise directs in the notice approving the valuation, the Service Provider shall not be entitled to:
- (a) an extension of time for Milestone; or
 - (b) extra payment.
- in respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved.
- 24.12.3 No Obligation:** The Contract Manager shall not be obliged to approve a variation for the convenience of the Service Provider.
- 24.13 Valuation of Variation:** With respect to the valuation of variations, the Council shall pay or allow the Service Provider, or the Service Provider shall pay or allow the Council, as the case may be, an amount ascertained by the Contract Manager in accordance with the Specification, as follows.
- 24.13.1 Specific Rates and Prices:** If this agreement prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used.
- 24.13.2 Council to Determine:** If clause 24.13.1 does not apply, then the rates or prices shall be determined by the Council, acting reasonably and will be used to the extent that it is reasonable to use them.
- 24.13.3 Reasonableness:** To the extent that neither clause 24.13.1 nor 24.13.2 applies, reasonable rates or prices shall be used.

24.13.4 Dispute Procedure: To the extent that neither clause 24.13.1, 24.13.2 nor 24.13.3 applies, the matter will be resolved in accordance with clause 27.

24.13.5 Actual: If the valuation is of an increase or decrease in a fee or charge or is a new fee or charge with respect to a legislative requirement, the value shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to overheads or profit.

25. RELATIONSHIP OF PARTIES

25.1 Relationship: The relationship of the Council to the Service Provider is that of principal and independent service provider and the Service Provider shall perform the Services and all acts and agreements related thereto, whether or not requested by the Council, in accordance with its own methods.

25.2 Employees of Council: Any person employed by the Council shall be the employee of the Council and no such person shall be or be construed to be the employee of the Service Provider by virtue of this agreement. Nothing herein shall cause a relationship between the Service Provider and any such person to be or be construed as one of employment.

25.3 No Authority: The Service Provider shall not have the authority to, and shall not, bind the Council to any agreement or otherwise hold itself out as being authorised to deal as an agent of the Council except as authorised by this agreement and the Service Provider shall indemnify the Council in respect of all representations, promises or agreements made in breach of this clause by any representative and/or agent of the Service Provider.

26. BANKER'S UNDERTAKING AND PERFORMANCE GUARANTEE

26.1 Banker's Undertaking: The Service Provider must provide a banker's undertaking in accordance with the terms of this agreement. The amount of such banker's undertaking shall be equivalent to the total annual maintenance cost under this agreement so as to ensure that the Service Provider installs the Street Furniture and faithfully performs all of its obligations as required under the terms and conditions of this agreement.

26.2 Contents of Undertaking: The Service Provider will, within five (5) Business Days of the Commencement Date, deposit with the Council an unconditional banker's undertaking whereby the bank undertakes to the Council that the Service Provider will promptly perform and observe and keep the obligations, conditions and stipulations on the part of the Service Provider expressed or implied by this agreement and will also pay all sums and payments agreed to be paid by the Service Provider when they become due and owing (if any) and whereby the bank covenants with the Council

that the bank will upon demand by the Council pay and make good to the Council all losses, costs and expenses sustained by the Council by reason of the default of the Service Provider or any failure to promptly perform and observe and keep the obligations, conditions and stipulations on the part of the Service Provider contained or implied by this agreement.

26.3 Details of Banker's Undertaking: The banker's undertaking shall:

26.3.1 Form: be by a bank and in a form acceptable to the Council;

26.3.2 Amount: provide for payment of the amount specified in clause 26.1 of this agreement, however, the Council shall release seventy five percent of the amount upon the installation programme for the Street Furniture being successfully completed, in all respects, to the satisfaction of the Council. The balance of the amount shall remain on deposit for the term of this agreement and may be applied to meet any costs incurred by the Council in meeting any obligation of the Service Provider which it has not performed in accordance with the terms of this agreement or for the payment of liquidated damages;

26.3.3 No Discharge: continue in full force and effect notwithstanding any neglect or forbearance on the part of the Council in endeavouring to obtain any payments due under this agreement or any part of them as and when they become due or notwithstanding any delay on the part of the Council to take steps to enforce the performance or observance of the obligations, conditions and stipulations on the part of the Service Provider contained in or implied by this agreement and any time which may be given by the Council to the Service Provider shall not release, lessen or affect the liability of the bank under the banker's undertaking;

26.3.4 Continuing: be a continuing banker's undertaking and shall continue during the Term and thereafter until all the obligations of the Service Provider have been fully satisfied and discharged;

26.3.5 Security: be security for every default, breach or failure of the Service Provider under the terms of this agreement and so often as and every occasion upon which any such default, breach or failure shall occur;

26.3.6 No Limitation: not operate to relieve the Service Provider from any of its obligations contained in or implied by this agreement nor shall the banker's undertaking limit the right of the Council to recover from the Service Provider in full all monies payable to the Council under any other clause of this agreement; and

26.3.7 Value Same as Specification: at all times be for a value of not less than that detailed in the Specification despite the fact that it may from time to time be called upon in part or in whole. Should the amount available to the Council under all banker's undertakings fall below the value detailed in the Specification, the Service Provider will provide additional banker's undertakings to make the amount available to the Council equal to or in excess of the value detailed in the Specification.

26.4 No Notice: The Council shall not be required to provide any notice to the Service Provider that it intends to call on the banker's undertaking.

26.5 Deed of Guarantee: If requested by the Council, the Service Provider shall lodge with the Council, substantially in the form attached to this agreement as Schedule 2 and by a guarantor approved in writing by the Council, a properly executed Deed of Guarantee for the performance of the obligations and the discharge of the liabilities of the Service Provider under this agreement.

27. DISPUTE RESOLUTION

27.1 Notice of Dispute: If a dispute or difference ("Dispute") arises between the parties out of, or in connection with, or related to, this agreement and either party requires it to be resolved, then that party shall promptly give to the other a written notice (the "Notice") adequately identifying and detailing the Dispute and the relief sought.

27.2 Meeting: Within five (5) Business Days of a party issuing a Notice under clause 27.1, the parties shall, without prejudice to any other right or entitlement, ensure that the Contract Manager and the Representative meet and attempt to resolve the Dispute. The Contract Manager and the Representative may meet more than once within such period in an attempt to resolve the Dispute.

27.3 Chief Executive Officer: If, within ten (10) Business Days of the expiry of the period referred to in clause 27.2, the Contract Manager and the Representative have not resolved the Dispute, then, if the parties agree, the Dispute shall be referred to the Chief Executive Officer of each party. If that shall occur the parties shall ensure that their respective Chief Executive Officers meet so often as shall be reasonably necessary to attempt to reach agreement on the matter. If the parties do not agree to refer the Dispute to the Chief Executive Officers then, if the parties agree, the matter shall be referred to an expert. If the parties do not agree to refer the matter to an expert then the matter shall be referred to mediation.

27.4 Experts: If, within ten (10) Business Days of the Dispute being referred to the Chief Executive Officers and the Dispute has not been resolved then,

where the parties agree, the Dispute is to be referred to an expert and the following provisions shall apply.

27.4.1 Expert: The expert shall be of not less than five year's standing in the expert's profession, and:

- (a) **Law:** in the case of a matter of law shall be a practising barrister or solicitor who failing agreement shall be appointed by the then President of the Waikato Bay of Plenty District Law Society;
- (b) **Financial:** in the case of a financial or accountancy matter shall be a practising chartered accountant who failing agreement shall be appointed by the then President of the New Zealand Society of Accountants;
- (c) **Design:** in a case concerning design and all associated matters shall be a practising registered engineer or registered architect who failing agreement shall be appointed by the chairperson of the Institute of Professional Engineers or Architects of New Zealand;
- (d) **Value:** in the case of a question of value shall be a qualified valuer who failing agreement shall be appointed by the New Zealand Institute of Valuers;
- (e) **Cost:** in the case concerning a question of cost shall be a qualified quantity surveyor who failing agreement shall be appointed by the New Zealand Institute of Quantity Surveyors;
- (f) **Others:** in any other case shall be a qualified person who failing agreement shall be appointed by the senior officer for the time being of the appropriate association, institute, society or board; or
- (g) **Panel:** if appropriate shall be a panel of experts representing more than one of such appropriate skills.

27.4.2 Agreement: The parties shall reach agreement on the appointment of the expert within two (2) Business Days of the parties electing to use an expert and failing agreement the expert shall be appointed by the President (or person holding similar office) in the professional body, society, or institute that the relevant expert is required to belong to in accordance with clause 27.4.1, or would be a member. Where the parties are unable to agree on the type of expert or on whether a panel is necessary,

then the expert or panel as the case may be, shall be appointed by the President of the Waikato Bay of Plenty District Law Society.

27.4.3 Determination: In each reference to an expert, the expert shall be directed and instructed to make a determination in writing for the parties no later than five (5) Business Days (or such longer or shorter period of time as the parties may agree) after the date of reference of the dispute or difference to the expert.

27.4.4 Costs: The costs of the expert and the costs of the parties will be borne in the proportion determined by the expert.

27.4.5 Findings binding: Where the parties agree to refer a matter or dispute to an expert for a binding determination the findings of the expert shall, in the absence of manifest error, be binding upon the parties.

27.5 Mediation:

27.5.1 Referral: If:

- (a) **Negotiation:** the parties have been unable to reach agreement pursuant to the provisions of clause 27.2;
- (b) **Chief Executive Officer:** no agreement has been reached between the Chief Executive Officer of each party within ten (10) Business Days of the Dispute being referred pursuant to the provisions of clause 27.3; or
- (c) **Expert:** the parties have agreed upon reference in a non binding manner to an expert and a party disputes the expert's findings by notice in writing to the other parties given within ten (10) Business Days of the expert's determination;

then, any party may give written notice to the other party of its intention to refer such Dispute to mediation. If such notice is given, the parties shall endeavour to agree on a mediator and shall submit the Dispute to the mediator. The mediator shall discuss the matter with the parties (separately or jointly in the discretion of the mediator) and endeavour to resolve it by their agreement. All discussion in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce any settlement concluded by mediation, be referred to in any later proceedings. The parties shall bear their own costs in the mediation and shall pay the costs of the mediator in equal shares.

- 27.6 Arbitration:** If the parties have been unable to resolve the Dispute by mediation then within ten (10) Business Days of the conclusion of mediation the Dispute shall be referred to arbitration under the Arbitration Act 1996 upon the service of a notice of intention to commence arbitration. The arbitration shall be governed by the Arbitration Act 1996 except to the extent modified by this clause 27.6.
- 27.6.1 Single arbitrator:** The arbitration shall be by a single arbitrator. If the parties cannot agree on a single arbitrator within ten (10) Business Days of service of the notice of intention to commence arbitration, either party may request the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a sole arbitrator.
- 27.6.2 Expert:** Where the Dispute relates to issues referred to in clause 12.3 of the Specification, the arbitrator shall, if he or she thinks fit, seek assistance from an expert such expert to be appointed having regard to the expert's knowledge and understanding of supply and demand in the advertising industry and the financial principles underlying the Service Provider's installation of Street Furniture funded by advertising. The appointment of the expert will be at the arbitrator's sole discretion.
- 27.6.3 Expedition:** The arbitrator shall be obliged to proceed with expedition to deliver an award as soon as reasonably practicable and the parties agree to cooperate to achieve that end.
- 27.6.4 Costs:** The costs of the parties, the costs of any expert and the costs of the arbitrator shall be borne in such proportion as the arbitrator determines.
- 27.6.5 Award final and binding:** The parties agree that the award of the arbitrator shall be final and binding as between them.
- 27.7 Carry out obligations:** In the event of a Dispute or the referral of that Dispute for resolution under any of the methods allowed in this section 27, the parties shall continue to perform all of their respective obligations under this agreement except for the obligation the subject of Dispute which shall be performed to no less a standard as existed prior to the Dispute arising and as if that Dispute had not occurred pending the outcome of the dispute resolution process. Where the Dispute relates to an obligation to pay money then the undisputed amount shall be paid to the other party forthwith and the disputed amount, if deemed payable upon resolution of the Dispute shall be paid to the other party plus interest calculated in accordance with the provisions of clause 13.

28. WHOLE AGREEMENT

This agreement constitutes the entire agreement between the parties concerning this agreement's subject matter and supercedes all prior agreements, understandings and communications, whether oral or written between the parties.

29. PRECEDENCE

29.1 Parts of agreement: The Specification (including all annexures, schedules, appendices, tables and charts) form a part of this agreement and the agreement and Specification are to be taken as mutually explanatory of each other. If either party discovers any ambiguity or discrepancy in either document, then that party shall notify the Contract Manager of the ambiguity or discrepancy. In the event of any ambiguity or discrepancy being discovered and brought to the attention of the Contract Manager or discovered by the Contract Manager, and the parties cannot agree on its true and accurate meaning then the provisions of clause 27 shall apply.

29.2 No Compensation: Any consequences arising from or connected with the Contract Manager's direction shall not entitle the Service Provider to any compensation of any kind.

30. FORCE MAJEURE

30.1 Force Majeure: The term "Force Majeure" means any act or event beyond the reasonable control of either party including but not limited to acts of God, landslides, lightning, mass vandalism, earthquakes, floods, storms, washouts, fires, volcanic eruptions, epidemics, acts of the Queen's enemies, wars, sabotage, terrorism, blockades, riots, insurrections, civil war, public disorders, restraints of rulers, strikes, lockouts, go slows, work to rule or other industrial disturbances, transportation failures or delays, shortage of materials, breakdowns in computer facilities, telecommunication delays or malfunctions, delay or non supply of electricity or the acts, rules, regulations orders or directives of any governmental body (including any agent or subdivision of it) whether or not valid or any other cause beyond the reasonable control of either party. For the purposes of this clause the solvency of a party will be deemed to be within that party's reasonable control.

30.2 Delay or Failure to Perform: Notwithstanding this agreement's other provisions a party will be relieved from liability under this agreement but only so far as the performance of any of this agreement's terms or conditions is prevented or delayed due to Force Majeure.

30.3 Notice: The party claiming Force Majeure will as soon as is reasonably practicable, but no later than five (5) Business Days after the occurrence of the event or circumstances claimed to be Force Majeure, give written notice to the other party of the occurrence of the event or circumstances. The

notice will provide full particulars of the event or circumstances causing its failure to perform its obligations under this agreement. The notice will also give an estimate of the period of time required to remedy the failure (if the remedy is deemed practicable). Failure to give notice will prevent the party from claiming that the event or circumstances are Force Majeure.

30.4 Disputes: The party receiving the above notice will, within five (5) Business Days of receiving the notice, notify the other party in writing whether it accepts that a situation of Force Majeure exists or whether it wishes to dispute the claim. If a party wishes to dispute the claim then the dispute will be resolved in accordance with clause 27 of this agreement. Failure to so notify will be deemed acceptance that Force Majeure exists.

30.5 Suspension of Performance Limited: Any suspension of a party's performance under this section will be limited to the period and the extent of Services affected during which the Force Majeure exists.

30.6 Prior Obligations: No Force Majeure will relieve a party of any duty or obligation under this agreement which had arisen or been incurred before the Force Majeure.

30.7 Remedy: If a party is affected by Force Majeure then the affected party will use all possible diligence and take all reasonable steps necessary to remedy or rectify the Force Majeure as quickly as possible and minimise any damage caused by it.

30.8 Termination: Where Force Majeure prevents a party from carrying out any obligations under this agreement for a continuous period of one hundred and twenty (120) days then this agreement may be terminated by the other party giving twenty (20) Business Days written notice to the party affected by the Force Majeure and the provisions of clause 21 will apply.

31. GENERAL

31.1 Best Endeavours: At all times during the Term the parties shall co-operate with each other and use their best endeavours to resolve by mutual agreement any difference between them and all other difficulties which may arise from time to time concerning their respective obligations under this agreement.

31.2 Form of Notice: All notices or other communications required to be given under this agreement, except for notices relating to clauses 10, 20, 21, 23 and 24 which shall only be sent by registered post or facsimile, must be in legible writing, addressed to the recipient at the postal address or facsimile number in this clause (as applicable) or to such other postal address or facsimile number as a party may notify to the other parties by like notice. Notices must be sent to the recipient by hand, registered post (airmail if

outside New Zealand) or facsimile and signed by a person duly authorised by the sender:

31.2.1 The Council: if to the Council, to:

For: *Sheryl Kurnal*
Facsimile: *(07) 3500185*
Address: *Private Bag 3029*
Rotorua

31.2.2 The Service Provider: if to the Service Provider, to:

For: Len van der Harst
Facsimile: (09) 300 3110
Address: PO Box 90 145
Auckland 1030

31.3 Time of Receipt: Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice will be deemed to have been duly received:

31.3.1 Personal Delivery: if sent by hand, when left with an apparently responsible person at the recipient's address; or

31.3.2 Facsimile: if sent by facsimile, on receipt by the sender of an acknowledgement or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number;

except that if a notice is served by hand or facsimile not on a Business Day, or after 5.00pm on any Business Day, that notice will be deemed to have been duly received by the recipient at 9.00am on the first Business Day after that day.

31.4 Applicable Laws: This agreement shall be governed by and construed in accordance with the laws of New Zealand.

31.5 No Waiver, Variation or Discharge: None of the conditions of this agreement shall be waived, varied, discharged or released either at law or in equity, unless both parties agree in writing.

31.6 No Waiver of Subsequent Breaches: A waiver by the Council in respect of any breach of a condition or provision of this agreement by the Service Provider shall not be deemed to be a waiver of any other or of any subsequent breach. The failure of the Council to enforce at any time any of the provisions of this agreement shall in no way be interpreted as a waiver of such provision.

- 31.7 Reasonableness:** The Council and the Service Provider consider the covenants, obligations and restrictions herein contained to be reasonable in all circumstances.
- 31.8 Covenants Severable:** Each and every covenant, obligation and restriction and each and every part thereof shall be deemed to be severable and an independent covenant, obligation or restriction unless it would defeat the purpose of this agreement.
- 31.9 Right of Occupation Only:** Subject to the interest of any Licensed Operators, the Service Provider only has a personal right of occupation in the Service Areas on the terms specified in this agreement and has no interest in the land on which the Service Areas are situated. The legal right to possession and control over the Service Areas remains vested in the Council throughout the Term. The Service Provider acknowledges that the Council, its employees, sub-contractors and agents shall have an unfettered right to enter and remain in the Service Areas at all times for whatever purpose the Council considers reasonable during the Term, provided the Council shall not unreasonably interfere with the Service Provider's use of the Service Areas.
- 31.10 Stamp Duty:** The Service Provider shall be liable for all stamp duty (if any) assessed on this agreement or any transaction contemplated by this agreement.
- 31.11 Council Discretion:** The Council may, where it is required to give its approval or consent, give it conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this agreement provides otherwise.
- 31.12 No Restriction:** The Service Provider acknowledges that nothing in this agreement, either express or implied, restricts, limits or modifies in any way the Council's functions, actions or discretions (of any kind) where it is acting in accordance with any statute or law as a regulator. When the Council is exercising such functions, actions and directions, the Council will be deemed to be a third party to this agreement.
- 31.13 Deduction of Recoverable Debt:** Any debt, damages, costs and expenses recoverable by a party from the other party (the "Default Party") in consequence of the Defaulting Party's breach of this agreement may be deducted from money then due to the Defaulting Party under this agreement and, if that money is insufficient, from the Bankers Undertaking and the balance remaining unpaid shall be a debt due by the Defaulting Party to the other party and may be:
- 31.13.1 Set-Off:** set-off against any other money due to the Defaulting Party by the other party under this agreement; or

- 31.13.2 Recovery:** recovered from the Defaulting Party by the other party in any Court of competent jurisdiction.
- 31.14 All Things Necessary:** The parties will do all things reasonably necessary or desirable to evidence satisfaction of their obligations under this agreement or to give effect to this agreement including the execution of additional documents.
- 31.15 Termination of Existing Agreement:** Any agreement relating to the provision of bus shelters, between the Council and the Service Provider, that is in force at the date of execution of this agreement, shall be deemed to be terminated upon the execution by the parties of this agreement and the parties respective rights and obligations pursuant to the provisions of the earlier agreement shall be replaced with the rights and obligations of this agreement. The Service Provider's right to increase the size of the advertising panels on the bus shelters, (the subject of the earlier agreement), to the size permitted under the terms of this agreement shall be subject to the Service Provider first refitting the existing bus shelters to include extending the roof, installing a third side and replacing the seat to ensure that the retro-fitted bus shelters are upgraded to no less a standard than the bus shelters comprised in the Street Furniture the subject of this agreement. For the avoidance of doubt, upon termination of the existing agreement pursuant to this clause 31.15 the existing bus shelters shall be deemed to be Street Furniture for the purposes of this agreement. The plan, agreed to by the parties, of the retro-fit proposal is attached to this agreement as Schedule 6.
- 31.16 Notification of Complaints:** Each party agrees to notify the other party upon receipt of any complaint relating to the Services. The Service Provider agrees that it shall not, and that the Council shall have the exclusive right to, reply to any such complaint. The Service Provider agrees to assist the Council, and to take such steps as the Contract Manager may require, including drafting any response, in responding to the complaint.

In witness of which this agreement has been executed.

THE COMMON SEAL of THE ROTORUA DISTRICT COUNCIL was affixed in the presence of:



G. Hall
(Deputy) Mayor

A. Hansen
City Secretary - District Manager

SIGNED for and on behalf of
ADSHEL NEW ZEALAND
LIMITED:

AC. O'REILLY
Full name of director

P.M. COSGROVE
Full name of director

[Signature]
Signature of director

[Signature]
Signature of director

SCHEDULE 1

COUNCIL:	Rotorua District Council
SERVICE PROVIDER:	Adshel New Zealand Limited
COMMENCEMENT DATE:	The earlier of the date on which the Service Provider has obtained all Permits necessary to install the first item of Street Furniture and the date six months from the date of execution of this agreement.
TERM:	A period of 23 years from the Commencement Date.
CONTRACT MANAGER:	
REPRESENTATIVE:	Len van der Harst
SPECIFIED PERSONNEL:	See Part 11 of the Specification Forms
SUBCONTRACTORS:	See Part 10 of the Specification Forms
NZ STANDARDS (clause 3.2.3)	Concrete Construction NZS 3109 Glazing in Buildings 1-3 NZS 4223 Glazing Performance NZS 4211 Outdoor Electrical NZS 3000 Plumbing NZS 3500.2.2 Steel Work Structures NZS 3404 Part 1 General Construction NZS 3910

SCHEDULE 2

PERFORMANCE GUARANTEE

THIS DEED OF GUARANTEE made the 21st day of February 1999 2000

BETWEEN ROTORUA DISTRICT COUNCIL (hereinafter called the "Council") of the one part,

AND APN NEWS & MEDIA LIMITED (A.C.N. 008637643) (hereinafter called the "Guarantor") of the other part.

