|  |  |
| --- | --- |
| Maintenance Contract (Ongoing)  Note:  Use this pro forma contract when engaging a provider for **ongoing maintenance services**.  If you’re engaging a provider for other services, use contracts available at: [School property procurement framework](https://education.govt.nz/school/property/state-schools/project-management/procurement/).  Before providing this to the contractor as part of the quote process:   1. complete all required sections (indicated with blue text) 2. delete all drafting notes.   **Date:**  **Parties:**  [*insert name of school*] Board of Trustees (**Board**)  [*insert name of Contractor*] (**Contractor**) | |
| The Contractor agrees to provide to the Board the Services described below for the sum of $*[insert agreed annual fee]* per annum (**Annual** **Fee**) together with goods and services tax, and in accordance with the terms and conditions set out in the Contract.  **Services:** The Contractor shall provide the following services to the Board from the Commencement Date:  *[insert description of the Services to be provided under this Contract and frequency of each of the Services (e.g. daily/weekly/monthly)]*   |  | | --- | |  | |  | |  | |  | |  |   **Authorised Representative:** [*insert name and contact details*], who is authorised to act on behalf of the Board in respect of the Services.  **Contract Term:**  From [*insert date*] (**Commencement Date**) to [*insert date*] (**Expiry Date**).  **Annual Fee:** $[*insert annual fee and whether plus, or inclusive of, GST*]. | |
|  | |
| For and on behalf of the Board by its authorised signatory:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print Name:  Date:  Address for notices:  Email: |  |
|  |  |
| Signed by and on behalf of *[name of Contractor]* as Contractor: |  |
|  |  |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Print Name of director: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Print Name of director: |
| Witness to signature where only one director |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| Signature |  |
| Print Name: |  |
| Print Occupation: |  |
| Print Address: |  |
|  |  |

**MAINTENANCE contract Terms and Conditons**

# FORMATION OF THE CONTRACT

## This contract for the provision of Services as described in this contract (Contract) will arise on the Contractor properly executing the Contract and will embody the terms of the Contract and the following terms and conditions (including any Appendices).

## The Board may cancel a Contract by notice to the Contractor if the Contractor has not properly executed the Contract and delivered it to the Board within ten (10) working days of the date of issue of the Contract.

## No payment otherwise due under the Contract shall become payable until the Contractor has properly executed the Contract and delivered it to the Board.

1. **Access**

## The Board shall grant the Contractor reasonable access to the site at such times as is necessary for the purposes of carrying out the Services, subject to the Board being satisfied that the Contractor (and its staff or subcontractors) has provided evidence to the Board that it has satisfied the requirements set out in clause 6 (Insurance), clause 9 (Health and Safety) and clause 13.1(d) (Acknowledgements) before access to the site is granted.

# General responsibilities

## The Contractor must:

### provide the Services to the Board in a timely manner and to a high standard of skill, care and diligence;

### ensure that the Services are performed by persons with the requisite skill and experience;

### comply with all proper instructions issued by the Board in relation to the Contract or the Services;

### immediately make good any damage in connection with the Services caused to any property or goods, to a suitable condition (as determined by the Board acting reasonably);

### immediately clear and remove from the Board’s property any rubbish or debris arising in connection with the Services;

### comply with all applicable statutes, regulations, codes of practice, bylaws of government, local and other public authorities that may be applicable to the provision of the Services.

## The Contractor shall commence providing the Services on the Commencement Date until the Expiry Date of the Contract Term.

# variations

## The Contractor shall carry out any variations to the Services (provided that such variations are within the scope of the Contract) instructed in writing by the Board. The Contractor must not vary the Services without an instruction in writing from the Board.

## The value of the variation must be agreed, or failing agreement, determined by the Board based on what is fair and reasonable in the circumstances. Unless directed otherwise, the value of the variation shall be agreed or determined prior to the Contractor commencing the varied work. The value of variations will be added to or deducted from the Annual Fee payable in respect of that year of the Contract Term.

# additional services

## In addition to the Services, the Contractor shall also provide any additional services to the Board, as requested by the Board in writing (Additional Services), in accordance with the schedule of rates set out in Appendix A, and otherwise in accordance with the terms and conditions of this Contract.

# TERMS OF PAYMENT

## The Annual Fee is the sum stated in the Contract, subject to such adjustments as provided for in the Contract.

## The Annual Fee is payable by the Board in equal monthly instalments in arrears during the Term.

# INSurance

## The Contractor shall arrange and maintain public liability insurance of no less than $2,000,000 in the joint names of the Contractor and the Board during the Contract Term (including any extensions to the Contract Term). This insurance must cover both the Contactor and the Board for any liability for loss or damage to any property, or injury or illness or death to any person that arises from the provision of the Services.

# INDEMNITY

## The Contractor shall indemnify the Board against any liability, loss, damage, claims, costs and expenses incurred in connection with the Services, any other breach by the Contractor of any term of the Contract or the negligent or wrongful act or default of the Contractor or any of its employees, subcontractors or agents in performing obligations under the Contract.

