



# Minor Works Contract

**Relating to:**

## **Huia Range School Block A Verandah Alterations**

Huia Range School Board of Trustees

as Principal

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*[insert name of Contractor]*

as Contractor

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**Note: all information required by text in blue must be entered/completed prior to providing the form of Contract to the Contractor as part of the quote process, and all drafting notes deleted.**

**Dated**

**Parties:**

Huia Range School Board of Trustees (**Principal**)

*[insert name of Contractor]* (**Contractor**)

The Principal engages the Contractor to provide the Works described below and the Contractor agrees to provide the Works for the sum of \$*[insert agreed contract price]*, or such greater or lesser sum as shall become payable under the Contract (**Contract Price**) together with goods and services tax, and in accordance with the terms and conditions set out in the Contract.

**Works:** The Contractor shall achieve Completion of the following Works by the Completion Date:

*[insert description of the Works to be provided under this Contract and refer to any attached drawings, specifications or other documents describing the Works]*

Further details of the scope of Works and a copy of the Contractor's quote may be annexed to this Contract.

**Warranties, documents and other information:** The Contractor shall provide the following prior to Completion:

*[list any building consents, producer statements, compliance certificates, warranties, documents and other information required (these may include manufacturer's warranties, operation and maintenance manuals, owner's manuals)]*

**Weathertightness Warranty:** Is the Contractor to provide a Weathertightness Warranty?

Yes ☐ No ☒ *[tick the appropriate box]*

*[Note: a Weathertightness Warranty will be required if the Works impact the weather-tightness of the building, such as the replacement of the whole or a substantial part of the roof or roof flashing, or substantial repairs to the roof which are more than emergency "patch repairs"]*

**Authorised Representative:** *[insert name and contact details]*, who is authorised to act on behalf of the Principal in respect of the Works.

**Contract Term:** From *[insert date]* (**Commencement Date**) to *[insert date]* (**Completion Date**).

For and on behalf of the Principal by its authorised signatory(ies):

For and on behalf of the Contractor by its authorised signatory(ies):

Print Name:

Date:

Address for notices:

Email:

Print Name:

Date:

Address for notices:

Email:



## CONTRACT TERMS AND CONDITIONS

### 1. FORMATION OF THE CONTRACT

- 1.1 This contract for the provision of Works as described in the contract (**Contract**) will arise on the Contractor signing the Contract and will embody the terms of the Contract and the following terms and conditions (including any Appendices).
- 1.2 The Principal may cancel a Contract by notice to the Contractor if the Contractor has not signed the Contract and delivered it to the Principal within ten (10) working days of the date of issue of the Contract.
- 1.3 No payment otherwise due under the Contract shall become payable until the Contractor has signed the Contract and delivered it to the Principal.

### 2. GENERAL RESPONSIBILITIES

- 2.1 The Contractor shall:
  - (a) complete, handover to the Principal, and remedy defects in the Works and provide all services, labour, materials, plant and everything, whether of a temporary or permanent nature required by the Contract;
  - (b) comply with all proper instructions issued by the Principal in relation to the Contract or the Works;
  - (c) comply with all applicable statutes, regulations, codes of practice, bylaws of government, local and other public authorities that may be applicable to the Works; and
  - (d) on behalf of the Principal obtain all necessary consents producer statements and compliance certificates required by relevant authorities and pay all required consent fees.
- 2.2 The Contractor shall commence Works on the Commencement Date or as soon as reasonably practicable thereafter, and shall then proceed with the execution of the Works with due diligence.
- 2.3 The Contractor shall achieve Completion of the Works, by the Completion Date.
- 2.4 Where the front page of the Contract states that the Contractor must provide a Weathertightness Warranty, the Contractor shall ensure that the Works comply with the weathertightness requirements set out in the document entitled "Weathertightness and Durability Requirements for Schools (Ministry of Education – August 2014) and any subsequent amendments thereto (refer to <http://www.education.govt.nz/school/property/state-schools/design-standards/weather-tightness-and-durability-design/>) and shall provide to the Principal prior to Completion a Weathertightness Warranty in the form at Appendix 5.
- 2.5 Completion is when the Principal certifies that the Works are complete, including the Contractor having provided all warranties, documents and information stated in the Contract as being required for Completion (**Completion**).
- 2.6 The Completion Date is subject to adjustment for any extensions of time which may be granted by the Principal.
- 2.7 The Contractor shall promptly remedy all defects in the Works identified by the Principal at Completion.