WHEREAS:

- A. The Council invited proposals for the provision of Street Furniture (hereinafter called the "Services")
- B. Adshel New Zealand Limited (hereinafter called the "Service Provider") has agreed to provide the services to the Council pursuant to the agreement annexed hereto (hereinafter) called the "agreement");
- C. The Guarantor agrees to provide the guarantees and indemnities hereinafter appearing.

NOW THEREFORE THIS DEED WITNESSES AS FOLLOWS:

The Guarantor hereby guarantees to the Council the due and punctual performance of the obligations undertaken by the Service Provider under the agreement on the following terms and conditions:

- (1) If the Service Provider (unless relieved from the performance of the agreement by the Council or by statute or by a decision of a tribunal of competent jurisdiction) shall fail to execute and punctually perform its obligations under the agreement the Guarantor will, if required to do so by the Council, complete or cause to be completed the obligations set forth in, and in accordance with the conditions of, the agreement. If the Service Provider should commit any breach of its obligations, and such breach is not remedied by the Guarantor pursuant to the foregoing sentence, and the agreement is then terminated for default, the Guarantor shall indemnify the Council against costs and expenses directly incurred by reason of such default.
- (2) The Guarantor shall not be discharged or released from this Deed of Guarantee by an arrangement made between the Service Provider and the Council with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Service Provider or by any forbearance whether as to payment, time, performance or

otherwise. This guarantee by the Guarantor to assume the obligations of the Service Provider shall continue in force and effect until completion of all the Service Provider's obligations under the agreement or until the completion of the undertakings of this Deed of Guarantee by the Guarantor.

- (3) The obligations of the Guarantor under this Deed of Guarantee shall not exceed the obligations of the Service Provider under this agreement.
- (4) This Deed of Guarantee shall be subject to and construed in accordance with the laws in force in New Zealand and the parties agree that the courts shall have jurisdiction to entertain any action in respect of, or arising out of, this Deed of Guarantee and hereby submit themselves to the jurisdiction of those courts.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day and year first hereinbefore written.

THE COMMON SEAL of THE ROTORUA DISTRICT COUNCIL was affixed in the presence of:

G. Hall
(Deputy) Mayor

D. Hansen
City Secretary District Manager



SIGNED for and on behalf of APN NEWS & MEDIA LIMITED by:

AC. O'REILLY
Full name of director

[Signature]
Signature of director


P.M. COSGROVE
Full name of director

[Signature]
Signature of director

SCHEDULE 4

Table of Liquidated Damages

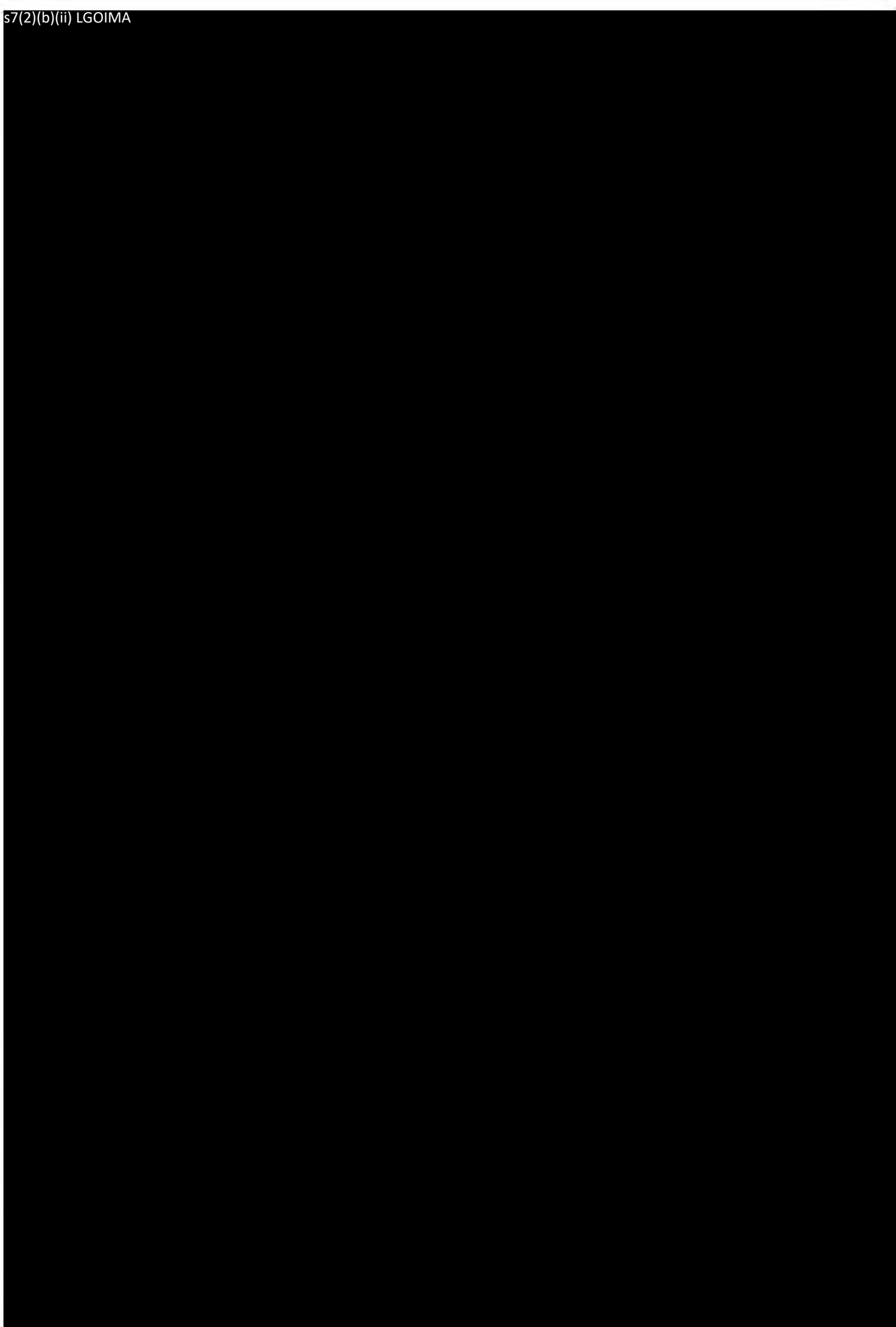
s7(2)(b)(ii) LGOIMA



In addition GST is payable on all prices quoted. Prices are subject to CPI escalation over the term and the prices in the above table are as at 1 January 2000. In addition a further 20% administration and management fee (plus GST) is payable on the above prices.

SCHEDULE 6

Retro-fit Plan







APPENDIX A

Correspondence

APPENDIX B

Specification

STREET FURNITURE SPECIFICATION

STREET FURNITURE SPECIFICATION

INTRODUCTION

1. OVERVIEW

- 1.1 The Councils seek an integrated suite of street furniture of world class design, to enhance the "look of their City". It is to be functional, safe, vandal and graffiti resistant, flexible in design to meet the requirements of each Council and it should aim to improve pedestrian flow by minimising street clutter.
- 1.2 Indicative quantities of street furniture elements sought by each Council are stated in Attachment 'B'.
- 1.3 Advertising may be permitted by the Council to offset the cost incurred by the Service Provider in the design, manufacture, installation and maintenance of street furniture. The display of advertising is to comply with the signage, advertising and offensive material policies as provided for in this specification and as amended from time to time by the Council.
- 1.4 The Service Provider will be granted rights to supply the specific street furniture specified in the street furniture service provider contract (the "Contract) and advertise on selected street furniture for the term of the Contract.
- 1.5 The Service Provider will be required to clean and maintain all street furniture supplied under the Contract.
- 1.6 Certain street furniture must include provision for pay phone services. The Service Provider will be required to permit pay phone services to be provided from bus shelters or other street furniture at no cost to the Council or the pay phone provider within street furniture nominated by the Council.
- 1.7 The street furniture is to be supplied, installed and serviced by the Service Provider. The costs associated with installation and maintenance costs will be offset by advertising revenue that will be generated during the term of the Contract.

2. COUNCIL'S OBJECTIVES

- 2.1 The broad objectives of the Council are to:
- 2.1.1 implement an integrated suite of street furniture of world class urban design;
 - 2.1.2 offset the cost of the supply, installation and maintenance by allowing limited and controlled advertising on some street furniture; and
 - 2.1.3 contribute toward the Council's strategic objectives relating to the promotion of passenger transport and the creation of a high quality urban environment.
- 2.2 The design and placement of street furniture is to reflect the following goals:
- 2.2.1 minimise the impact on pedestrian movement and the visual character of the streetscape by keeping the footprint of street furniture as small as possible consistent with its function;
 - 2.2.2 reduce the visual and physical clutter on footways by integrating several items within one item of street furniture where appropriate. For example, bus shelter designs may incorporate items such as public pay phones, litter bins, ash trays etc;
 - 2.2.3 facilitate pedestrian movement by aligning street furniture with adjacent existing elements to the extent possible;
 - 2.2.4 advertising, where permitted, is to be integrated into the design of the structures such that the aesthetics and the primary function of the street furniture are not compromised; and
 - 2.2.5 street furniture is to be placed on streets in locations selected in a manner consistent with the terms of the Contract.
- 2.3 The Councils are committed to maximising New Zealand industry content in this project subject to the local industry being competitive internationally. The Service Provider is encouraged to explore the feasibility of using expertise, materials and equipment of New Zealand origin.

GENERAL REQUIREMENTS

3. DESIGN PRINCIPLES

3.1 A number of design principles are to be followed to ensure the success of the Street Solutions project in the development of a high quality, cost effective street environment. These include the following.

3.1.1 A coherent street scene is to be created and enhanced by all elements of street furniture. A consistency of colours, textures, shapes and finishes is required to add to the sense of unity and develop the desired image for the city. Variations within a street or area should be subtle to allow the continuity and harmony of the street or area to be maintained.

3.1.2 Designs should seek to optimise life cycle costs of provision, maintenance, cleaning, graffiti removal and possible misuse of street furniture.

3.1.3 The materials and design of street furniture is to be robust, durable and resilient to the use and misuse of urban environments and capable of withstanding the harsh conditions imposed by urban environments in New Zealand.

3.1.4 Wherever practicable, the design of street furniture is to facilitate integration of structures to reduce visual clutter and promote a sophisticated approach to street furniture provision. This may be in the form of shared mountings or multi-purpose designs.

3.1.5 Materials are to be sourced from sustainable and socially acceptable origins.

3.1.6 Structures are to be of a scale, intensity and colour to support pedestrian comfort, safety, legibility and functional effectiveness.

4. DESIGN REQUIREMENTS

4.1 The Service Provider is to submit designs for each element of the suite of street furniture listed in Attachment B. The design(s) for each street furniture element must:

4.1.1 be functional;

4.1.2 achieve aesthetic excellence;

4.1.3 be unified in a coordinated design scheme for the suite of all street furniture;

- 4.1.4 take into account compatibility with special contexts, such as civic precincts, historic buildings, commercial, retail and residential areas, proximity to parks and open spaces;
 - 4.1.5 be able to incorporate site specific design components with minimal changes;
 - 4.1.6 enable each type of structure to be available in several sizes and configurations to accommodate the constraints posed by various street conditions and users' needs;
 - 4.1.7 be flexible to meet the needs of a Council wanting to differentiate its street furniture from other Councils; and
 - 4.1.8 provide for the needs of people with disabilities.
- 4.2 The overall design plan must incorporate flexibility and allow for the integration of items such as public pay phones in or on street furniture (as described below). The intention will be to improve pedestrian mobility and to service the needs of users of street furniture.
- 4.3 Advertising panels are to be designed as an integral part of street furniture and are not to detract from the aesthetics or functionality of street furniture.
- 4.4 The Council's logo is to be displayed on street furniture and is to be of equal size and prominence to the logo of the Service Provider.
- 4.5 The design of street furniture must comply with all relevant legislation and local government regulations, by-laws and policies and be approved by the Council.
- 4.6 The street furniture will be placed in locations in accordance with the provisions of the Contract.

5. COORDINATED DESIGN SCHEME

- 5.1 Designs must be compatible with a wide variety of build contexts and must conform to a coordinated design scheme.
- 5.2 Designs for different types of street furniture must be coordinated so that within any one area there is a harmonious relationship between the various street furniture elements.

6. SUBMISSION OF DESIGNS

- 6.1 The Service Provider must include a minimum of two designs for bus shelters and one design for all other street furniture, in accordance with Part 8 of the Specification Forms.

- 6.2 The first bus shelter design shall be suitable for deployment throughout the central business districts and in high density urban environments. The second design shall be suitable for deployment in low to medium density environments.
- 6.3 The Service Provider must show how each of the designs can be modified to suit specific contexts and requirements where required by the Council. This may be achieved, for example, by alternative shapes or forms for components or parts, materials and/or applied finishes. Any additional cost payable by the Council to achieve flexibility in design shall be included in the Service Provider's proposal.

7. DESIGN MATERIALS

- 7.1 All components of street furniture must be fabricated of new high quality, durable and vandal resistant materials. All surfaces of the street furniture that are accessible to the public must be graffiti resistant.
- 7.2 Lighting of the street furniture and adjacent footways must be provided as required in this specification.

8. DESIGN EVALUATION

- 8.1 The designs must be based on functional efficiency, aesthetics, security and safety, durability, consideration of the needs of people who are physically challenged, flexibility and adaptability to relate to various built environments.
- 8.2 The Council reserves the right to ask the Service Provider to indicate how the designs could be modified and any design changes shall be provided.
- 8.3 All designs and changes to designs are subject to approval by the Council.

9. INSTALLATION REQUIREMENTS

- 9.1 The Service Provider shall propose an implementation plan for the manufacture and installation of the street furniture. This plan must at least achieve the installation schedule specified in Attachment 'B'.
- 9.2 The Service Provider is encouraged to submit manufacture and installation schedules more ambitious than the schedule at Attachment 'B' for any or all street furniture. The implementation plan must be approved by the Council and must be updated at least annually until completion of the programme.
- 9.3 All applicable building codes must be complied with and permits, building consents and resource consents etc obtained by the Service Provider from the relevant authorities. The Service Provider will obtain resource consents

and approvals under the Local Government Act 1974, where required, for the installation of street furniture and associated advertising.

- 9.4 The Service Provider must manufacture and install the street furniture on or before the target installation dates in its implementation plan, subject to any amendments in accordance with the terms of the Contract.
- 9.5 Failure to adhere to the approved installation schedule will be grounds for liquidated damages or termination of the Contract.
- 9.6 The timetable for installation of operated street furniture, such as fruit or flower stalls and newsstands, must take account of the need to involve existing operators in transferring to the new street furniture. The aim shall be to minimise the period for installation of new street furniture and the period of non-operational time for existing operators.
- 9.7 Structures are not to be delivered to sites until all site works, including the provision of services, are completed.
- 9.8 The Service Provider must not display advertising on an operated street furniture structure until its installation, including the provision of all services, is completed and it is fully ready for operation. Advertising may be displayed on street furniture only after installation has been approved by the Council.

10. REMOVAL OF EXISTING STREET FURNITURE

- 10.1 Removal of existing street furniture owned by the Council may be undertaken by the Council or another contractor, and the sites reinstated.
- 10.2 The Service Provider may be required by the Council to remove existing street furniture prior to scheduled installation of new street furniture under the implementation plan, and to reinstate the sites.
- 10.3 The implementation plan must include removal of existing street furniture and reinstatement of sites as required by the Council.
- 10.4 The Service Provider will be given instructions by the Council as to the disposal of existing street furniture.
- 10.5 Removal of existing street furniture by the Service Provider shall only be carried out with the approval of the Council.
- 10.6 After the installation or removal of any street furniture structure the footway pavement immediately under or adjacent thereto shall be reinstated to its original condition using materials of the same or equivalent standard, unless the Council requires otherwise.

- 10.7 Other services such as electricity, water and drainage shall be removed when street furniture is removed at a location where new street furniture is not to be installed unless the Council requires otherwise.
- 10.8 A schedule of rates is to be included by the Service Provider for the removal of street furniture and reinstatement of sites.

11. REMOVAL AND RELOCATION OF NEW FURNITURE

- 11.1 Subject to the provisions of clause 11.2, each year during the term of the Contract, the Council may direct the Service Provider to remove, replace or relocate up to 5% of the installed quantity of each category of street furniture to:
 - 11.1.1 accommodate changing needs;
 - 11.1.2 enable construction, maintenance or repairs to public utilities, public works etc; or
 - 11.1.3 address security or other concerns of the Council.
- 11.2 Where relocations of street furniture are directed by the Council under the provisions of clause 11.1 within 12 months of installation then such relocations are to be at the cost of the Council. In all other cases, if the street furniture to be relocated at the Council's request contains advertising then the Service Provider shall meet the cost of relocation including the cost of removal from the old site. In all other cases, the cost of relocation shall be at the cost of the Council, and such cost shall be determined by the prices submitted in the appropriate "removal" and "installation" schedules of rates as provided by the Service Provider in Table C, Part 2 of the Specification Forms ("Schedule of Rates"). If street furniture installed by the Service Provider is to be removed at the Council's request but is not being replaced or relocated then the cost of removal is to be borne by the Council based on the Schedule of Rates.
- 11.3 The Service Provider is not permitted to remove or relocate street Furniture without first obtaining the written consent of the Council.
- 11.4 Subject to clauses 11.2 and 11.3, no compensation shall be paid for any loss or damage of any kind including, but not limited to, loss of advertising revenue or damage to the street furniture as a result of the removal or relocation of street furniture under this clause 11.
- 11.5 If the Service Provider is required to remove street furniture during the term of, or upon termination of, the Contract the site of that street furniture shall be reinstated by:

- 11.5.1 complying with a direction from the Council as to whether to remove all utility services at the site;
- 11.5.2 removing any footings, foundations or other support for the street furniture if decided by the Council to do so;
- 11.5.3 reinstating the surface of the site to the same condition and using the same materials as the adjoining surface, at the time of installation. If the materials on the surface adjoining the site have been replaced with different materials, the Service Provider shall use materials of that type. If the materials are not available, the Service Provider shall use such materials as are required by the Council; and
- 11.5.4 upgrading the adjoining surface to a higher quality surface by the Council if, at any time after the installation of the street furniture, the adjoining surface of the site has been upgraded. If the cost of reinstating the site using the same material and to the same standard as the upgraded surface is higher than if the surface had been reinstated to the same condition as the original surface then the Service Provider may submit to the Council a claim for the difference in reinstatement costs between the original and the upgraded surface.

11.6 The Service Provider shall provide proper support for surface finishes.

11.7 Except as provided in this Specification or the Contract, all costs of reinstatement of a site following the removal of street furniture, shall be borne by the Service Provider.

12. REFURBISHMENT, UPGRADE AND ADDITIONAL STREET FURNITURE

- 12.1 At or around the mid-point of the term of the Contract the Service Provider may be required to modernise and refit street furniture. The Service Provider is to price an option for this mid-point upgrade, refit or modernisation programme for street furniture if required by the Council.
- 12.2 Replacement of existing street furniture with new street furniture of a changed design, at the request of the Council, will be at the cost of the Council or by agreement between the parties.
- 12.3 The Council or the Service Provider may require the installation of additional street furniture at any time under the terms of clause 24 of the Contract. The price for additional street furniture, and its cleaning and maintenance, shall be determined in accordance with clause 24 of the Contract. Where the additional street furniture includes advertising, the factors to be considered in determining price shall include forecast revenue for the structure, the period of time remaining under the Contract, the price

and maintenance costs, (adjusted for CPI movements), and the revenue being derived from each advertising panel at that time.

- 12.4 During the term of the Contract the Service Provider will, subject to the exceptions in clause 2.3 of the Contract, have the exclusive right to advertise on street furniture within the territorial jurisdiction of the Council. The Service Provider will be the Council's exclusive supplier of specific elements of street furniture (as listed in the Specification Forms) with the exception of APT's and street furniture that does not contain advertising panels. The Council reserves the right to implement alternative solutions for APT's and street furniture without advertising panels.

13. CONSTRUCTION METHODS

- 13.1 Quality workmanship must be employed at all times and local manufacture is encouraged.
- 13.2 State-of-the-art construction methods and new building materials must be incorporated into street furniture as they become available and are proven for their purpose.

14. INSTALLATION

- 14.1 Subject to clause 14.2, the Service Provider shall ensure that the design and placement of any structure does not result in an installation that causes the destruction or damage of any part of a distinctive or historic pavement.
- 14.2 Subject to the written consent of the Council, the Service Provider shall not be prevented from installing a structure, including utility connections, on footways by any reasonable or proper method. Prior to the commencement of installation, the Service Provider shall procure and store, or guarantee the supply of sufficient quantities of materials of the same or equivalent standard necessary to repair, restore or replace the pavement to its original condition.
- 14.3 In the event that any street furniture structure or associated services are located on or in distinctive or historic pavement, such pavement shall be restored to its original condition at the cost of the Service Provider.
- 14.4 The banker's undertaking referred to in paragraph 28 of the Specification may be used to meet the cost of reinstating pavement, if it has not been carried out by the Service Provider to the reasonable satisfaction of the Council.
- 14.5 Street furniture is to be installed to the satisfaction of the Council only at locations specified or approved by the Council.

- 14.6 The Service Provider shall liaise in a timely manner with all Licensed Operators identified by the Council (eg. kiosk and pay phone provider) to ensure a coordinated installation programme and minimise periods in which services are not available.

15. QUANTITY OF STREET FURNITURE

- 15.1 The estimated range and quantity of street furniture sought and the installation timetable requirements for each participating Council are listed at Attachment 'B'.

- 15.2 Pricing schedules are to be based on the quantities in Attachment 'B'.

- 15.3 Schedules of prices are to be completed for each element of street furniture to cover different quantities (greater and smaller) of street furniture installed compared with those quantities in Attachment 'B' in accordance with the pricing tables in Part 2 of the Specification Forms. The prices for street furniture displaying advertising must be all-inclusive including maintenance costs for the duration of the Contract term. The prices for street furniture, which do not display advertising, must provide an installed price and annual maintenance costs.

16. MAINTENANCE REQUIREMENTS

- 16.1 The Service Provider will be required, during the term of the Contract, to maintain street furniture in accordance with the minimum maintenance performance requirements specified in clause 18 including:

16.1.1 inspection;

16.1.2 programmed maintenance;

16.1.3 repair;

16.1.4 cleaning;

16.1.5 removal of graffiti and posters from the street furniture; and

16.1.6 payment of all charges including electricity, water and sewerage charges.

- 16.2 In the case of operated street furniture such as fruit/flower stalls, newsstands and vending or information kiosks, the Service Provider is required to cooperate with the occupier regarding the scheduling of maintenance work to minimise disruption to the occupier's business operations.