## This clause 8 survives termination or expiry of the Contract.

# CONFIDENTIALITY

## The Contractor must use its best endeavours to keep confidential all matters relating to the Contract. The Contractor must not disclose any information related to the Contract except to the extent that the disclosure of that information is necessary for the Contractor to carry out its obligations under this Contract, to enforce any of its rights under it or where disclosure is required by law.

## This clause 9 survives termination and expiry of the Contract.

# HEALTH AND SAFETY

## The Contractor warrants that it and any of its employees, agents and subcontractors have complied and will comply with the Health and Safety at Work Act 2015 and all other regulatory provisions for health and safety in connection with the Services (including the Board’s Health and Safety Requirements as revised from time to time and available on the Ministry of Education’s website under the following link: [www.education.govt.nz/school/property/health-and-safety-management/](http://www.education.govt.nz/school/property/health-and-safety-management/). This includes, without limitation, providing a task analysis/safe work statement (or its equivalent from time to time) with the details available on the Ministry of Education’s website under the following link: www.education.govt.nz/school/property/health-and-safety-management/property-contractor-health-and-safety/.

## The Contractor warrants that it and any of its employees, agents and subcontractors have complied and will comply with all the Board's protocols, rules and regulations for health and safety in connection with the Services. This includes, without limitation, completing the required ‘sign-in’ register and completing the required induction prior to accessing the relevant site and school access planhttp://www.education.govt.nz/school/property/state-schools/project-management/boards-of-trustees-role/police-vetting/

# termination

## Either party may terminate the Contract by immediate notice if the other party materially breaches the Contract, including but not limited to the Contractor failing to perform the Services to the standard required by this Contract.

## The Board may terminate the Contract with 30 days prior written notice to the Contractor for any reason.

## Termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties.

# dispute resolution

The parties shall attempt to settle any dispute which arises between them by way of good faith discussions. If an agreement cannot be reached within 20 working days of any dispute being notified by one party to the other party, then the parties may by agreement refer the dispute to mediation, failing which either party may refer the matter to other forms of dispute resolution.

# privity of contract

## The obligations of the Contractor and any of its subcontractors under the Contract shall for the purposes of the Contracts (Privity) Act 1982 be deemed to be for the benefit of the Ministry of Education (including, its successors and assigns) and shall be enforceable by the Ministry of Education against the Contractor or any of its subcontractors but not so as to impose any greater liability on the Contractor or its subcontractors towards the Ministry of Education than the Contractor owes or owed to the Board.

# DEFECTIVE SERVICES

## If any of the Services and/or the Additional Services are provided to a lesser standard than that required under this Contract (Defective Services), and the Contractor has not rectified the Defective Services to the standard required under this Contract within the time specified in a notice from the Board in respect of this, the Board:

## may, without notice, arrange for the Defective Services to be rectified; and

## shall be entitled upon demand to recover from the Contractor the Board’s reasonable costs and expenses incurred in rectifying the Defective Services together with interest at the default interest rate of 2.5% on money expended by the Board calculated on a daily basis from the date the money was expended down to the date of repayment.

# acknowledgment

## The Contractor acknowledges and agrees that it:

### is qualified to provide the Services;

### has no, and is not aware of any conflict of interest, that it has not disclosed in writing to the Board prior to signing this Contract, including but not limited to any personal or professional relationship that the Contractor (or its directors, majority shareholders, or individual owner(s)) has with any member of the School Board of Trustees or a school staff member, and the Contractor undertakes to advise the Board immediately if any conflict of interest should arise;

### is not the subject of any claim brought by the Ministry of Education or any School Board of Trustees for any reason, and will notify the Board immediately if any such claim is brought; and

### has complied, and will comply, with all Ministry of Education police vetting requirements before it or any of its employees, subcontractors or consultants access the school to provide the Services. Details may be found on the following web site: http://www.education.govt.nz/school/property/state-schools/project-management/boards-of-trustees-role/police-vetting/. [Please note that, among other things, a Site Access Plan (or the equivalent document) is required from the contractor to satisfy this provision.]

# general

## The Contract is governed by New Zealand law, and the New Zealand courts have non-exclusive jurisdiction in respect of this Contract.

## This Contract evidences the entire agreement between the Contractor and Board in connection with the Services and supersedes and extinguishes all prior agreements (including any quotes provided by the Contractor) between the Contractor and Board relating to such matters.

## The Contractor shall not assign the Contract without the Board’s prior written approval. A change in the management or control of the Contractor or the sale of the major part of the Contractor's business or assets will be deemed to be an assignment for the purposes of this clause.

## The Contractor shall not subcontract any part of this Contract or the provision of the Services without the Board’s prior written consent. Where the Board consents to the Contractor subcontracting any of its obligations under this Contract to a third party, the Contractor will remain fully responsible for all obligations to the Board under the Contract.

## The Board may set-off any amounts owing to the Contractor under this Contract against any amounts owing to the Board by the Contractor under this Contract.

## Each party must pay its own costs in connection with this Contract.

## Any notice to be given under the Contract must be in writing and must be delivered or sent by post or e-mail to that party's address for notices set out in the Contract. In the case of notice by email, confirmation of receipt from the recipient is required to confirm the delivery of the notice.

**Appendix A – Schedule of Rates for Additional Services**