### 3. INFORMATION

- 3.1 The Principal shall use reasonable endeavours to provide to the Contractor upon request, all relevant information in its possession which relates to the Works. The Contractor shall not, without the Principal's prior written consent, use information provided by the Principal for purposes unrelated to the Works.
- 3.2 The Principal makes no warranty as to the sufficiency or accuracy of such information. The Contractor shall be

responsible for the interpretation of all such information for the purposes of the Works.

### 4. VARIATIONS

- 4.1 The Contractor shall carry out any variations to the Works (provided that such variations are within the scope of the Contract) instructed in writing by the Principal. The Contractor must not vary the Works without an instruction in writing from the Principal.
- 4.2 The value of the variation must be agreed, or failing agreement, determined by the Principal 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 Contract Price.
- 4.3 The Contractor must comply with the requirements of the drawings and specifications. Where the Contractor wishes to propose alternative products or materials to those specified by the drawings and specifications, the Contractor must seek the approval of the Principal in writing. Details of the proposed substitution must be provided to the Principal by the Contractor to highlight the advantages that will accrue as a result of implementing the proposed change. If the Contractor submits a proposal for a substitute product the Principal may:
  - (a) decline to consider the alternative product or material any further;
  - (b) accept the alternative product or material; or
  - (c) request that the Contractor provide further information in relation to the alternative product or material.The further information which might be requested by the Principal may, without limitation, include a certificate or warranty from a body or person nominated or described by the Principal to the effect that the technical aspects of the performance benefits of the alternative material or product which will be delivered to the Principal are no less appropriate or beneficial than those derived through the drawings and specifications. If the Principal makes a request pursuant to paragraph (c) and the Contractor does not provide the further information the Principal may decline to consider the alternative product or material any further.

### 5. TERMS OF PAYMENT

- 5.1 The Contract Price is the sum stated in the Contract, subject to such adjustments as provided for in the Contract.
- 5.2 The Contractor must provide the Principal with a payment claim within five (5) working days of Completion, for the full amount of the Contract Price.
- 5.3 The Contractor's payment claims must not be in the form of a GST invoice. The payment claims must be addressed to the Principal and must identify the Works carried out, detail the amounts claimed for payment and show any amendments to the original Contract Price.
- 5.4 The Principal shall issue to the Contractor a payment schedule within 15 working days of receipt of the payment claim. The payment schedule shall indicate the amount of the payment claim which the Principal proposes to pay to the Contractor (**Scheduled Amount**).
- 5.5 Where the Scheduled Amount is less than the amount claimed in the payment claim, the payment schedule must indicate:
  - (a) the manner which the Principal has calculated the Scheduled Amount; and