17. MAINTENANCE INSPECTIONS

- 17.1 The Council will have the right to inspect street furniture and sites and to require compliance by the Service Provider of its installation, maintenance and repair obligations.

18. MAINTENANCE PERFORMANCE REQUIREMENTS

- 18.1 The Service Provider's minimum maintenance obligations are as follows:

18.1.1 street furniture is to be maintained to an "as new" standard, kept clean and free of graffiti;

18.1.2 APT's are to be inspected and cleaned at least once daily;

18.1.3 street furniture is to be inspected by the Service Provider a minimum of once per week in addition to the weekly clean required under clause 18.1.4 of the Specification;

18.1.4 without limiting the obligations under sub-clause 18.1.1, street furniture must be cleaned a minimum of once per week;

18.1.5 identified repairs, cleaning and graffiti removal in the above inspections or notified to the Service Provider are to be recorded in a maintenance information system, and the required work is to be completed in accordance with the Performance Criteria in Part 6 and Part 7 of the Specification Forms;

18.1.6 a preventive maintenance programme broken down into quarterly or annual programmes of works must be submitted, and adhered to, by the Service Provider; and

18.1.7 the maintenance information system must meet functional and reporting requirements.

- 18.2 The preventive maintenance programme and anticipated major periodic maintenance will be combined to form a maintenance programme for the term of the Contract. On the basis of the maintenance programme and the other matters referred to in this Specification, and in particular this clause 18, the Service Provider and the Council are to implement agreed performance criteria in accordance with the procedure detailed in the Contract.

- 18.3 The Service Provider may be required to ensure that simple testing of the pay phones service is conducted during each maintenance inspection and any problems found are promptly reported to the pay phone provider.

- 18.4 The Service Provider must provide a schedule of maintenance charges that are payable by the Council in order to enable the Service Provider to meet its obligations under clause 18 of this specification. In addition, the Service

Provider is encouraged to nominate higher and more responsive maintenance standards in order to meet the objectives of the Council, provided those additional costs are offset totally by increased revenues. Higher standards of inspection and maintenance at the Service Provider's cost will be favourably considered.

- 18.5 "As new" means, without limitation, that street furniture is to be kept in an as new condition, structurally sound, free of noticeable sagging, distortion or displacement and weather tight. Internal and external surfaces are to be scratch and damage free and there is to be no discoloration or corrosion of surfaces. All functional components and equipment including mechanical, electrical and lighting are to be kept in good working order.
- 18.6 The Council reserves the right to conduct a random inspection programme to determine the Service Provider's compliance with its obligations in relation to the standard and timeliness of maintenance and repairs, cleaning and graffiti removal.
- 18.7 Maintenance is to be based on the indicative quantities of street furniture in Attachment 'B' and is to allow for street furniture to be maintained clean, free of graffiti and in an "as new" condition for the term of the Contract.
- 18.8 Maintenance of street furniture shall be all inclusive, covering all programmed and emergency maintenance, repairs and replacement of structures during the term of the Contract, parts, labour, materials, cleaning, graffiti removal, all charges including electricity, water and sewerage charges, overhead cost and oncost etc.
- 18.9 The obligation to maintain street furniture includes the obligation to replace and repair street furniture so that it is maintained as new and this will be undertaken at no cost to the Council.

19. EMERGENCY MAINTENANCE

- 19.1 Emergency maintenance includes, but is not necessarily limited to, any damage, repair or graffiti that in the opinion of the Council is a public safety issue or may cause offence to members of the public. Emergency maintenance shall be carried out by the Service Provider in accordance with the Performance Criteria in Part 6 and Part 7 of the Specification Forms.

20. MAINTENANCE INFORMATION SYSTEM

- 20.1 The Service Provider shall, at its cost, be responsible for acquiring, installing and maintaining, at its sole cost, an industry standard computerised inventory and maintenance information system (maintenance information system) covering all street furniture for each Council.

- 20.2 The maintenance information system is to have a database, mapping and graphic capabilities for recording the location, type, design and features of all installed and proposed street furniture and rejected sites. It is to have a maintenance management module capable of providing an accurate current position and comparisons of actual and programmed maintenance and repairs and facility for comments on maintenance problems and potential problems (operational reports).
- 20.3 The maintenance information system shall enable information sharing with the Council and reporting via on-line access, monthly disc updates and hard copy reports. The Service Provider is encouraged to propose PC based systems using industry standard software and commercially available application packages.
- 20.4 The maintenance information system shall be installed and operational at the commencement of the Contract and it shall be Year 2000 compliant in all respects.
- 20.5 At the expiration or termination of the Contract online access shall continue for a period of at least one year and the data/information shall become the property of the Council without compensation to the Service Provider.

21. ADVERTISING

- 21.1 The Contract provides that advertising panels may be affixed to specified street furniture for the term of the Contract subject to policies and constraints as specified by the Council, from time to time, and subject to the requirements of this clause 21.
- 21.2 Street furniture on which advertising is permitted is detailed in Attachment 'B', subject to the requirements of each Council.
- 21.3 It shall be the Service Provider's responsibility to carry out all functions associated with advertising.
- 21.4 The Service Provider shall be entitled to the exclusive right to advertise on specified street furniture supplied by the Service Provider subject to the terms of the Contract.
- 21.5 Generally the maximum number of advertising panels for each street furniture structure is two on bus shelters, APTs, newsstands, fruit stalls, flower stalls, kiosks and poster bollards and one advertising panel on pay phones and information boards. Advertising panels in excess of this on any item of street furniture, eg. a double length bus shelter, require the prior written approval of the Council.
- 21.6 On street furniture, such as bus shelters, it is possible to have back to back panels and this constitutes two advertising panels. A back to back or double

sided panel is to be used in preference to two single sided panels on street furniture where this is practicable.

- 21.7 The number of advertising panels permitted for each type of street furniture and per street furniture structure is detailed in Attachment 'B' for each Council.
- 21.8 The maximum size of advertising panels permitted on street furniture structures is to be the international standard advertising panel, 1.8 metres by 1.2 metres, unless another size is approved in writing by the Council. Approval may be conditional upon re-negotiated prices.
- 21.9 The Council reserves the right to grant written approval to the pay phone provider to advertise on pay phone LED or touch screens. Such advertising rights shall be subject to the pay phone provider only advertising to users of the payphone and in a manner consistent with the exclusivity rights granted to the Service Provider pursuant to the provisions of clause 2.3 of the Contract.
- 21.10 Advertising on stand alone pay phones with the capacity to display advertising panels may be permitted under this Contract as detailed in Attachment 'B' or otherwise with the prior approval of the Council. Appropriate signage indicating the functional use of the street furniture by the Licensed Operator may be permitted with the approval of the Council.

22. ADVERTISING DESIGN

- 22.1 Advertising panels are to be designed as an integral part of street furniture and are not to detract from the aesthetics of street furniture. They must not physically or visually obscure or impede the functionality of the service being provided in, by or from the street furniture. Public and user safety must not be affected adversely by the location or size of advertising panels.
- 22.2 The Service Provider may design panels to enable different mediums of advertising to be used as technology changes and becomes proven and cost effective. This may enable advertising images to be changed frequently and remotely rather than relying solely on static advertising panels.
- 22.3 The introduction of new advertising technology to replace static advertising panels at suitable locations shall be subject to the Council's written approval. It is expected that lower costs and increased revenues resulting from advances in technology would be shared equitably with the Council.
- 22.4 Transport authorities may not permit, or may require the removal of, scrolling, dynamic or other new technology advertising panels because they consider them to adversely affect traffic safety. In such cases the Service Provider will not be compensated for any losses whatsoever by the Council.

23. ADVERTISING RESTRICTIONS

- 23.1** Audio advertising is not permitted.
- 23.2** The following advertising shall not be permitted.
 - 23.2.1** Advertising of tobacco and tobacco related products.
 - 23.2.2** Advertising containing words or images of a pornographic nature, or which would be deemed by the censor and/or the Indecent Publications Tribunal to be inappropriate.
 - 23.2.3** 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.
 - 23.2.4** Advertising which the Children and Young Persons Service would find inappropriate because of the detrimental effect or exploitation it portrays of young people.
 - 23.2.5** Advertising which the Privacy Commissioner would find inappropriate or which would offend the principles of the Privacy Act 1993.
 - 23.2.6** Advertising which promotes or condones drink driving.
 - 23.2.7** Advertising targeted at promoting and/or encouraging alcoholic drinking amongst teenagers, in particular, but not limited to, the advertising of any product containing alcohol on any Street Furniture within 200 metres of any primary, intermediate or secondary school.
 - 23.2.8** Advertising that promotes the commercial sex industry.
- 23.3** 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, shall be prohibited.
- 23.4** Any prohibited material displayed or placed shall be removed immediately by the Service Provider upon notification by the Council. Failure to do so within 24 hours of notification will entitle the Council to remove the prohibited material.
- 23.5** During the term of this Contract special events of such national or international significance as the Olympic or Commonwealth Games may occur. The Service Provider acknowledges that advertising restrictions may be imposed on it during the period of such special events either by statute,

regulation or at the direction of the governing body of the special event and the effect of such restriction may include, but shall not be limited to, a requirement:

- 23.5.1 that advertising be removed for all or part of the special event period from locations which are on or near the location of events;
 - 23.5.2 that official sponsors obtain preferential advertising rights; and
 - 23.5.3 that restrictions apply as to the parties entitled to advertise and/or the nature of advertising allowed during the event period.
- 23.6 Where the Service Provider has advertising restrictions imposed on it pursuant to clause 23.5 of the Specification the Service Provider shall not be entitled to claim compensation or reimbursement from the Council for any sums or losses whatsoever.
- 23.7 The Service Provider shall ensure that advertisements displayed in advertising parcels on stand alone pay phone structures do not display advertisements for goods or services that compete, either directly or indirectly with the goods, or services provided by the pay phone provider, in any way whatsoever. The Council shall be entitled, in its absolute and unfettered discretion, to determine compliance with this restriction.
- 23.8 The Service Provider will comply with all directions from the Council in relation to advertising during the special event period identified above. The Service Provider shall have no claim against the Council in relation to revenue foregone or additional costs incurred in complying with any such requirements.

24. PUBLIC OR COMMUNITY SERVICE ADVERTISING

- 24.1 The Service Provider shall provide free space for advertisements, subject to availability, on street furniture for the Council and other public or community service organisations nominated by the Council. This space shall represent the equivalent of a maximum of 2.5% of the total number of advertising panels for the term of the Contract.
- 24.2 Such advertisements are to be distributed equitably among the various types and locations of street furniture, subject to availability of free space, and the Council shall decide upon locations if it considers this requirement has not been met.

25. PRINCIPALS'S RIGHT TO OCCUPY CERTAIN STREET FURNITURE

- 25.1 The Service Provider will be required to grant a right of exclusive possession to the Council in respect of all pay phones and street furniture occupied by a Licensed Operator including, but not limited to, newsstands,

flower and fruit stalls and kiosks for an annual nominal rental of \$1.00 on terms required by the Council. These terms will include the right to grant occupation rights to the street furniture to Licensed Operators and pay phone providers on such conditions as the Council requires.

- 25.2 Except for public pay phone booths, the Service Provider will not be responsible for cleaning the inside of street furniture operated and occupied by either the Council or third parties such as kiosk operators.

26. IMPLEMENTATION PLAN

- 26.1 The Service Provider must include a draft implementation plan covering strategies and plans for the design, manufacture and installation of street furniture and associated decommissioning of existing street furniture owned by the Council, maintenance and advertising. This plan must also address quality, time and performance management in all of the above areas and customer service and complaint handling.

27. REMOVAL OF STREET FURNITURE ON TERMINATION

- 27.1 Upon the expiry or termination of the Contract the Council may elect to either require the Service Provider to remove any or all of the street furniture and restore the sites in accordance with clause 11.5 of the Specification or alternatively, the Council may purchase the street furniture at market value less the cost of reinstatement of the sites whereupon title in the street furniture shall transfer absolutely to the Council.
- 27.2 At any time, for the purposes of this Specification, the value of street furniture shall be the lesser of market value and depreciated value. The capital cost of installed street furniture and the estimated useful life of street furniture as per the Specification Forms (Table B) shall be used as the basis for the calculation of depreciation. The reducing balance method of calculating depreciation shall be used and the percentage applicable shall be double the percentage applicable under straight line depreciation for the estimated useful life.

28. BANKERS UNDERTAKING

- 28.1 The Service Provider will be required to deposit a banker's undertaking. The amount is to be equivalent to the total annual maintenance cost under the Contract to ensure the installation of the street furniture and the faithful performance of all of the terms and conditions under the Contract.
- 28.2 Seventy five percent of the banker's undertaking shall be returned upon the successful completion of the installation programme for street furniture. The remaining portion will remain on deposit for the term of the Contract and may be used to meet the cost of carrying out any obligation of the

Service Provider which has not been performed in accordance with the Contract or for the payment of liquidated damages.

29. SITE SELECTION

29.1 The determination of locations for street furniture is to be in accordance with the provisions of the Contract.

29.2 The Service Provider may propose sites for the consideration of the Council and in selecting proposed sites is to take account of the following factors.

29.2.1 Bus Shelters - commuter numbers, transfer points, location of existing shelters, geographic distribution, footway space and activity and presence of other street furniture on footways, impact on adjacent activities and services, location relative to traffic movement and reasonable access to properties.

29.2.2 APT's - availability of water and sewerage, need, public safety and convenience, enhancement of commercial and tourist areas, geographic distribution, footway space and activity and presence of other street furniture on footways and in public places.

29.2.3 Newsstands, fruit stalls, flower stalls and other types of kiosks - need, economic viability, replacement of existing street furniture, geographic distribution, space and presence of other street furniture on footways and public areas.

29.2.4 Other street furniture - need, footway activity, geographic distribution, presence of other street furniture on footways and public spaces.

29.2.5 The Council will follow consultation processes regarding the location and installation of street furniture. The processes vary between Council and it is the responsibility of the Service Provider to become familiar with the consultation processes of each Council.

ADDITIONAL FUNCTIONAL REQUIREMENTS FOR INDIVIDUAL ITEMS OF STREET FURNITURE

The requirements in the General Requirements Section (clauses 3 - 29) are to apply to all street furniture. Additional requirements for individual elements of street furniture are stated below.

30. BUS SHELTERS

30.1 All bus shelter designs must provide the following minimum amenities.

- 30.1.1** Protection for users from precipitation, wind, sun and ultra violet rays. The roof and number and placement of side enclosures must be sufficient to accomplish this fundamental requirement. Rainwater is to be discharged into the storm water system in a satisfactory manner.
- 30.1.2** Ease of access to facilitate functional and security requirements.
- 30.1.3** Adequate lighting of the interior and adjacent footway (15-20 lux).
- 30.1.4** Passenger seating that is sheltered and of ergonomic design which may be installed in every shelter but which the Council may require to be installed or removed at any time.
- 30.1.5** A secure and weatherproof area on the structure for bus route maps and timetables (visible from two sides), bus stop sign, name and street identification and other information. Bus stop name and/or street identification shall be back-lit or otherwise illuminated (for shelters in CBD or high density environments) and shall be designed to maximise the ability of bus passengers to see such name and identification from the bus as the bus approaches the bus stop.
- 30.2** Innovation and flexibility in design of bus shelters is strongly encouraged. The Service Provider may be required to construct shelters in a variety of shapes and sizes to accommodate different street conditions and service needs. These include large shelters for heavily used bus stops where there is sufficient footway space and shelters with shorter and narrower footprints where either footway space is limited or where there is lighter use and installation of shelters on steep slopes. Modular design may be required at some locations where two or more shelters are to be joined together.
- 30.3** The Service Provider must design bus shelters to be located in the CBD and high density environments to enable the installation of pay phones as described in clauses 42 - 45. Those bus shelters, which may include pay phones, shall be designed to maximise privacy and reduce road noise for pay phone users and minimise the impact from queuing on both facilities.
- 30.4** The Service Provider is encouraged to propose additional public amenities and to design shelters for busy streets to incorporate other items of street furniture to improve pedestrian movement, eg. street signs, ash trays, litter bins, timetables, maps and information boards etc.
- 30.5** A secure cabinet or receptacle must be designed in to the back wall of bus shelters for the purpose of insertion of timetables and other information up to 'A2' in size to be visible from both sides by passengers. Alternatively, at nominated multi-route and busy bus stops, a free standing information

board is to be provided, capable of displaying bus route and other information on a double sided 'A1' display. Colour coded trunk route band(s) 10cm wide may be required to be installed across the back wall of bus shelters nominated by the Council to denote trunk routes and destinations of services using the bus stop.

- 30.6** Materials used for the walls of shelters must be transparent to facilitate good lines of sight between the passengers seating positions, oncoming traffic and the surrounding environment. The dimensions of structural frames and supports must be kept to a minimum subject to sound engineering constraints. In the event that glass is the material proposed for shelter walls, an alternative unbreakable, scratch and graffiti resistant material must be proposed for shelters at locations where there is a high incidence of vandalism.
- 30.7** Advertising panels, maps and bus stop signs etc shall be integrated into the design of shelters so as not to compromise the aesthetics of the bus shelters and be located so as to minimise their impact on the visibility from adjacent buildings and the interior of bus shelters. Shelters shall not interfere with pedestrian or motorist sight lines necessary for traffic safety.
- 30.8** In general, bus shelters shall be designed to allow a minimum clear path on the footway between the shelter and the building alignment of 1.5 metres width for arterial roads and 2.0 metres for busy CBD locations. A path less than 1.5 or 2.0 metres may be approved by the Council, at its absolute discretion, if it is considered by the Council, at its discretion, that there is a need for a bus shelter in the public interest.
- 30.9** The clear path for a shelter may include the area covered by the shelter's roof overhang provided such overhang is a minimum of 2.25 metres high.
- 30.10** All bus shelters shall be installed to allow an unobstructed path a minimum of 0.8 metres in width between the shelter and the curb. Viewed in plan, the roof of a shelter including any overhang shall be set back from the curb line a minimum distance of 0.5 metres. These standards may be varied subject to first obtaining the written approval of the Council.
- 30.11** Bus shelters shall be located as close as practicable to the head of the bus stop.
- 30.12** The enclosed end of a bus shelter housing an advertisement panel should be situated toward the head of the bus stop. The end closest to the oncoming traffic should be enclosed, or partially enclosed, to protect passengers from wind and rain but should not impede vision into and from the bus shelter. Bus shelters with no enclosed ends and an advertising panel on the back wall may be required in certain locations with restricted pedestrian movement.

- 30.13 Bus shelters to be located in particularly windy locations may be required to have partial enclosure of the front in addition to the other three enclosed sides and are to be engineered to withstand extreme winds.
- 30.14 The supply of street furniture will cover a diverse urban environment from CBDs, industrial, commercial and residential areas to inter-urban road systems and suburban retail centres. The pedestrian and vehicle traffic will vary considerably in volume and composition. The requirements of suburban bus shelters as distinct from city shelters must be addressed in the flexibility of bus shelter designs.

31. BUS STOPS

Bus Seats

- 31.1 There are to be stand alone bus seats in addition to those in bus shelters. These may be located at bus stops located under footpath verandahs where there may be a requirement for an information board rather than a bus shelter.
- 31.2 Bus seat designs should be ergonomically sound.
- 31.3 Bus seats shall be designed and located not to interfere with pedestrian or motorist sight lines necessary for traffic safety and to minimise their impact on the visibility from adjacent buildings.
- 31.4 Seating is particularly vulnerable to damage caused by skateboarders. This needs careful consideration in the design and choice of materials.
- 31.5 Where required, seats are generally to be positioned with the back 400mm from wall/fence/edge or boundary or as directed by the Council.
- 31.6 Optimal height for seats is 450mm (500mm maximum and 350mm minimum).

Information Boards

- 31.7 Information boards are to be provided at selected bus stops on major arterials or locations advised by the Council.
- 31.8 Information boards are to have provision for bus timetables, route maps or other information to be placed on one side and an advertising panel on the reverse side.
- 31.9 Information boards must have a clearly visible bus or other relevant symbol to indicate the public function or facility in close proximity to the information board, eg. bus stop, public convenience, ferry, taxi stop, railway station, museum, library etc.

- 31.10** Bus stop information boards are generally to be located at the head of the stop and are to incorporate sufficient functionality to render the existing bus stop signs redundant.

32. INTELLIGENT TRANSPORT SYSTEMS

- 32.1** The Service Provider will be required to cooperate with the relevant authority or agency to make the bus shelters available for the installation of intelligent transport systems, wiring and equipment and the ongoing maintenance of such systems as these are developed and installed.
- 32.2** Bus shelters must be designed to enable intelligent transport systems, such as variable message systems, to be installed in bus shelters at a later date. The Service Provider will not be required to bear any cost associated with the introduction of such systems however the bus shelters should be designed to facilitate their introduction at a later date. The Service Provider will be entitled to charge the appropriate transport organisation or local government authority a fee to recover the reasonable costs for the provision of such services.

33. AUTOMATIC PUBLIC TOILETS

Design of APTs

- 33.1** Each APT unit must contain:
- 33.1.1** a bowl;
 - 33.1.2** a hand-washing station and soap dispenser;
 - 33.1.3** toilet tissue in an enclosed dispenser;
 - 33.1.4** a hand drier;
 - 33.1.5** baby change table;
 - 33.1.6** hygiene disposal units; and
 - 33.1.7** ventilation, air conditioning and lighting systems, including emergency lighting.
- 33.2** The unit must:
- 33.2.1** be designed with the ability to automatically self clean and disinfect the seat and bowl after every use;

- 33.2.2 fully clean and disinfect the floor after a nominated number of uses varying from eg. 1 - 10;
 - 33.2.3 contain a self activating warning system that communicates contemporaneously all significant maintenance and operations problems to the Service Provider's operations centre;
 - 33.2.4 provide external indicators informing potential users of whether the unit is available for use;
 - 33.2.5 provide an emergency alarm system that allows for activation by the user and transmission to the Service Provider's operations centre;
 - 33.2.6 provide a smoke and fire alarm system with an automatic door opening device;
 - 33.2.7 provide an emergency access portal, in addition to the user door, to allow emergency access by Police or other emergency services;
 - 33.2.8 be equipped with a timing device that will cause the door to open after a fixed period of time, to be generally set at 10 minutes, with an audible and visual warning signal to alert the user one minute prior to the door's opening;
 - 33.2.9 be capable of accepting a nominal fee for use which may be paid by means of cash or swipe card. The fee collection mechanism must be positioned to facilitate use by children and physically challenged persons;
 - 33.2.10 be designed to be accessible to persons who are physically challenged and to accommodate wheelchair access; and
 - 33.2.11 comply with the requirements of the Council's policies regarding public conveniences.
- 33.3 The Service Provider is encouraged to propose designs that utilise the minimum footprint necessary for effective operation.
- 33.4 APTs may include designs to be integrated with other elements of street furniture.

Maintenance and Operation of APTs

- 33.5 The APTs must be open to the public 24 hours per day unless otherwise required.

- 33.6 The Service Provider must carry out additional maintenance requirements for APTs including a minimum of daily inspections and cleaning of each unit to ensure that all systems are functioning properly, that the units are clean and that dispensers are fully stocked. The Service Provider must respond immediately to its self-activating maintenance and operation warning system.
- 33.7 Comfortable interior temperature, ventilation, and illumination must be maintained at all times when the APTs are in operation.

Revenue from APTs

- 33.8 The Service Provider may be allowed by the Council to charge a nominal fee, say 20c - \$1, for use by the public of APTs. Variations in fees require the approval of the Council.

34. KIOSKS

Design of kiosks

- 34.1 Kiosks must be designed to:
 - 34.1.1 be multi-purpose structures that provide optimum conditions for the sale of merchandise, newspapers and periodicals, tickets, flowers, fruit, food and beverages etc or the display or provision of tourist and visitor information services;
 - 34.1.2 provide adequate storage space built in to the kiosk because the total operation must be contained within the confines of the kiosk structure;
 - 34.1.3 have a minimum footprint consistent with its function;
 - 34.1.4 be open and inviting to customers with consideration given to the use of the inside and outside of the structures; and
 - 34.1.5 maintain a comfortable interior temperature, ventilation and adequate illumination consistent with their function.
- 34.2 Kiosk sites may vary in shape according to the sites available and which become available. Kiosk designs must be varied to suit particular site requirements without additional cost to the Council.
- 34.3 Designs must meet all statutory requirements.
- 34.4 Litter control and waste management are to be integrated within the kiosk structures.

- 34.5 Drainage and runoff from kiosks are to be integrated into the design of the structures.
- 34.6 More detailed kiosk functions are detailed below using fruit/flower stalls and newsstand kiosks as examples.

35. FRUIT/FLOWER STALL KIOSKS

Fruit/flower Stall Design

- 35.1 Fruit and flower stalls are to be designed to be functional to provide a valued service and add life and colour to the urban environment.
- 35.2 As noted in clause 25, the Council will have exclusive possession in respect of stalls and kiosks. It is intended that rights of occupancy will be given to fruit and flower stall operators, for the stall and adjoining area. The fruit/flower stall system is to clearly define the area operators are permitted to occupy. A modular system is envisaged that can allow for larger or smaller stalls based on the market needs of the operator and the size the site can accommodate.
- 35.3 Part of the problems the operators face with the old stalls is the lack of adequate storage. The resulting piles of boxes around the stalls contribute significantly to the untidy nature of the stalls. Adequate storage should be provided within the stall to enable the operator to easily access spare boxes of stock without disrupting the stall. All day storage should occur within the approved occupied area of the stall. For example, the area underneath the trestles may be used for storage during operation. Some stock may be stored in the stall overnight. This feature streamlines the set-up and pack-up time for the operator.
- 35.4 When the stall is not in operation it should be as compact and unobtrusive as possible. All trestles, display trays, sun-screens and other attachments should be hidden away inside the locked stall. The closed stall should offer protection from vermin, the weather and vandalism. It should be an interesting and attractive piece of street furniture in its own right.
- 35.5 The fruit/flower stall must be able to withstand the rigours of daily exposure to the elements. It must be easily cleaned and be resistant to attacks from graffiti and other vandalism. Materials that discourage vandalism are encouraged. The useable surfaces of the stall should be easily cleaned and hygienic. Sun-shading devices may be brightly coloured but should not figure any advertising.
- 35.6 Whilst the stalls are clearly outdoor market style operations they should nevertheless offer a reasonable amount of protection to the operator and their produce. The storage compartments should be completely watertight and well ventilated. Designs should protect goods on display from direct

rain and sun. The operator should also be protected from sun and rain in the normal selling position within the stall.

- 35.7 Power is to be supplied to the stalls and metered individually. Provision may be made for advertising panels on the back of the stalls. These are to be back lit. Provision is to be made for lighting, power and water to be installed within the stall. Power and lighting are to be connected at the Service Provider's cost. The connection of water, where required, will be at the Council's cost.
- 35.8 The stall must be capable of being locked securely when not in use. Appropriately located flanges must be provided to allow the operator to lock the stall.
- 35.9 It will be the responsibility of the operator to comply with all Government health regulations relating to operation. The design of the stall must facilitate this compliance by the operator eg. minimum heights applicable for the display of food for sale.

36. **INSTALLATION OF FRUIT/FLOWER STALLS**

- 36.1 The stalls are to be brought to their sites as prefabricated modules and assembled on a concrete or similar plinth to be installed by the Service Provider. The stall is to be bolted down to the slab from the interior.
- 36.2 An installation plan is to be negotiated with stall operators and the Council with a view to minimising disruption to operators.

37. **NEWSSTANDS**

Design of Newsstands

- 37.1 Newsstands must be designed to:
 - 37.1.1 provide optimum conditions for selling, displaying and storing newspapers, periodicals, and convenience items;
 - 37.1.2 be accessible to persons with disabilities who may operate or patronise the structure.
- 37.2 Variable footway conditions may prevent newsstands from occupying a large footprint and may require flexibility in their design. Consequently, the Service Provider must be prepared to construct newsstands of a variety of shapes and sizes.
- 37.3 In the event that the Service Provider proposes another street furniture structure be integrated with a newsstand it should be designed so that the

- 41.3 Pay phone providers are to be responsible for all costs associated with the installation and connection of pay phones on or in pay phone structures, including all trenching and cabling costs.

Design of pay phone street furniture

- 41.4 Stand alone pay phone street furniture is to be capable of accommodating two pay phones and one advertising panel.
- 41.5 Pay phone structures are to have a minimum footprint and height and be as unobtrusive as possible, consistent with their function. In this regard the maximum height of a pay phone structure must not exceed 2.25 metres unless approved in writing by the Council.
- 41.6 Design of pay phone street furniture should be in consultation with the pay phone provider to ensure useability for customers and cost effective installation and operation for all parties. Designs must take account of the needs of physically challenged and sight impaired people.
- 41.7 The Service Provider may nominate dynamic advertising panels for pay phones. Subsequent replacement of static advertising panels with dynamic advertising panels must be approved by the Council in writing.
- 41.8 Bus shelters within the CBD and other high density areas must be designed to accommodate pay phones and to enable cabling for, and attachment of, pay phones with a minimum of inconvenience and cost. The Council may nominate bus shelters in which a pay phone Service Provider may install pay phones.
- 41.9 The Service Provider cannot charge the Council or the pay phone provider for installations under the previous clause. Changes to technical and service requirements by a pay phone provider during the term of the Contract which causes the Service Provider to incur additional costs by way of modifications to street furniture are to be at the cost of the pay phone provider.

Maintenance and installation of pay phone street furniture

- 41.10 The Service Provider is to be responsible for the maintenance and cleaning of both the interior and exterior of pay phone street furniture.
- 41.11 Maintenance does not extend to the technical maintenance and cleaning of pay phones or coin collection. These functions are to be the responsibility of the pay phone provider.
- 41.12 All costs associated with the installation of pay phones on or in the street furniture are to be met by the pay phone provider.

Advertising on pay phone street furniture

- 41.13 The Service Provider may advertise on pay phone street furniture where the approved design and specific location includes an advertising panel.
- 41.14 Generally, advertising panels on pay phones are to be positioned to face the oncoming traffic. The approval of the Service Provider will be required to position them parallel to the roadway as this may pose an occupational health and safety problem.
- 41.15 Pay phone providers are not to be charged by the Service Provider for the provision or use of pay phone street furniture.

42. TRAFFIC BOLLARDS

- 42.1 Bollards are to be designed to permit pedestrian movement while preventing vehicle access to an area.
- 42.2 Bollards requiring frequent removal for vehicle access must possess simple tamper proof mechanisms (eg. standard hexagon key access).
- 42.3 Designs are to facilitate ease of replacement.
- 42.4 Bollards are to be readily noticeable to drivers, cyclists and the visually impaired but not visually obtrusive. Solidity and visual weight should enhance function.
- 42.5 Generally the height range should be 900-1200mm. Chains between bollards, where required, should hang 500mm above the ground surface.
- 42.6 Bollards are to be robust and capable of withstanding minor impacts without need for immediate maintenance.
- 42.7 The minimum installation distance is to be 500mm from the kerb.

43. DRINKING FOUNTAINS

- 43.1 Drinking fountains are particularly subject to abuse. They must be of robust design incorporating simple components with ease of access for maintenance and replacement.
- 43.2 Design must be attractive to encourage use.
- 43.3 Drinking fountains must be connected to a mains water supply and storm water drain.
- 43.4 Drinking bowls should be stainless steel.

43.5 To be sited a minimum of 500mm from kerb and 1 metre from seats.

44. BICYCLE RACKS

- 44.1 Designs must be capable of accommodating secure parking for a wide range of bicycle types.
- 44.2 Racks are to be simple in design to minimise obstruction and visual clutter, particularly when not in use. Designs must enable bicycle frames and not just one wheel to be secured.
- 44.3 Typical bicycle zones are 2 metres long by 600mm wide.
- 44.4 Placement of racks is to be as follows:
 - 44.4.1 perpendicular to kerb – position centreline of rack in line with centreline of tree pit/seat location;
 - 44.4.2 parallel to the kerb – 500mm minimum setback from kerb;
 - 44.4.3 in locations where more than one rack is required they are to be placed a minimum of 800mm apart; and
 - 44.4.4 500mm minimum clearance from other elements such as a tree pit or seat.

45. PEDESTRIAN SHELTERS

- 45.1 Designs are to provide pedestrians with adequate protection from wind, rain and sun. It is envisaged that a modular design would give the flexibility to provide shelter from different wind directions while providing the minimum obstruction to pedestrian traffic.
- 45.2 It is envisaged that they be located primarily on street corners on busy pedestrian routes. Each shelter would be sited individually to maximise weather protection and visibility, and to minimise obstruction to pedestrians.
- 45.3 The footprint of the shelters is to be as small as possible consistent with their function. The sketches at Attachment 'D' provide an indication of the element envisaged.
- 45.4 It should have modular side panels positioned at approximately 120 degrees rather than 90 degrees so that pedestrians have the benefit of some weather protection no matter which direction the wind is coming from, while encouraging pedestrian flows and retaining visibility. Each shelter would have a minimum of two side panels installed, including a double sided advertising panel.

45.5 In some situations three side panels, including one advertising panel may be appropriate.

46. OTHER ITEMS

46.1 The Service Provider may include additional items of street furniture in its proposal for consideration by the Council. These should be designed to be an integral part of the suite of street furniture of coordinated design and must be included in the cost and price Tables 'A'-'E' in the Specification Forms.


46.2 The Council may accept or reject any of the other items submitted by the Service Provider.

ATTACHMENTS


- A.** List of participating Councils
- B.** Schedules of Street Furniture requirements for each Council and total requirements
- C.** Maps and spreadsheets of proposed locations of street furniture permitted to display advertising for each Council

LIST OF PARTICIPATING CITY COUNCILS

s7(2)(b)(ii) LGOIMA

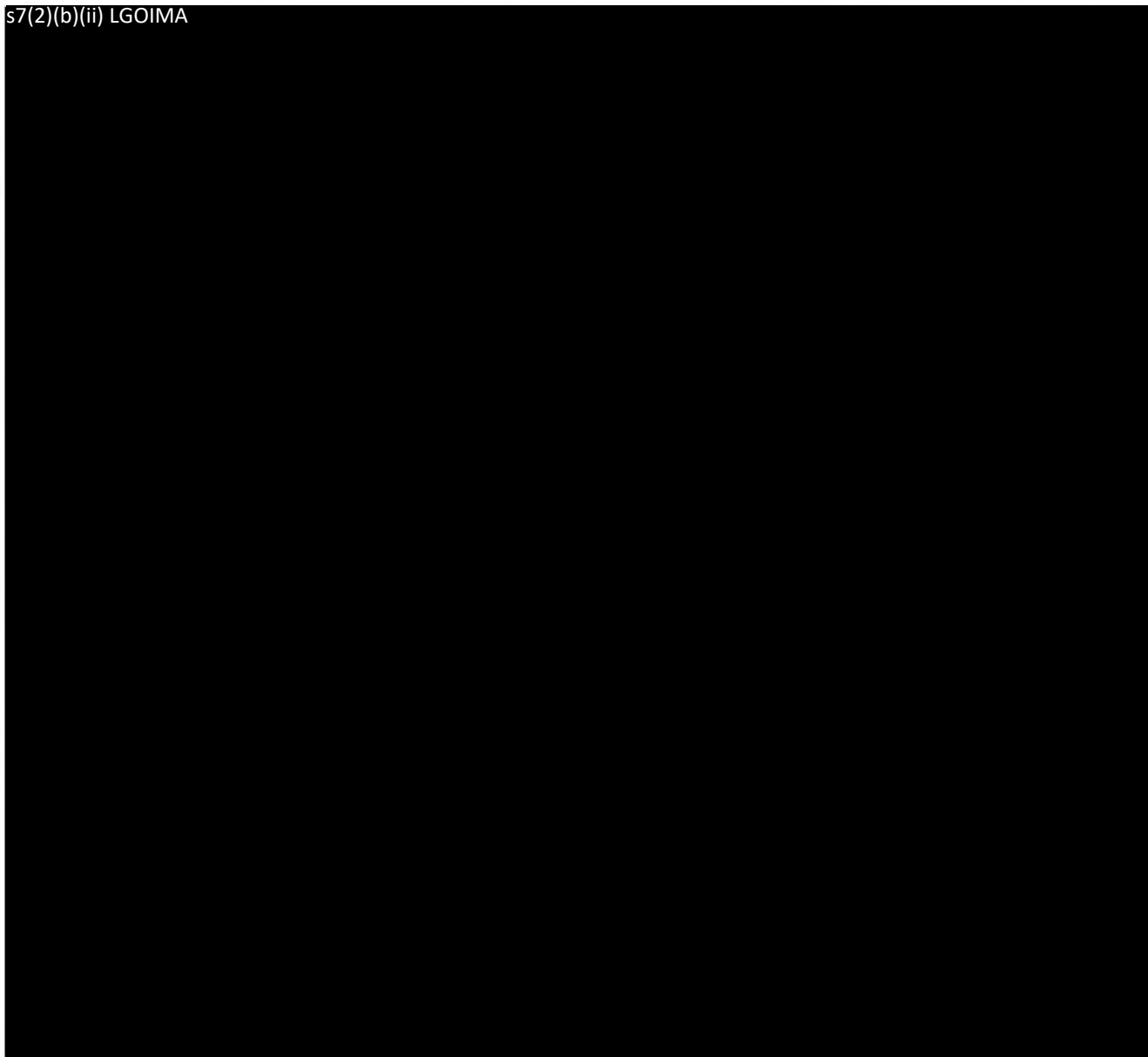


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ATTACHMENT 'B'

s7(2)(b)(ii) LGOIMA




ATTACHMENT 'B'

s7(2)(b)(ii) LGOIMA



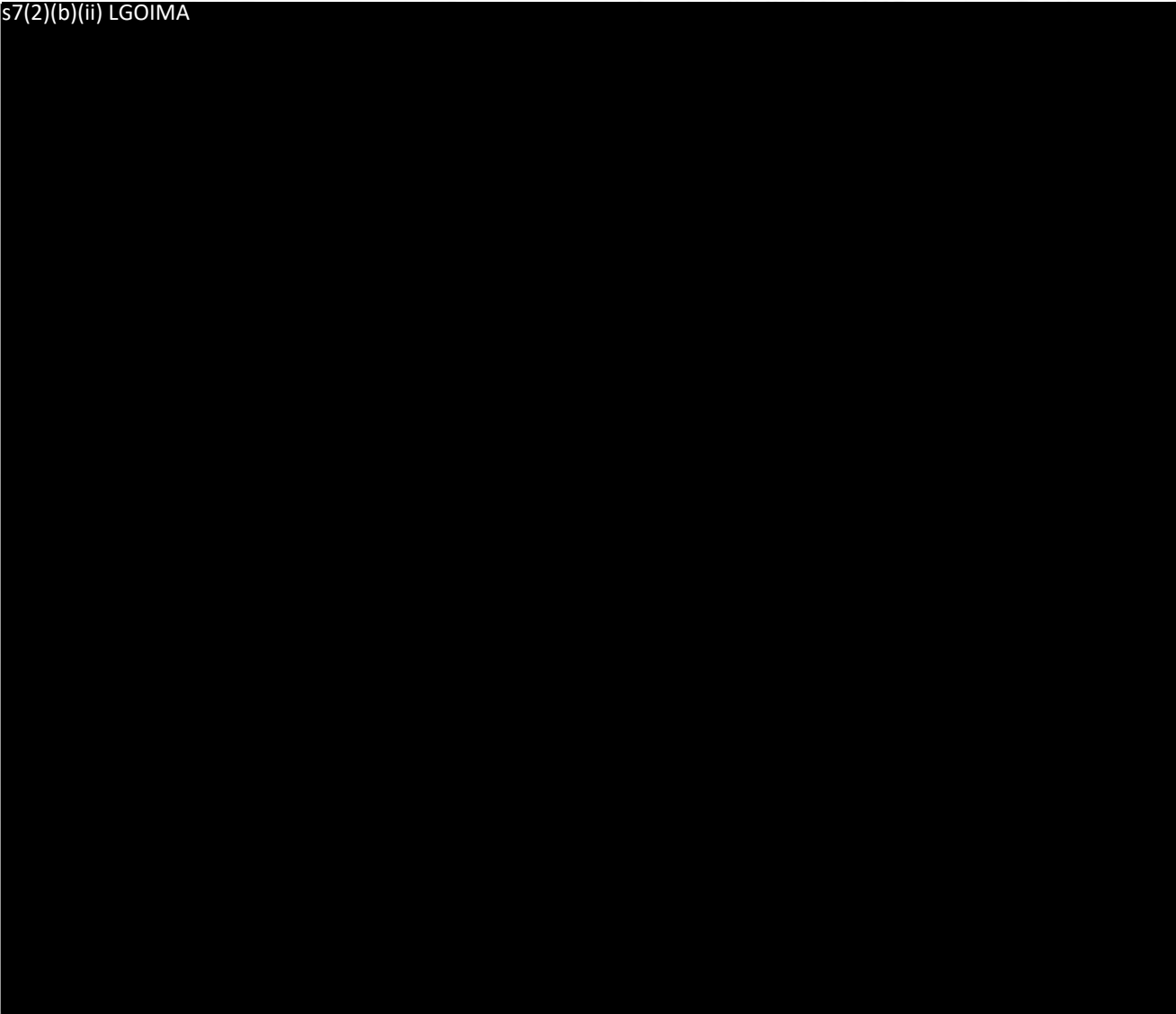
ATTACHMENT 'B'

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ATTACHMENT 'B'

s7(2)(b)(ii) LGOIMA




ATTACHMENT 'B'

s7(2)(b)(ii) LGOIMA



ATTACHMENT 'B'

s7(2)(b)(ii) LGOIMA



ATTACHMENT 'B'

ROTORUA DISTRICT COUNCIL STREET FURNITURE REQUIREMENTS

STREET FURNITURE	NO. OF AD. PANELS	QUANTITY
Advertising Permitted		
Bus shelters (CBD)	2	2
Bus shelters (arterial)	2	28
Bus shelters incorporating a pay phone	2	0
Pedestrian shelters	2	0
Kiosks	2	0
Pay phones	1	0
Poster bollards	2	0
Information boards	1	0
APTs	2	0
Advertising not Permitted		
Seats and benches	0	0
Litter bins	0	0
Bike racks	0	0
Ash trays	0	0
Drinking fountains	0	0
Traffic bollards	0	0

Installation of the street furniture is to be completed by 30 June 2001 although a more ambitious implementation plan would be looked upon favourably.

ATTACHMENT 'C'

**MAPS AND SPREADSHEETS OF STREET FURNITURE WITH PROPOSED
LOCATIONS FOR EACH PARTICIPATING COUNCIL**

Detailed maps and spreadsheets showing proposed locations of street furniture are available from the contact persons, Colin Brown or Shyrel Burt.

Specification Forms

Table of Contents

BOOK 1

1. Service Provider/Joint Venture/Partnership Arrangements
2. Part “A” – Schedule of Revenue Estimates, Capital and Maintenance Cost of Street Furniture

Part “B” – Schedule of Prices and Fees, Installation and Removal Rates and Completion Dates
3. Financial Details of the Service Provider
4. Organisational Structure of the Service Provider

BOOK 2

5. Implementation Plan
6. Maintenance Program
7. Performance Criteria
8. Drawings and Designs
9. Experience, Capability and Knowledge
10. Proposed Sub-contractors and Suppliers
11. Specified Personnel
12. Service Provider’s Insurance Details
13. References
14. Statutory Declaration of the Service Provider
15. Additional Relevant Information
16. Execution by Service Provider

FOLDER

Part 9 – Drawings and Designs

VIDEO

Adshel – A Solution for Cities

PART 1

Service Provider/Joint Venture/Partnership Arrangements

1. Name and address of each company or person comprising the Service Provider:

Adshel New Zealand Limited
Suite 1, Level 2 Parkview Building
200 Victoria Street West
AUCKLAND NZ 1030

2. Name and Position of Service Provider's personnel who may be contacted for further information if required.

- Len van der Harst – General Manager Adshel New Zealand
- Peter Cope – Managing Director Adshel Street Furniture Pty Ltd
- Mark Thewlis – Chief Financial Officer Adshel Street Furniture Pty Ltd

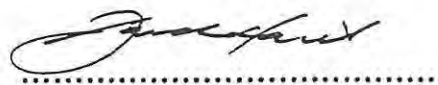
3. Fax Number: 649 300 3110 Email Number: len@adshel.co.nz

4. Telephone Number: 649 379 3032

5. Provide details of the Joint Venture or Partnership. Copies of the constituent documents (eg. Constitution, trust deed, partnership deed) must be attached to this Part 1 of the Specification Form and must be certified by the Service Provider as being true copies.

Can be supplied on request.


.....
Signature of Service Provider


.....
Signature of Witness

PART 2

Schedule of Revenue Estimates, Capital and Maintenance Cost of Street Furniture

Part A

- I. Tables (A-B) are to be completed by the Service Provider in respect of each participating Principal.