- (b) the Principal's reasons for the difference between the Scheduled Amount and the amount of the payment claim; and
- (c) where the difference is because the Principal is withholding payment on any basis, the Principal's reasons for withholding payment.
- 5.6 On receipt of a payment schedule, the Contractor may then issue to the Principal a GST invoice for the Scheduled Amount. The Principal shall pay the invoice by the 20<sup>th</sup> day of the month following the month of issue to the Principal of the invoice for the Scheduled Amount.
- 6. INSURANCE**
- 6.1 The Contractor shall arrange and maintain public liability insurance and motor vehicle third party liability insurance of no less than \$1,000,000 in the joint names of the Contractor and the Principal until final completion of the Works. These insurances must cover both the Contractor and the Principal for any liability for loss or damage to any property, or injury or illness or death to any person that arises from the carrying out of the Works.
- 6.2 The Principal shall arrange and maintain contract works insurance in the joint names of the Contractor, subcontractors and the Principal, until Completion of the Works, to cover loss or damage in accordance with its insurance policies. The insurance shall also cover loss or damage resulting from an act or omission of the Contractor in the course of remedying defects. Details concerning these insurance policies are set out in Appendix 4.
- 6.3 Where the Works are in the nature of additions, alterations, repairs, or maintenance to an existing structure, or where the Works are in the vicinity of another structure in the care of the Principal, the Principal will effect insurance under clause 6.2 and will include cover for the replacement values nominated in Appendix 4 in respect of:
- the existing structure;
  - other structures in the vicinity; and
  - any contents which are owned by the Principal and contained within the existing or other structures,
  - in each case as identified in Appendix 4.
- 6.4 The Contractor must pay the full amount of any of the Principal's insurance policy deductibles or excesses where the loss, damage or liability arises out of an act or omission of the Contractor in which event the Contractor must pay the amount stated in Appendix 4 as the nominal deductible (Nominal Deductible) as applicable. The Nominal Deductible will be in each case an amount which is equal to the actual insurance policy deductible or excess.
- 7. INDEMNITY**
- 7.1 The Contractor shall indemnify the Principal against any liability, loss, damage, claims, costs and expenses incurred in connection with any faulty workmanship, defects or non-compliance of the Works, 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.
- 7.2 This clause 7 survives termination or expiry of the Contract.
- 8. CONFIDENTIALITY**
- 8.1 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.
- 8.2 This clause 8 survives termination and expiry of the Contract.
- 9. HEALTH AND SAFETY**
- 9.1 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 Works (including the Principal'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/) and the Principal's Asbestos Handling 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/state-schools/fixing-issues/asbestos](http://www.education.govt.nz/school/property/state-schools/fixing-issues/asbestos)
- 9.2 The Contractor warrants that it and any of its employees, agents and subcontractors have complied and will comply with all the Principal's protocols, rules and regulations for health and safety in connection with the Works.
- 9.3 Prior to commencing the Works, the Contractor shall prepare and submit to the Principal a site specific risk assessment and a site specific health and safety plan appropriate to the scope of the Works, and shall comply with any such plan in the performance of the Works. Acceptance by the Principal of the site specific risk assessment and a site specific health and safety plan shall not relieve the Contractor of any obligation or liability under the Contract or at law.
- 10. TERMINATION**
- 10.1 Either party may terminate the Works by immediate notice if the other party materially breaches the Contract, including but not limited to the Contractor failing to perform the Works by the Completion Date or to the standard required by this Contract.
- 10.2 Termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties.
- 11. 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.
- 12. PRIVACY OF CONTRACT**
- 12.1 Where the Principal is a School Board of Trustees, the obligations of the Contractor and any of its subcontractors under the Contract shall for the purposes of the Contracts (Privacy) 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 Principal.
- 12.2 Where the Principal is the Ministry of Education, the obligations of the Contractor and any of its subcontractors under the Contract shall for the purposes of the Contracts (Privacy) Act 1982 be deemed to be for the benefit of the School Board of Trustees (including, its successors and assigns) and shall be enforceable by the School Board of Trustees 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 School Board of Trustees than the Contractor owes or owed to the Principal.
- 13. ACKNOWLEDGMENT**
- 13.1 The Contractor acknowledges and agrees that it:
- is qualified to carry out the Works;

- (b) has no, and is not aware of any conflict of interest, that it has not disclosed in writing to the Principal 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 Principal immediately if any conflict of interest should arise;
- (c) is not the subject of any claim brought by the Ministry of Education or any School Board of Trustees for defective workmanship, and will notify the Principal immediately if any such claim is brought; and
- (d) 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 carry out the Works. 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/>