TABLE 'A' – Service Provider's Gross Revenue Estimates

TABLE 'B' – Capital and Maintenance Cost of Street Furniture


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Signature of Service Provider

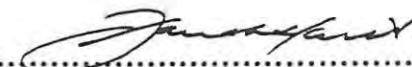

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Signature of Witness

TABLE "A"
GROSS REVENUE ESTIMATES (New & Existing)

COUNCIL: Rotorua District Council

s7(2)(b)(ii) LGOIMA

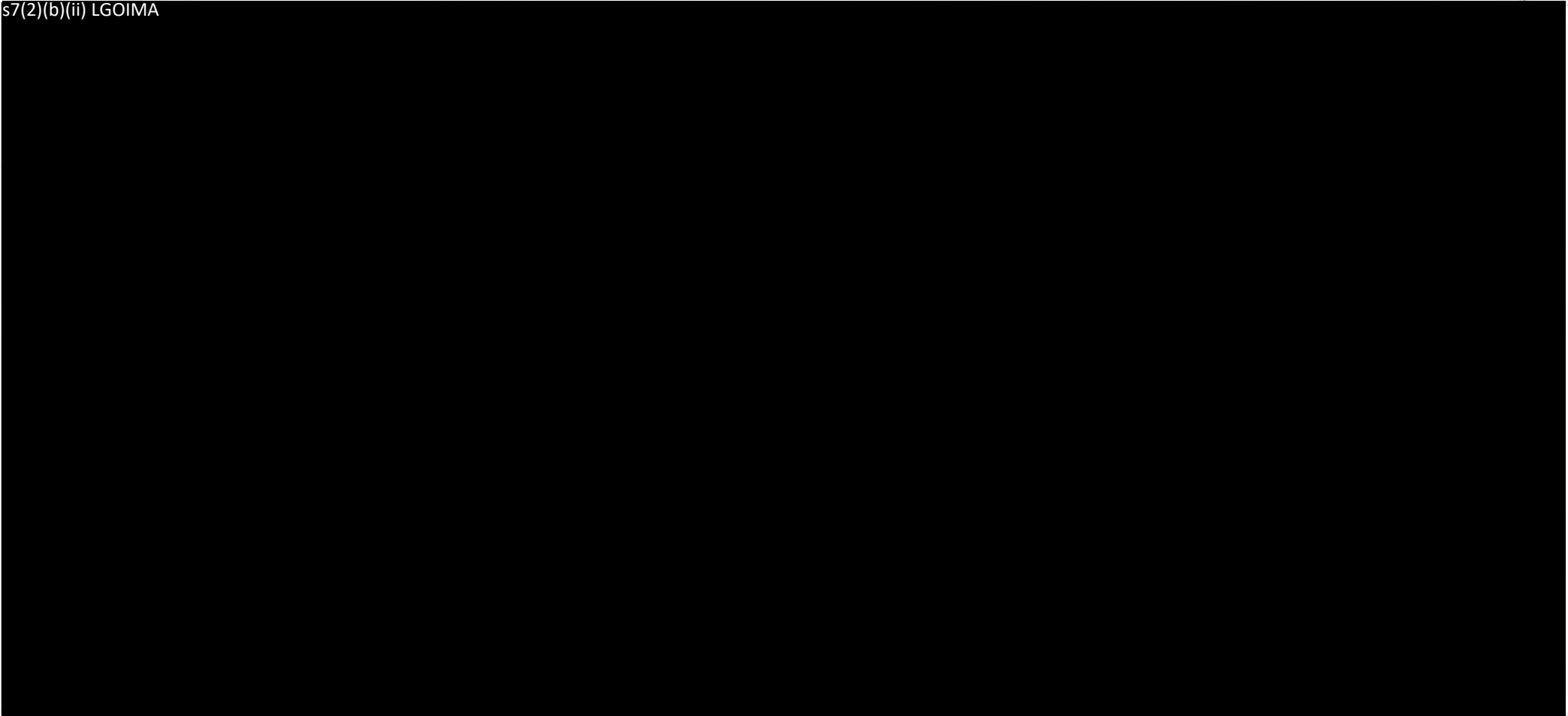


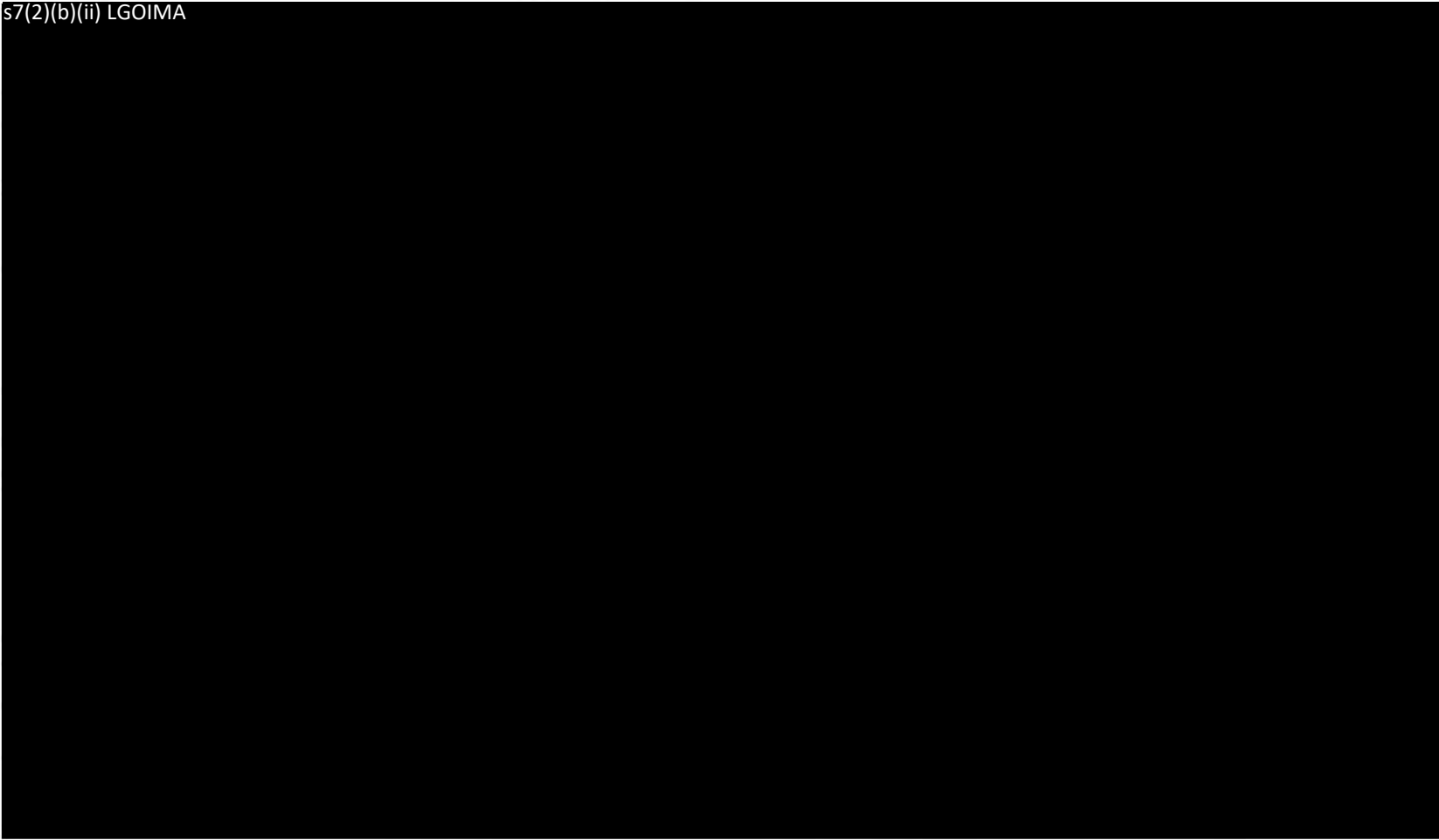
TABLE "B"

CAPITAL COST / PURCHASE PRICE OF STREET FURNITURE AND ANNUAL MAINTANCE COST / CHARGE

COUNCIL:

Rotorua District Council

s7(2)(b)(ii) LGOIMA

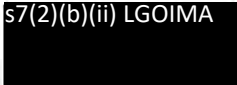


* Does not include installation costs. See table 'C' for details of installation costs.

Summary of Cleaning & Maintenance of Advertising Furniture

Gross value over life of the contract
NPV @ 7%

s7(2)(b)(ii) LGOIMA



PART 2

Schedule of Prices and Fees, Installation and Removal Rates and Completion Dates

Part B

- I. Tables (C-E) are to be completed by the Service Provider in respect of each participating Principal.

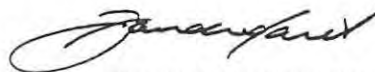
TABLE 'C' – Schedule of rates and dates

TABLE 'D' – Pricing schedule for specified Street Furniture advertising rights

TABLE 'E' – Net initial payment/charge and annual charge/estimated payment to Principal



Signature of Service Provider




Signature of Witness

TABLE "C"
SCHEDULE OF INSTALLATION AND REMOVAL RATES AND COMPLETION DATES

COUNCIL: Rotorua District Council

s7(2)(b)(ii) LGOIMA



* - See additional documentation

TABLE "D"

PRICING SCHEDULE FOR STREET FURNITURE ON WHICH ADVERTISING IS PERMITTED

COUNCIL:

Rotorua District Council

s7(2)(b)(ii) LGOIMA

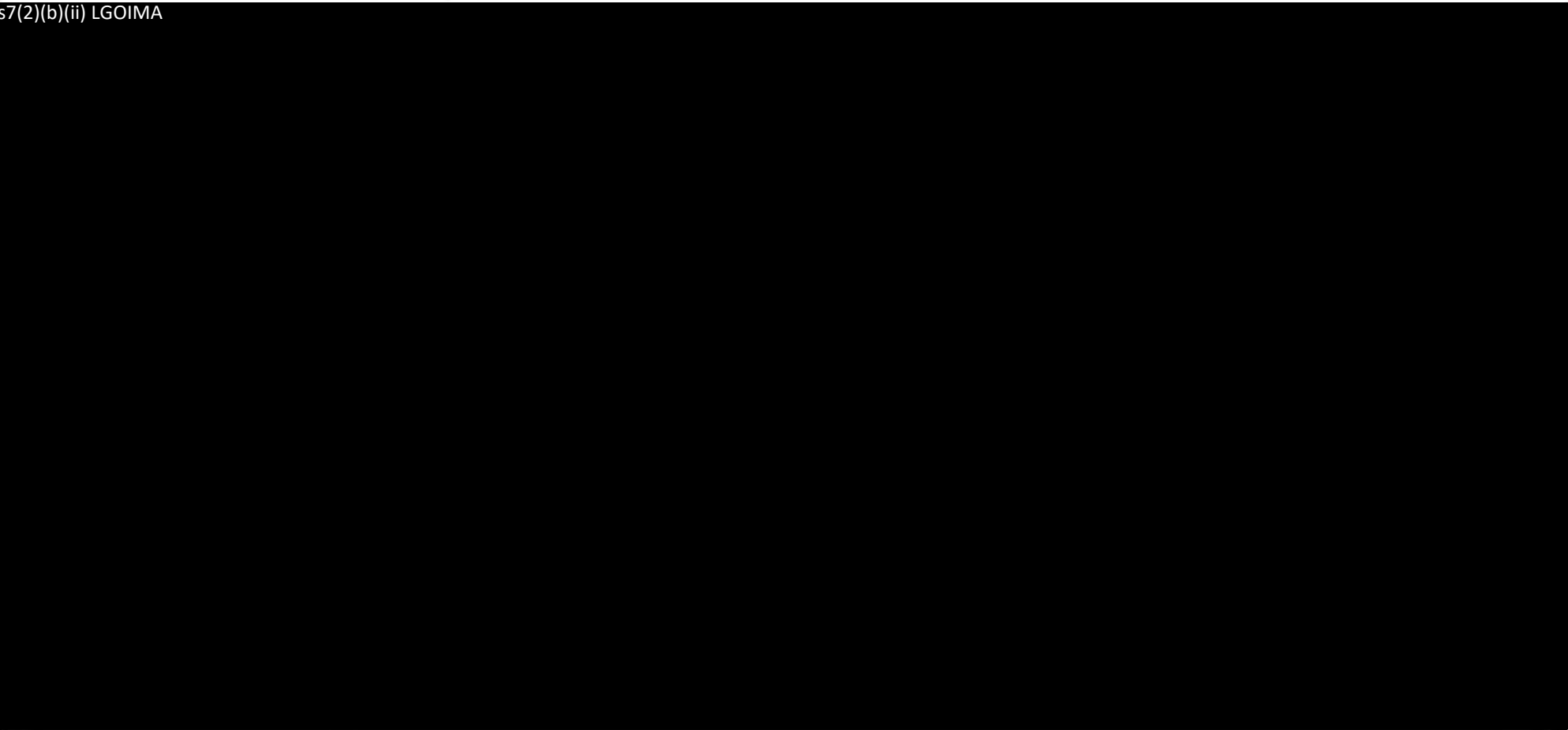


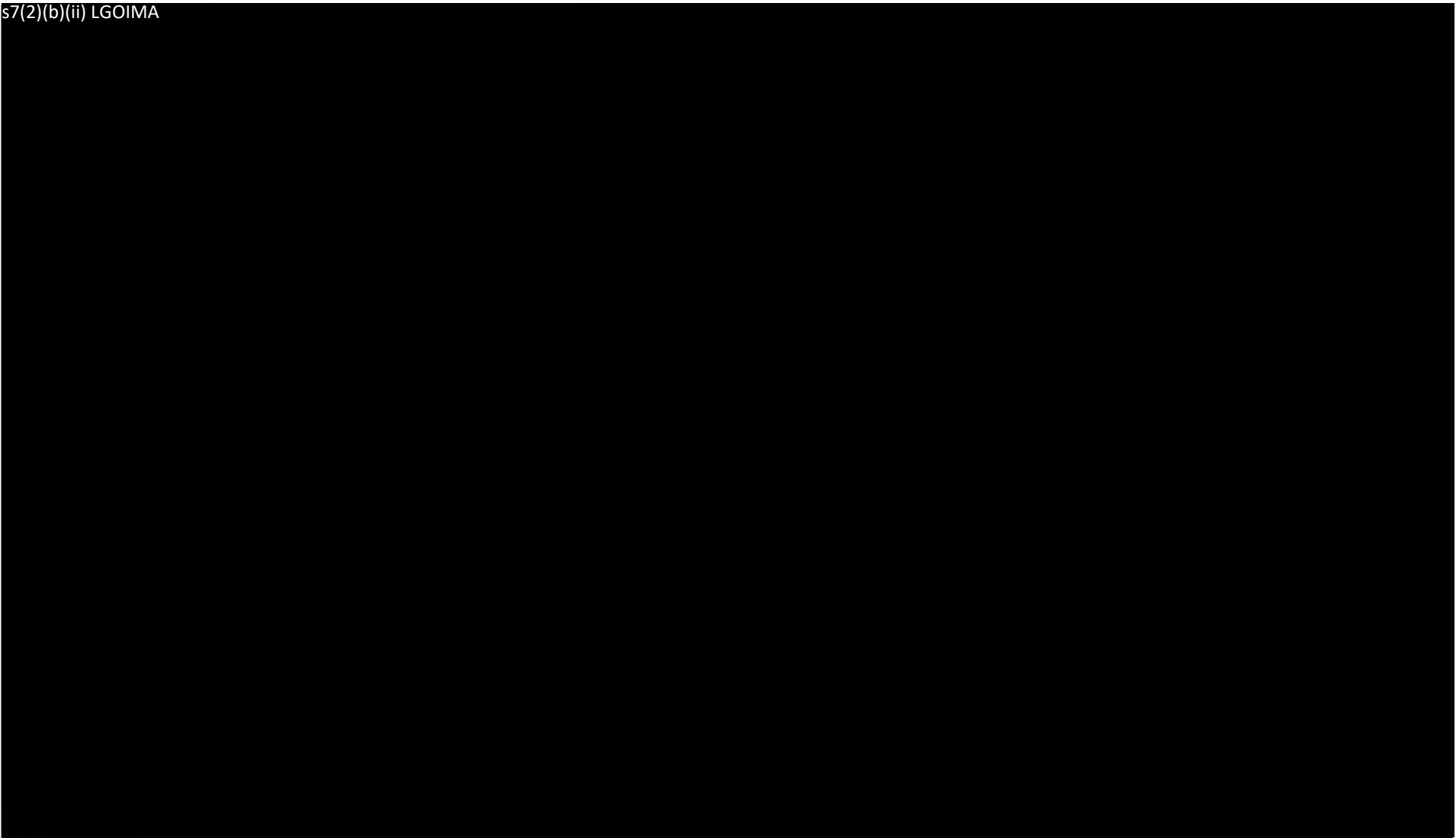
TABLE "E"

NET INITIAL PAYMENT / CHARGE AND ANNUAL ESTIMATED PAYMENT / CHARGE TO PRINCIPAL

COUNCIL:

Rotorua District Council

s7(2)(b)(ii) LGOIMA



PART 3

Financial Details of Service Provider

If the Service Provider is a Joint Venture or Partnership then it shall submit all relevant financial details to the Principals. A separate Part 4 shall be completed for each Joint Venturer or Partnership Member and for each participating subsidiary company.

1. Name of the Service Provider or other joint venture or partnership member:

Adshel New Zealand Limited

2. If the joint venturer or partner is a company:

Capital of Company:

Adshel New Zealand Limited Adshel Street Furniture Pty Ltd

s7(2)(b)(ii) LGOIMA
[REDACTED]

3. List and value of Contracts for similar works and services:

See Part 10 – Experience, Capability and Knowledge.

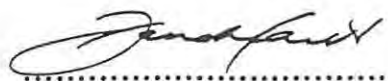
4. Any other financial data considered by the Service Provider to be relevant including access to capital and operating funds sufficient to meet the requirements of this specification:

See attached Annual Reports.

5. List all attachments below. Documents containing other financial information of the Service Provider which may be relevant to the principal's determination should be attached. (These must include audited financial statements for the most recent financial year and the most recent annual report.)

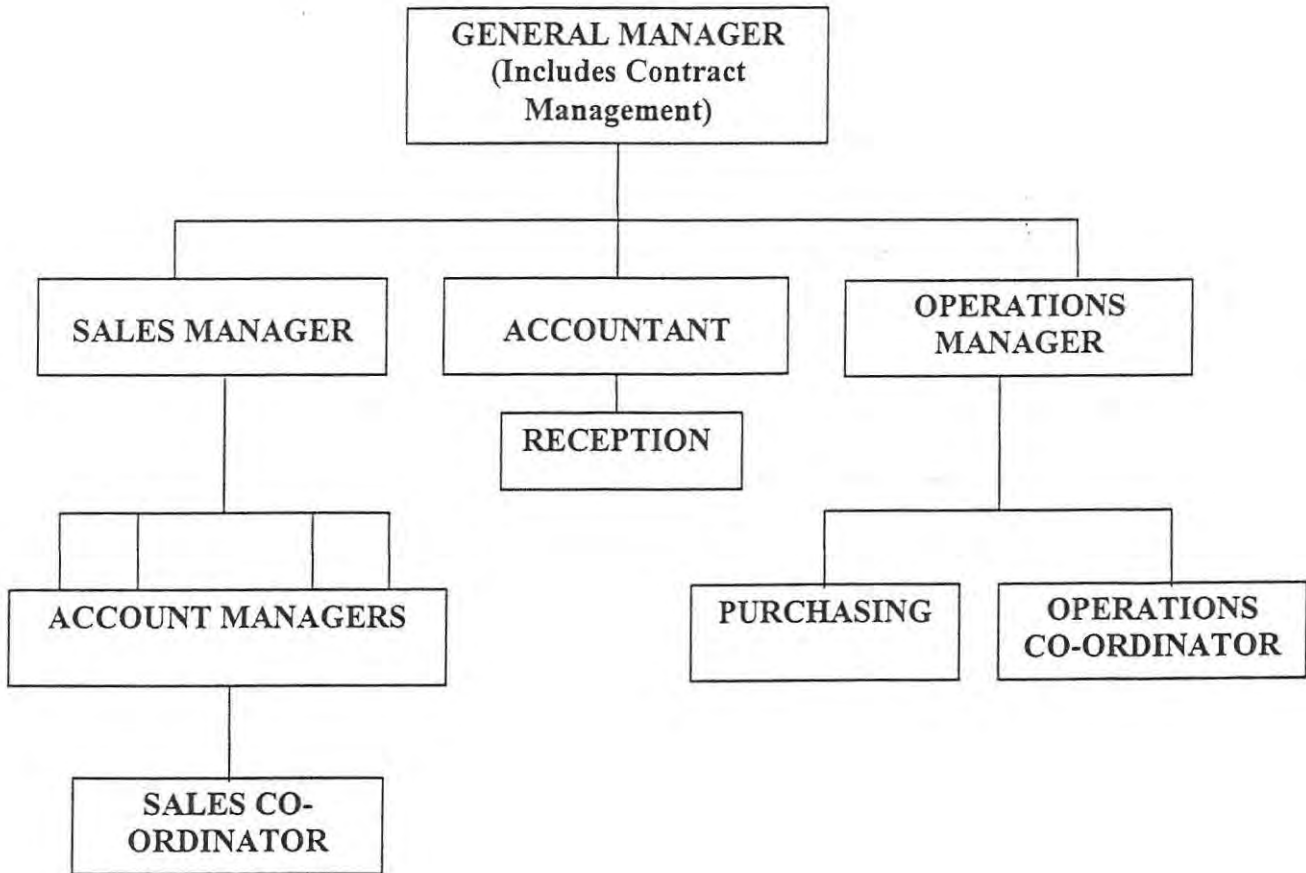
See attached Annual Reports.


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Signature of Service Provider

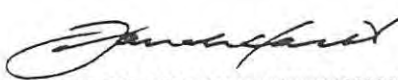

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Signature of Witness

PART 4

ORGANISATIONAL STRUCTURE OF THE SERVICE PROVIDER

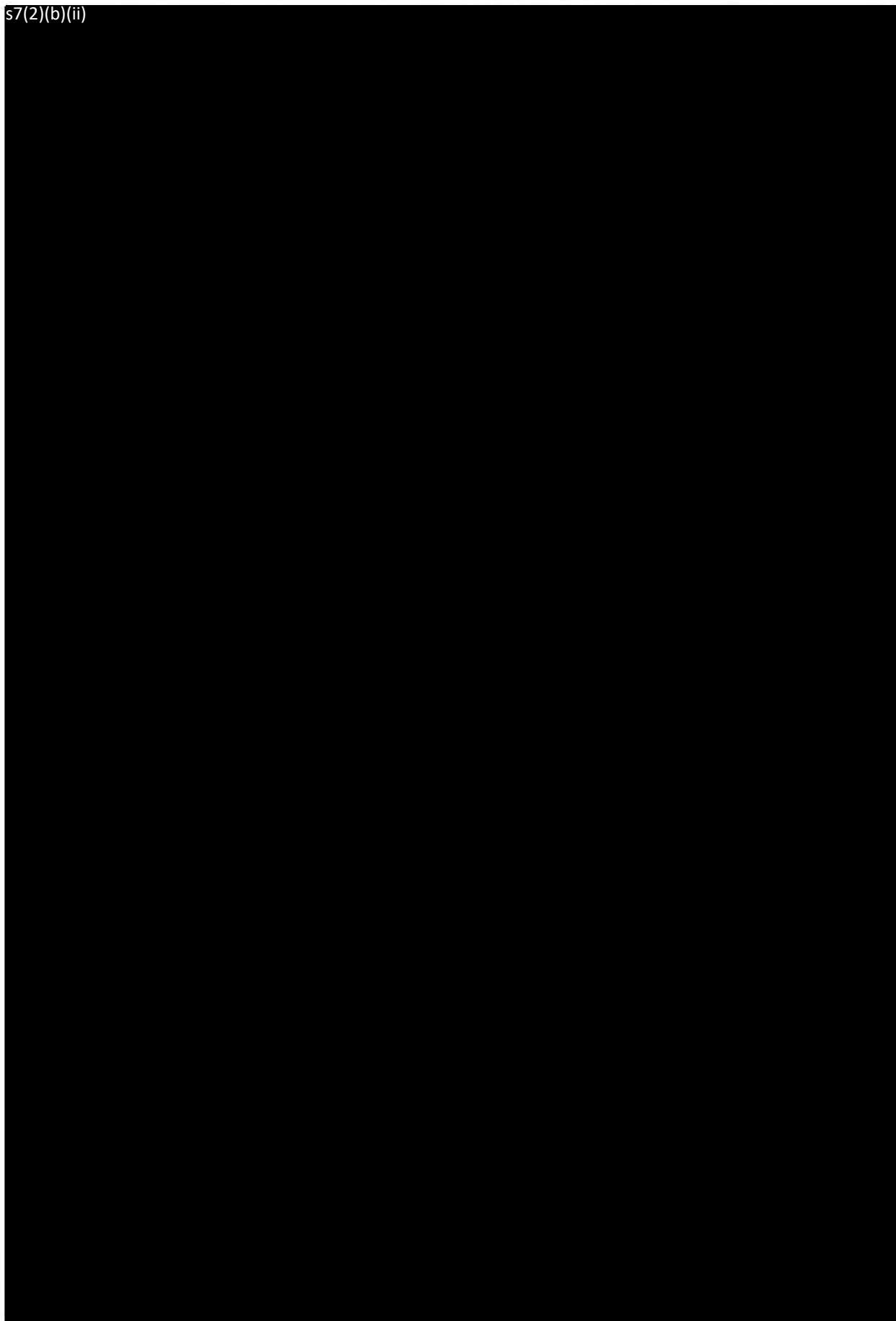



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Signature of Service Provider


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Signature of Witness

PART 5
Implementation Plan

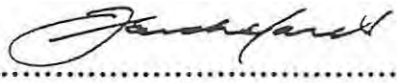
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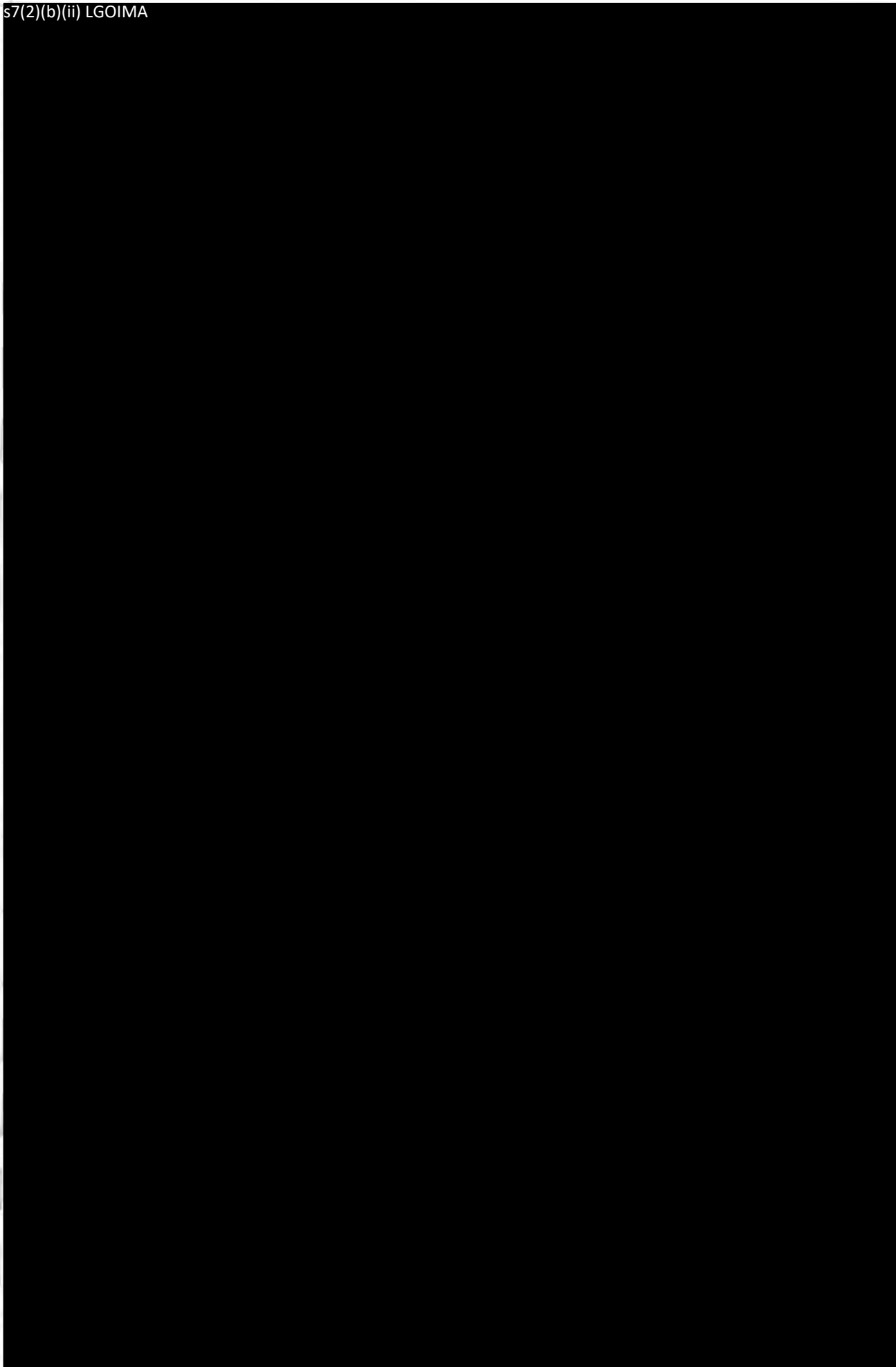
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Signature of Service Provider

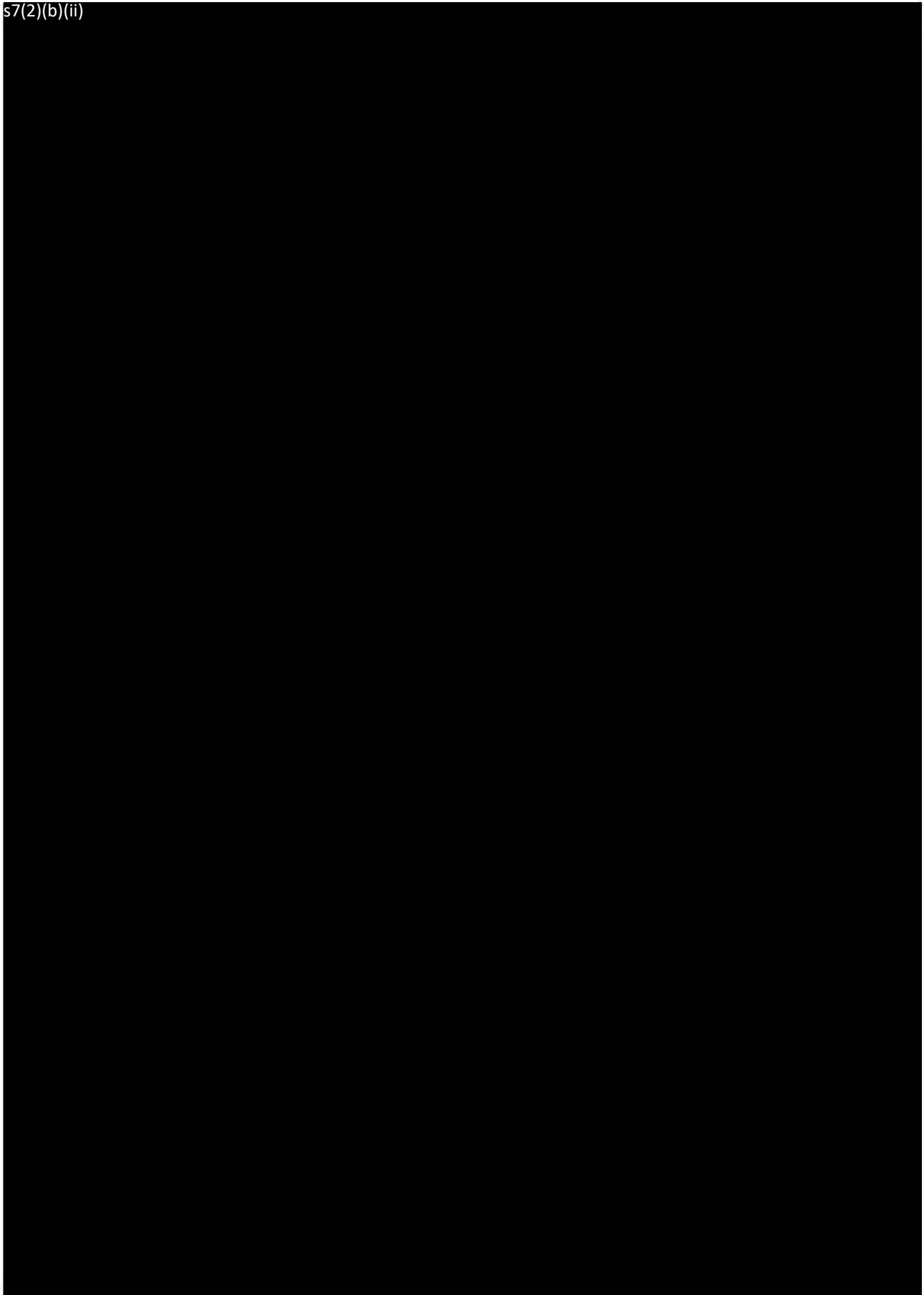

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Signature of Witness

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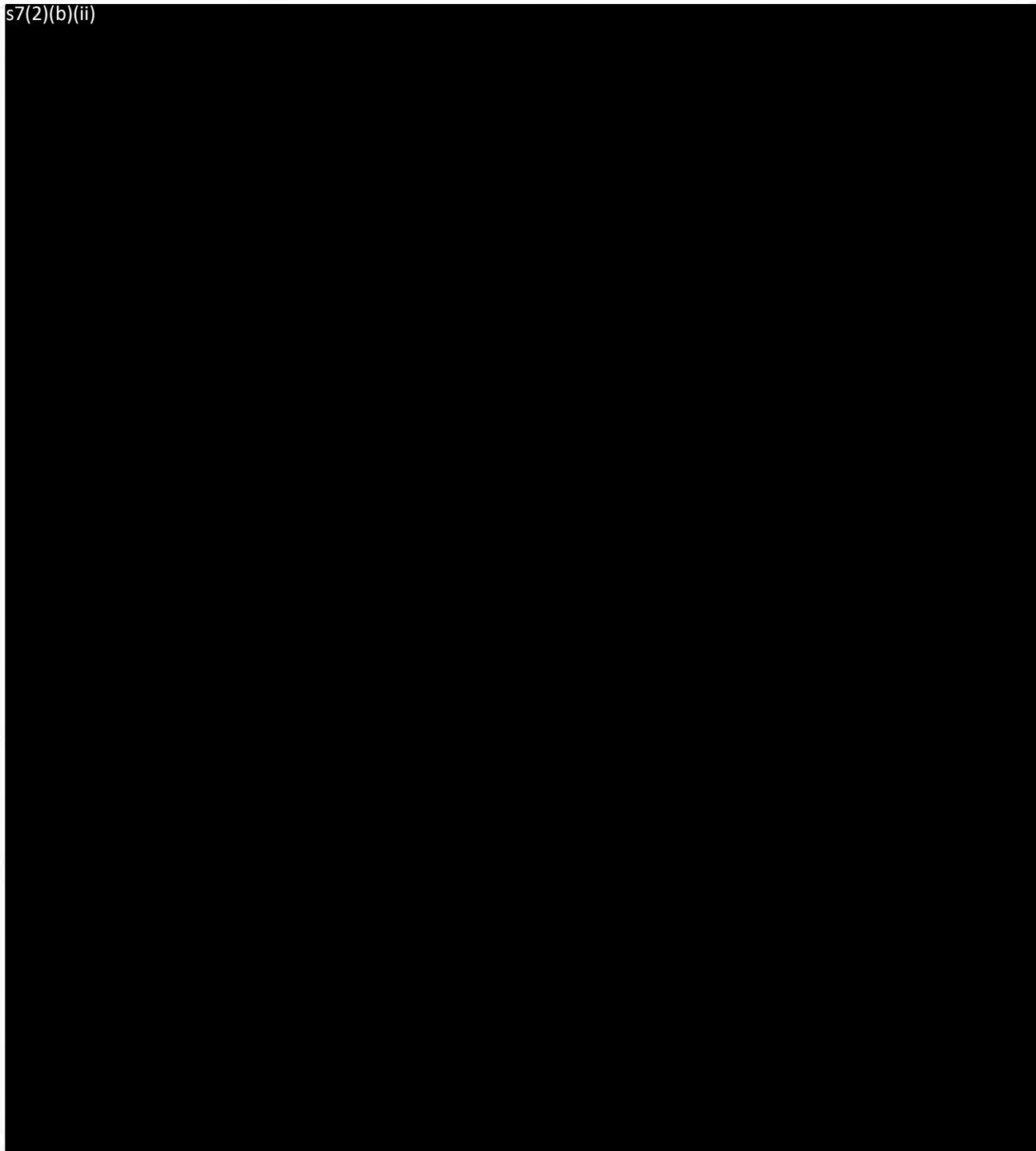


PART 6
Maintenance Program


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Signature of Service Provider


.....
Signature of Witness

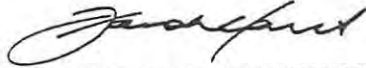
PART 7

PERFORMANCE CRITERIA

Adshel New Zealand suggests the following KPI's be used to monitor the successful implementation of the Street Furniture Programme and ongoing cleaning and maintenance.

1. Achievement of milestones.
2. Timely completion of installation.
3. Response time on faults/defects.
4. Completion of cleaning and maintenance routines.


.....
Signature of Service Provider


.....
Signature of Witness

PART 8

Drawings and Designs

Drawings of the following designs have been enclosed in a separate folder:

- Millennium Free Standing Seat
- Bike Rack
- Millennium Water Fountain
- Millennium 2 bay Shelter
- Millennium 3 bay Shelter
- Federation Shelter
- Colonial Shelter Standard
- Colonial Shelter Mini
- Boulevard Shelter Standard
- Boulevard Shelter Mini
- Boulevard Free Standing Seat
- Classic Standard Bin
- Classic Free Standing Phone Unit
- Classic Free Standing Seat
- Classic Standard Shelter
- Classic Pedestal Bin
- Classic Kiosk
- Manningham Visual

PART 8 (cont'd)

Drawings and Designs

Photos of the following shelters are attached:

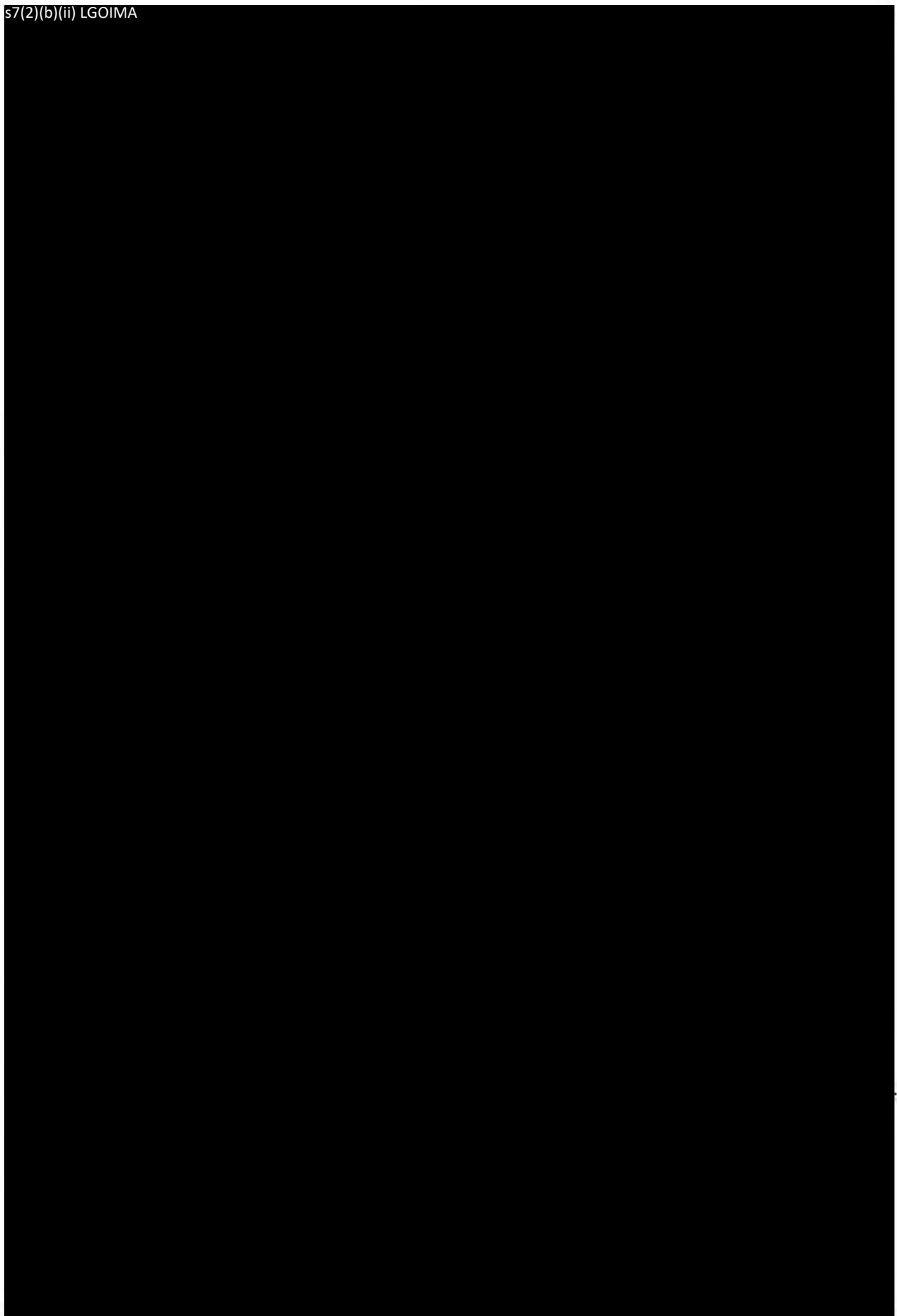
- Lifestyle
- Millennium
- Classic
- Traditional
- Federation
- Boulevarde
- Double-Seated Boulevarde
- Colonial
- Metro

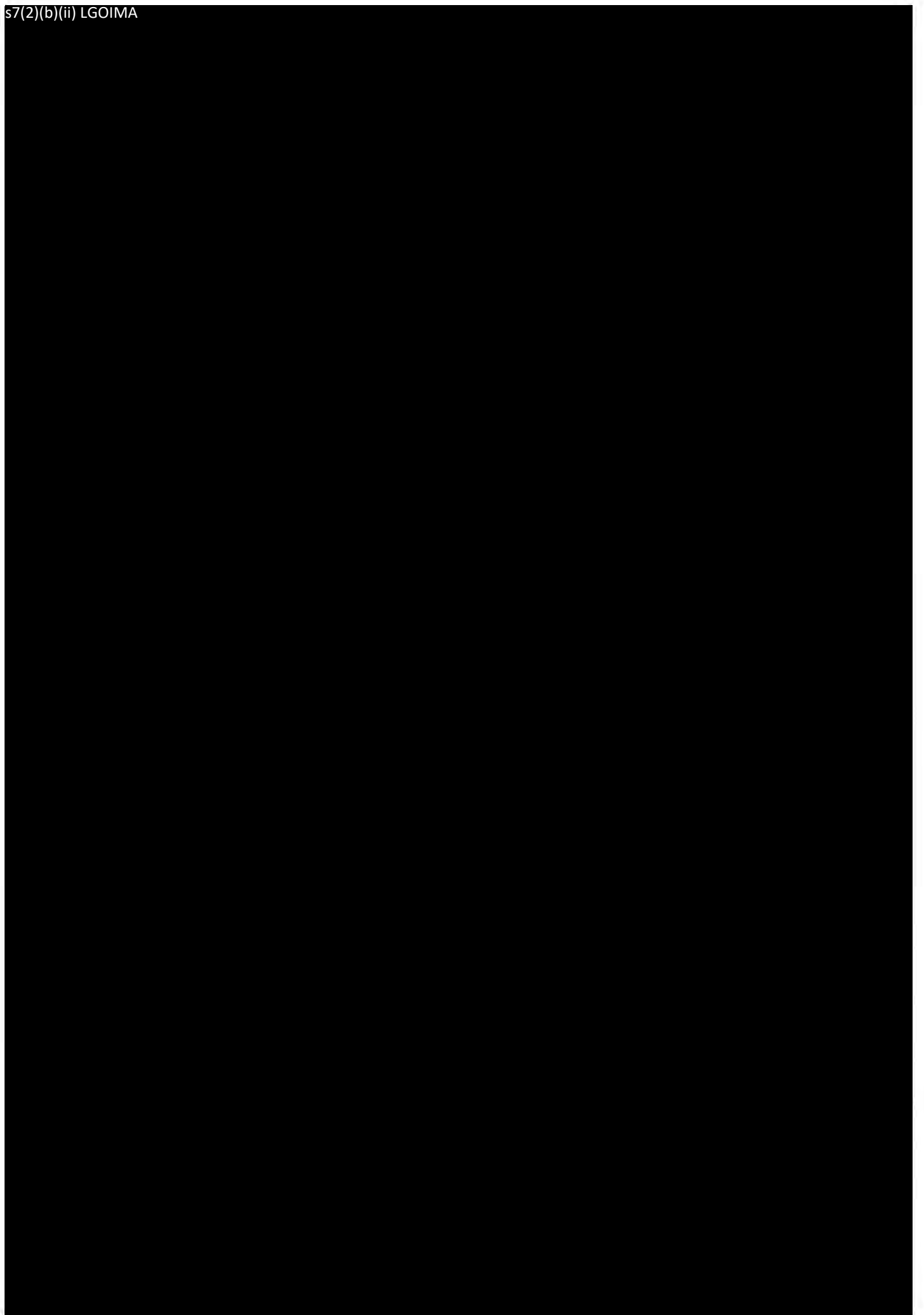

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Signature of Service Provider

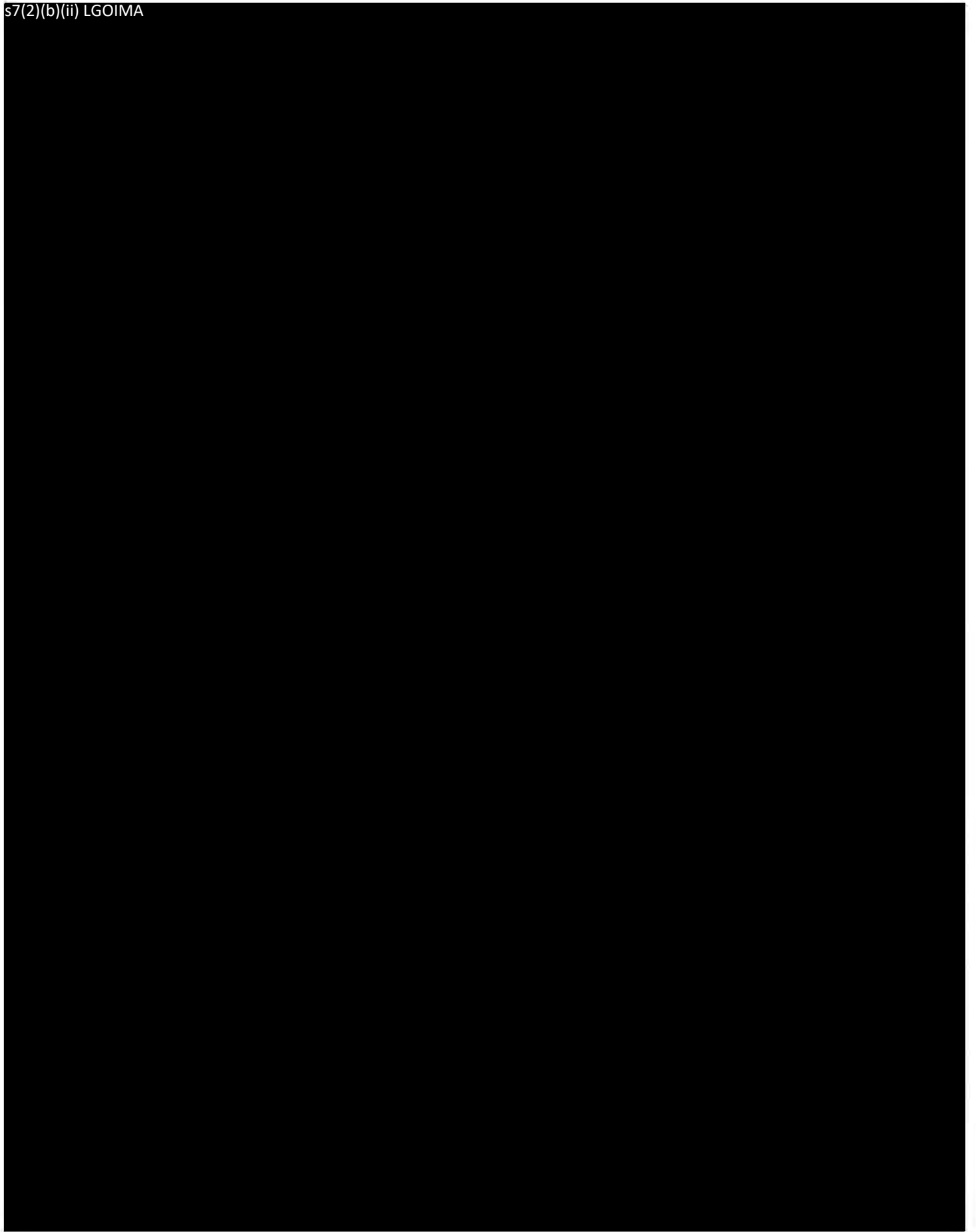
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Part 9

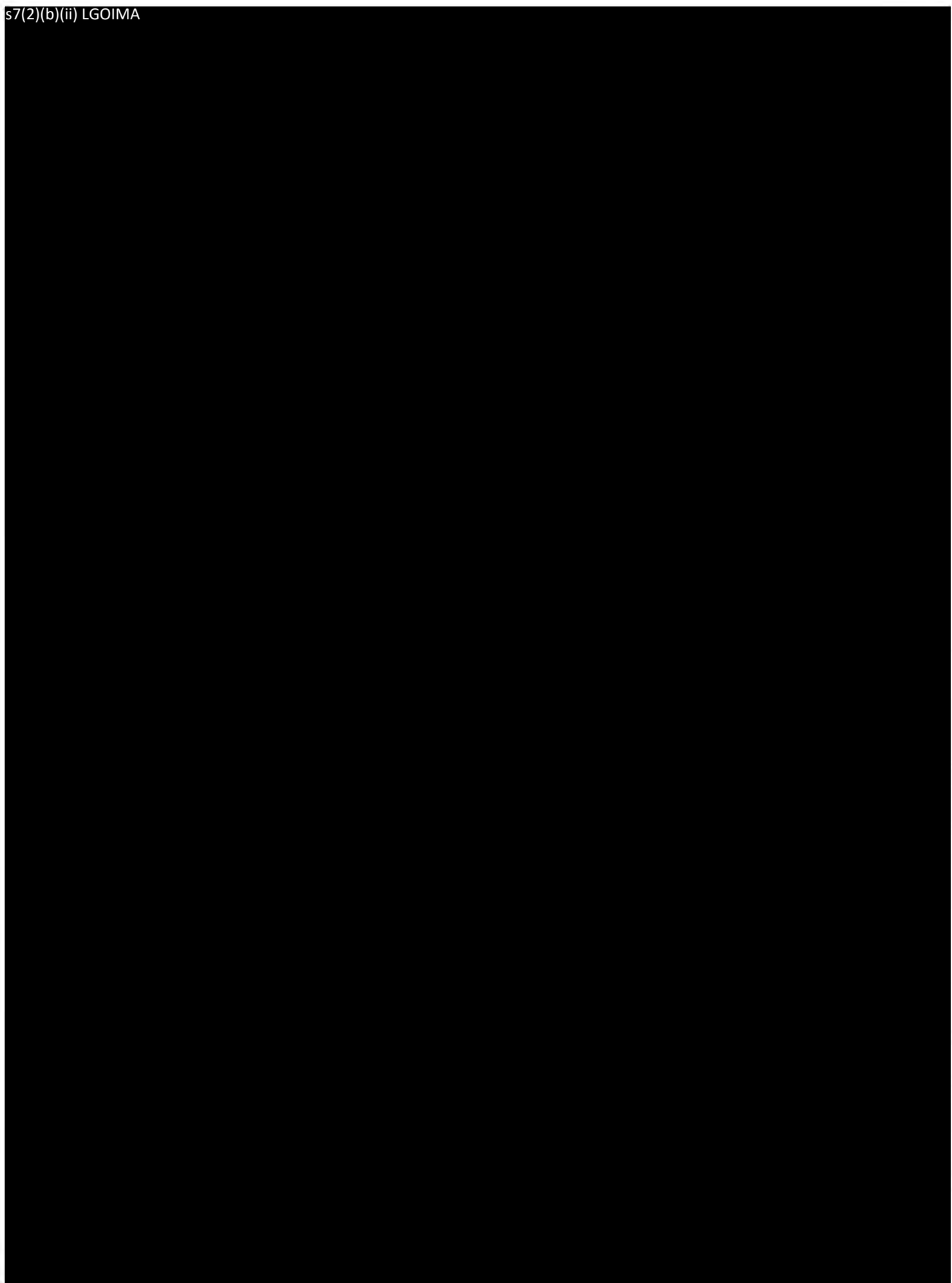
Experience, Capability and Knowledge





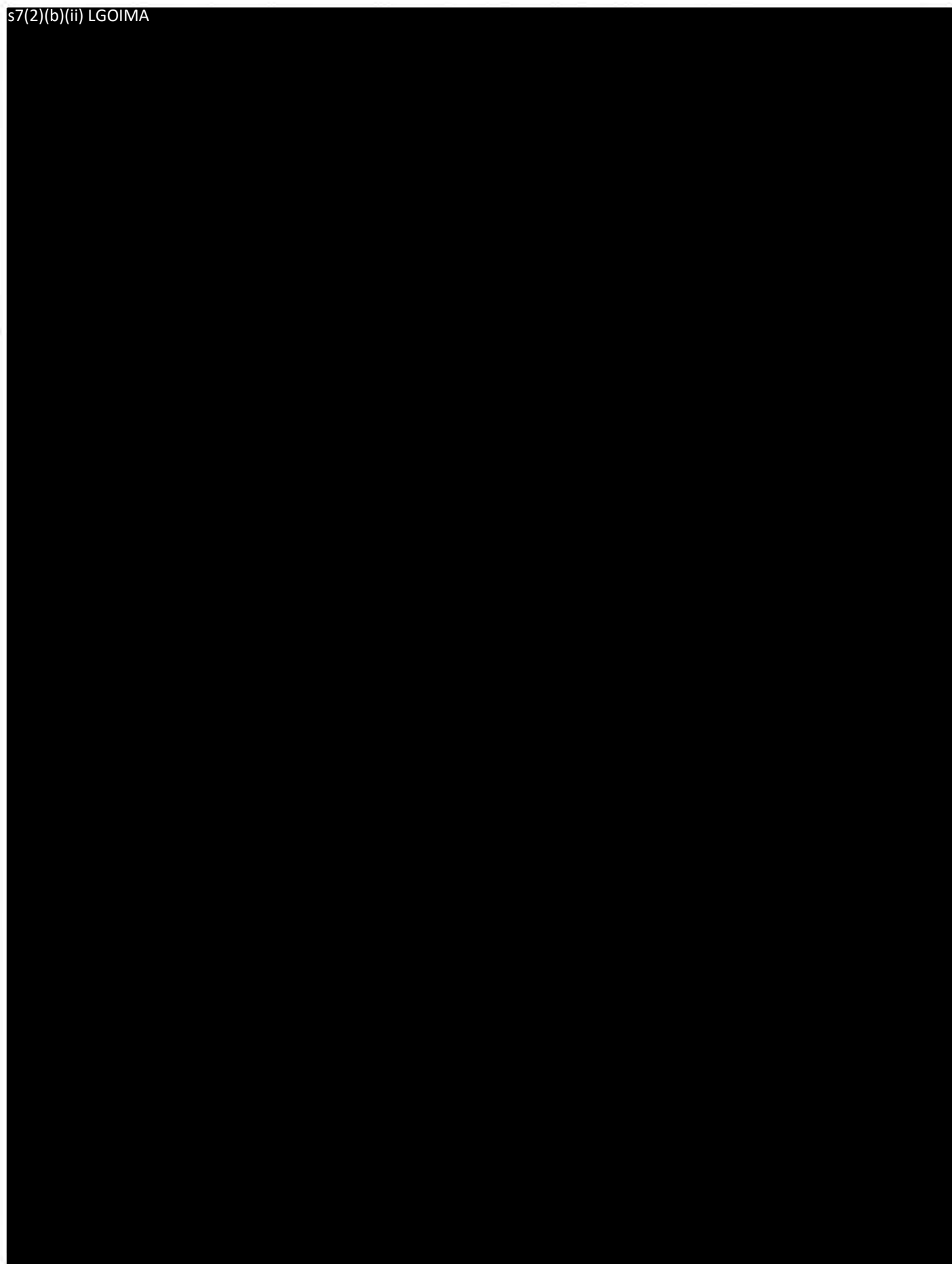




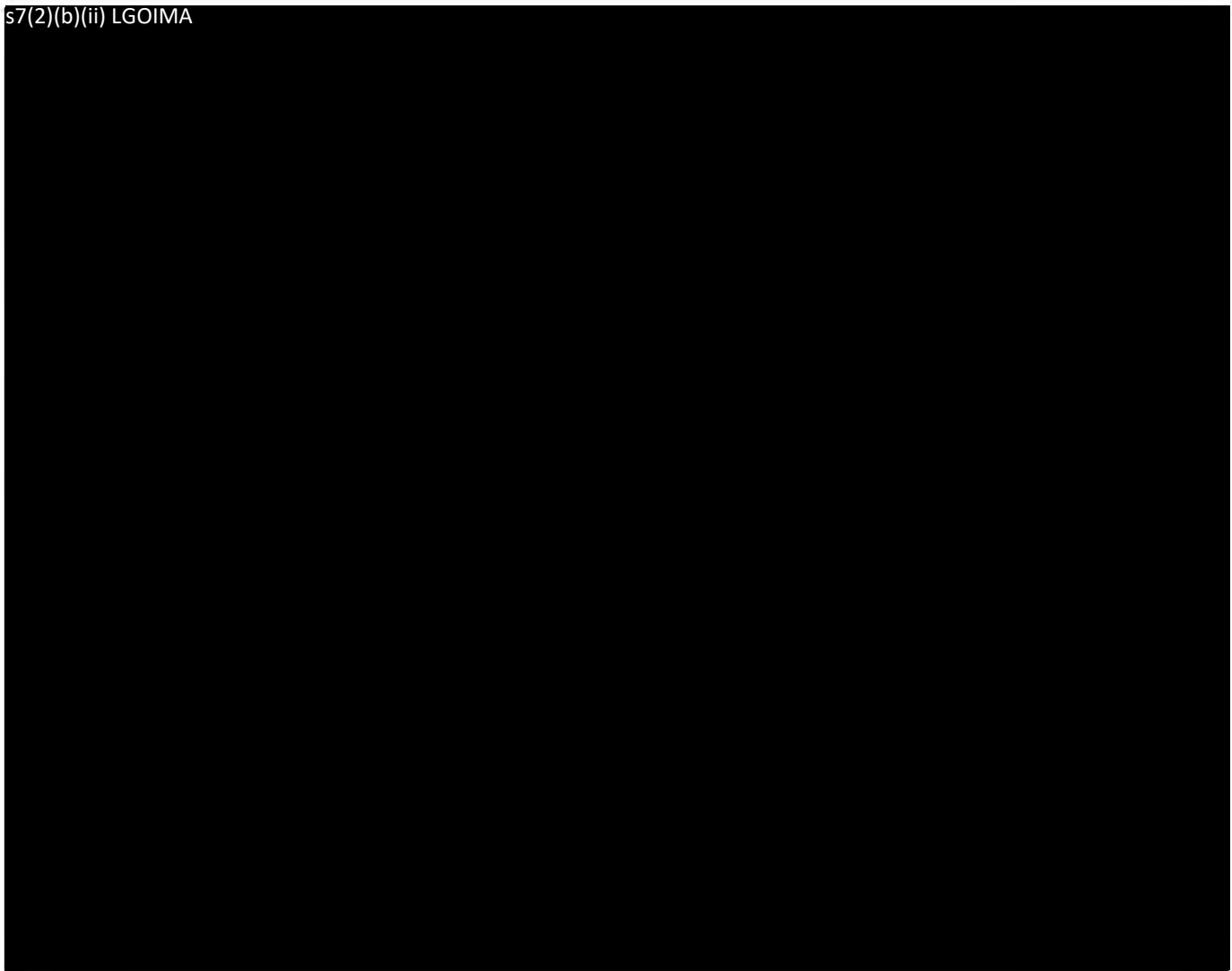


“Commercial in Confidence”


s7(2)(b)(ii) LGOIMA



s7(2)(b)(ii) LGOIMA



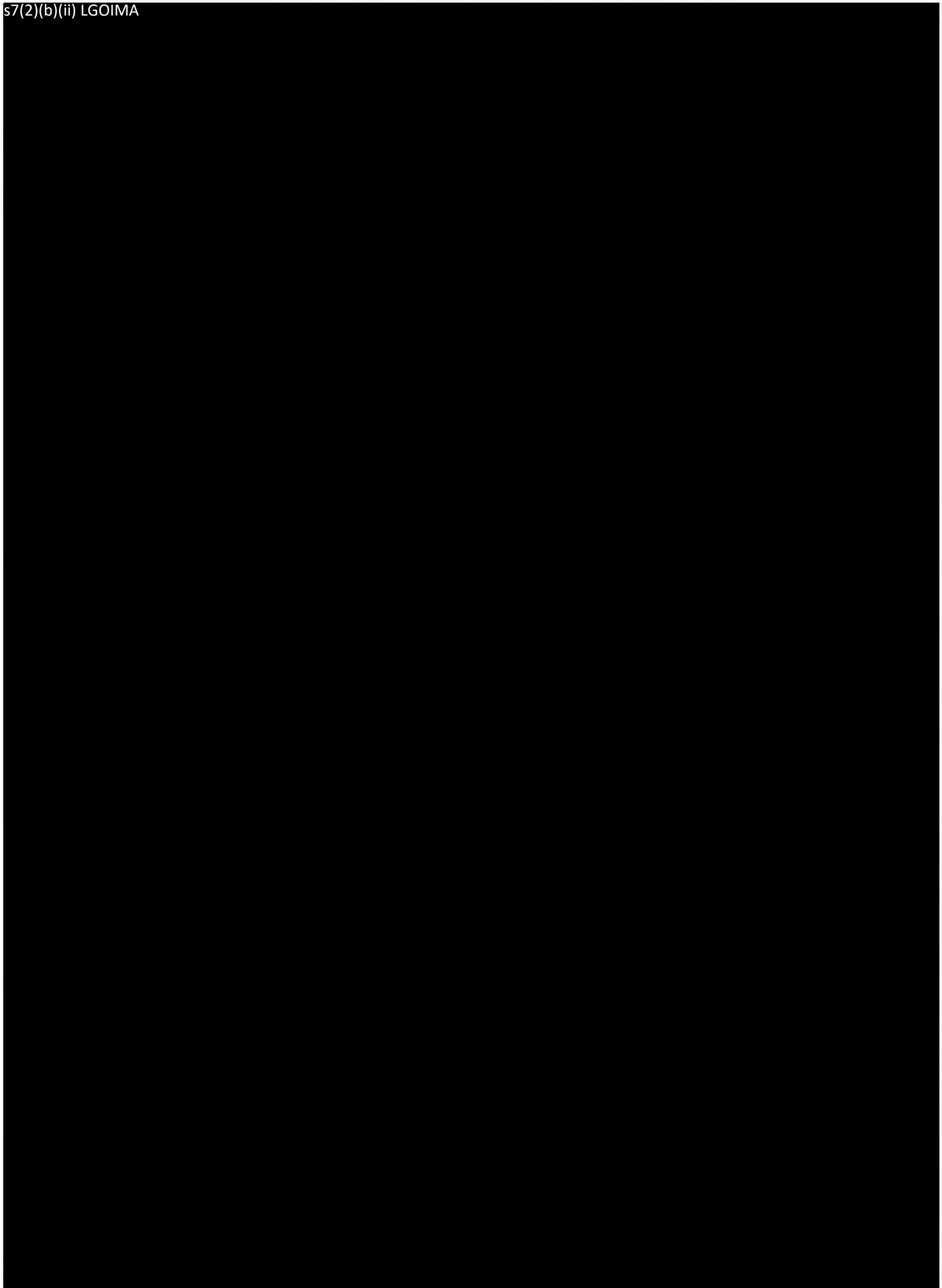

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Signature of Service Provider


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Signature of Witness

PART 10

PROPOSED SUB-CONTRACTORS AND SUPPLIERS

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PART 11

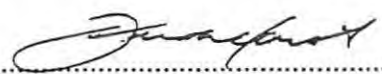
SPECIFIED PERSONNEL

(Clause 15.2 of the Contract)

The Service Provider is required to provide details of the key personnel to be used in the management of the Contract including personnel with responsibility for overall management of the Contract and personnel supervising or managing a portion of the Services eg. maintenance services.

<u>Full name of specified person</u>	<u>Position held</u>
Len van der Harst	General Manager Adshel New Zealand Ltd
Jane Cameron	Business Support Manager Adshel New Zealand Ltd
Clayton Danswan	Media Services Co-ordinator Adshel New Zealand Ltd


.....
Signature of Service Provider

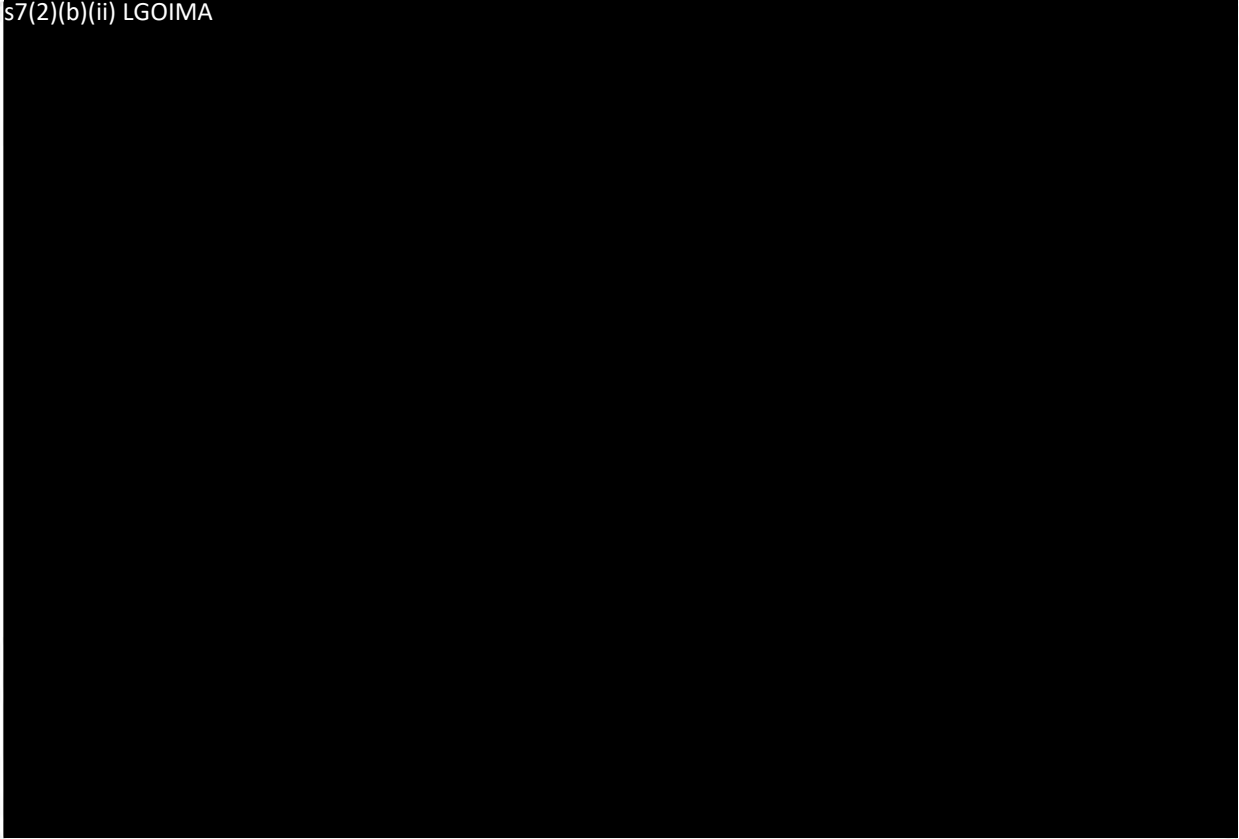

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Signature of Witness

PART 12


SERVICE PROVIDER'S INSURANCE DETAILS

1. The Service Provider shall provide details of insurance currently held by it and any proposed sub-contractor which would be extended to provide cover for Services under the Contract.

s7(2)(b)(ii) LGOIMA




.....
Signature of Service Provider



.....
Signature of Witness

PART 12

SERVICE PROVIDER'S INSURANCE DETAILS

1. The Service Provider shall provide details of insurance currently held by it and any proposed sub-contractor which would be extended to provide cover for Services under the Contract.

s7(2)(b)(ii) LGOIMA

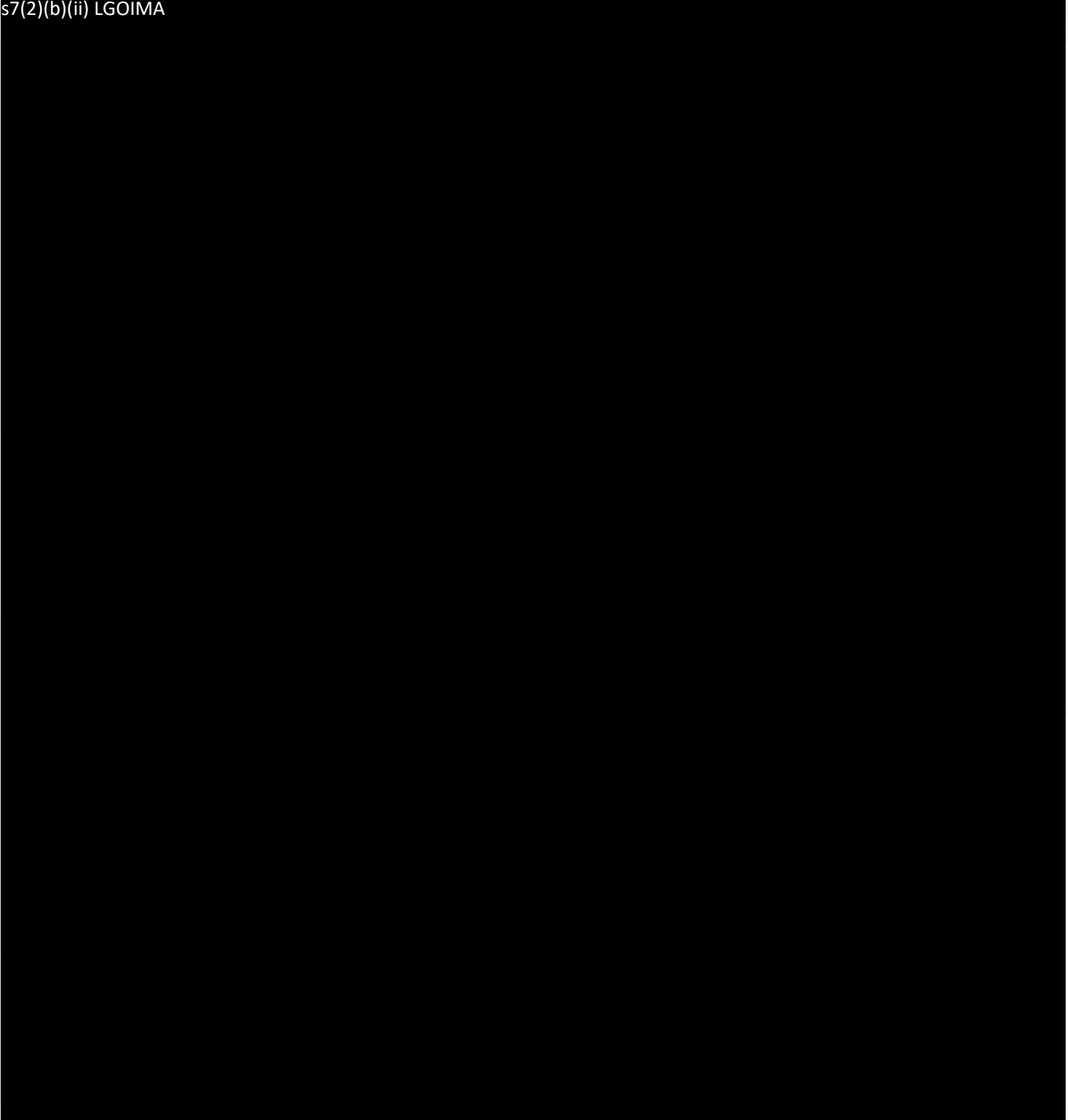


PART 12

SERVICE PROVIDER'S INSURANCE DETAILS

1. The Service Provider shall provide details of insurance currently held by it and any proposed sub-contractor which would be extended to provide cover for Services under the Contract.

s7(2)(b)(ii) LGOIMA

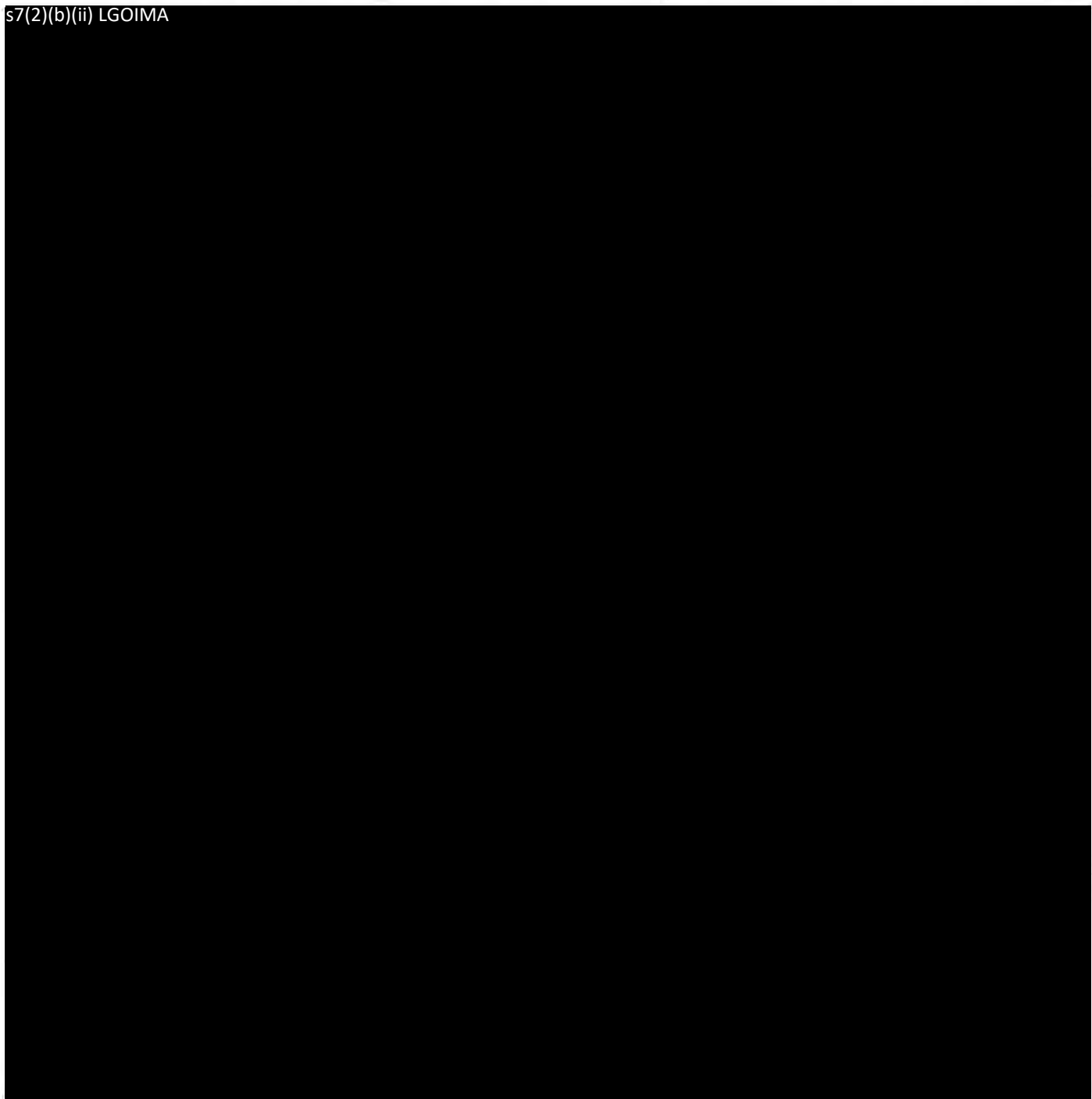


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s7(2)(b)(ii) LGOIMA

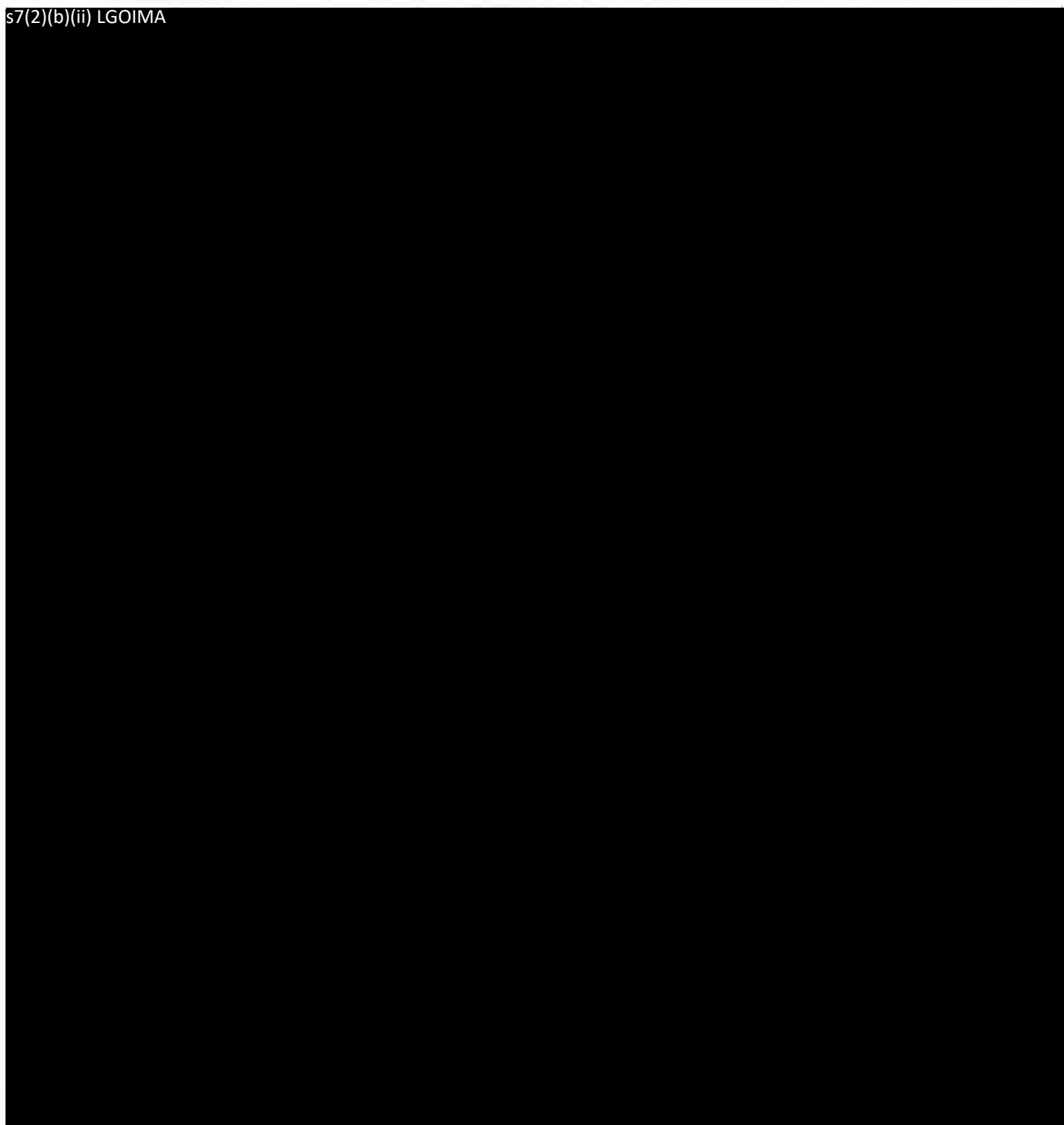


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s7(2)(b)(ii) LGOIMA

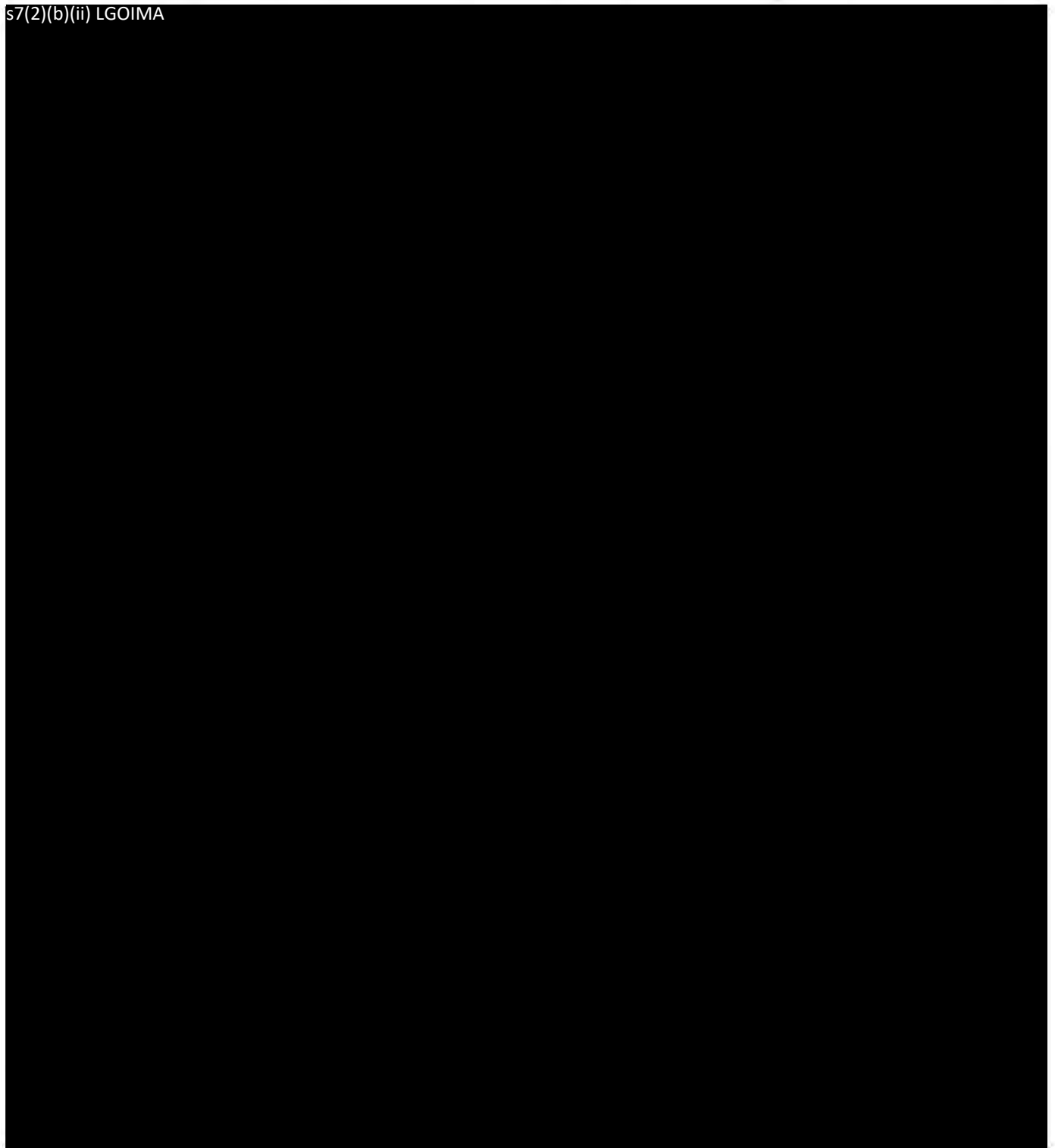


PART 12

SERVICE PROVIDER'S INSURANCE DETAILS

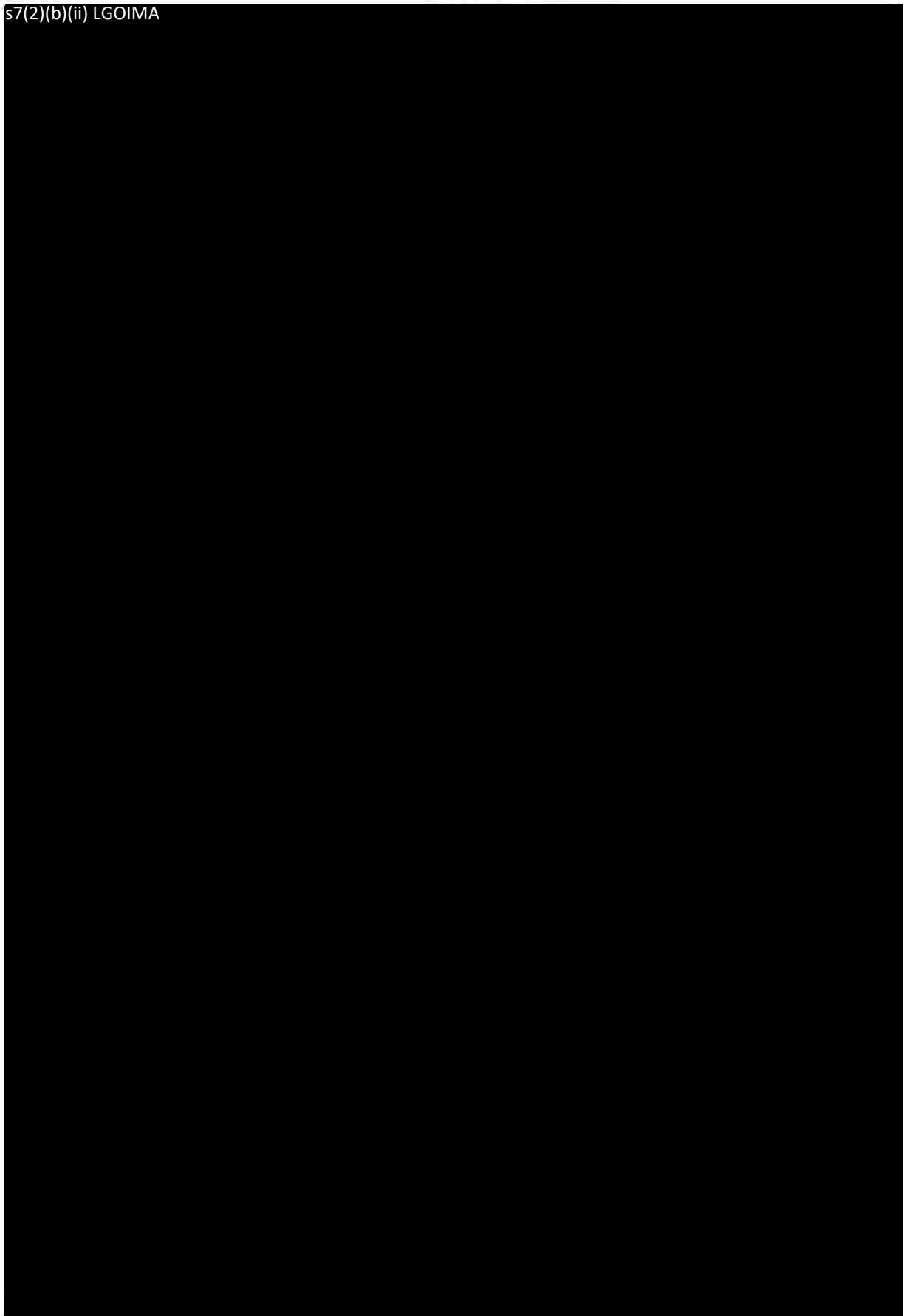
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s7(2)(b)(ii) LGOIMA



PART 13
References

s7(2)(b)(ii) LGOIMA



PART 14

STATUTORY DECLARATION OF THE SERVICE PROVIDER

I, PETER NORMAN COPE

of 201 MILLER STREET, NORTH SYDNEY (address)

do solemnly and sincerely declare, in respect of the Contract for street furniture that:-


- 1. I hold the position of MANAGING DIRECTOR and am duly authorised by ADSHEL ("the Service Provider") to make this declaration on its behalf and do so to the best of my knowledge, information and belief as to the accuracy of the material contained herein and after due enquiry in relation to such material.
- 2. Neither the Service Provider nor any of its servants or agents has entered into any contract, agreement or understanding to pay any money to any trade association in respect of the Contract.

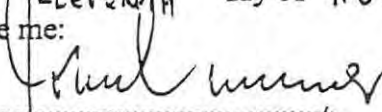
or

The Service Provider has entered into a contract, arrangement or understanding to pay..... the sum of \$..... in the event of the Service Provider being awarded the Contract referred to above.

- 5. The Service Provider is not aware of any fact, matter or thing which would materially affect the decision of Council to enter into the Contract with the Service Provider.
- 6. The contents of the Specification Forms are true and correct.

And I make this solemn declaration conscientiously believing the same to be true.

Subscribed and Declared at NORTH SYDNEY)
This ELEVENTH day of AUGUST 1999) 
before me:)


.....
Justice of the Peace/Solicitor JP.

PART 15

ADDITIONAL RELEVANT INFORMATION

[The Service Provider must state any additional information required by the Specification but not already provided for in the Specification Form]



.....
Signature of Service Provider



.....
Signature of Witness

PART 16

EXECUTION BY SERVICE PROVIDER

s7(2)(b)(ii) LGOIMA