#### **14. GENERAL**

- 14.1 The Contract is governed by New Zealand law, and the New Zealand courts have non-exclusive jurisdiction in respect of this Contract.
- 14.2 This Contract evidences the entire agreement between the Contractor and Principal in connection with the Works and supersedes and extinguishes all prior agreements (including any quotes provided by the Contractor) between the Contractor and Principal relating to such matters.
- 14.3 The Contractor shall not assign the Contract without the Principal'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.
- 14.4 The Contractor shall not subcontract any part of this Contract or the Works without the Principal's prior written consent. Where the Principal 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 Principal under the Contract.
- 14.5 The Principal may set-off any amounts owing to the Contractor under this Contract against any amounts owing to the Principal by the Contractor under this Contract.
- 14.6 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 4 – PRINCIPAL ARRANGED INSURANCE

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**Principal arranged contract works insurance:** In accordance with clause 6.2, the insurance policies are:

for clause: 6.2 Construction Material Damage; and

for clause: 6.3(a) and (b) – Material Damage Insurance Policy

for clause: 6.3(c) – *[Contents Policy] or [N/A] [Note: insert N/A if the School does **not** have a separate contents insurance policy]*

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**Details of Principal arranged construction insurance:**

Lead insurer is: Vero Insurance New Zealand Limited of Private Bag 92 – 237, Auckland.

The Nominal Deductibles are:

For damage arising out of the works: **\$5,000** or **\$25,000** for loss arising from testing and commissioning

For other claims **\$5,000**

*[Note: to obtain contract works insurance contract works insurance for your project, the Ministry requires that the details of the contract are entered into the Ministry's contract works insurance broker's website. The Ministry's insurance broker's website can be accessed via: [www.education.govt.nz/school/property/state-schools/project-management/project-managers-role/procurement/insurance/](http://www.education.govt.nz/school/property/state-schools/project-management/project-managers-role/procurement/insurance/)]*

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**The existing structures to be insured by the Principal are:**

*[Note: the Board shall insure any existing structures **that it owns** and list these here. If the structures are owned by the Ministry the information requested below can all be marked as "N/A". For the purposes of the contract, "existing structures" are defined as being those structures directly affected by construction activity e.g. where the construction involves working in, on, under, over or in connection to existing structures. Existing property insurance policies will need to be checked with the policy provider to ensure that the policy covers damage arising from construction activity]*

The replacement value to be insured is: (\$) *[insert value]*

Lead insurer is: *[insert name of insurer]*

The Nominal Deductibles are: **\$[insert figure]** for damage arising out of the Works and for other claims.

*[Note: the Board will need to insert the appropriate details as stated in their insurance policy]*

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**Other structures in the vicinity are:**

*[Note: the Board shall insure any other structures **that it owns** and list these here. If the structures are owned by the Ministry the information requested below can all be marked as "N/A". For the purposes of the contract "other structures in the vicinity" are those structures within the defined boundary of the construction site. Any existing property insurance policies already in place will need to be checked with the policy provider to ensure that it covers damage arising from construction activity]*

The replacement value to be insured is: (\$) *[insert value]*

Lead insurer is: *[insert name of insurer]*

The Nominal Deductibles are: **\$[insert figure]** for damage arising out of the Works and for other claims.

*[Note: the Board will need to insert the appropriate details as stated in their insurance policy]*

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**Contents insurance:**

The replacement value to be insured is: (\$) **[insert figure]** *[Note: where the Board is a member of the Ministry of Education's 'Risk Management Scheme for school contents' (RMS) enter "\$ replacement cost". Where the Board is not a member of the RMS they need to consult their own insurance provider]*

The lead insurer is: *[insert name of insurer]*

Address of lead insurer: *[insert address of insurer]*

The Nominal Deductibles are:

For damage arising out of the Works: **\$[insert figure]** *[Note: where the Board is a member of the Ministry's 'Risk Management Scheme for school contents' (RMS) enter \$500. Where the Board is not a member of the RMS they need to consult their own insurance provider]*

For other claims: **\$[insert figure]** *[Note: where the Board is a member of the Ministry's 'Risk Management Scheme for school contents' (RMS) enter \$500. Where the Board is not a member of the RMS they need to consult their own insurance provider]*

*[Note: the Board will need to insert the appropriate details as stated in their insurance policy]*

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## APPENDIX 5 - FORM OF CONTRACTOR'S WEATHERTIGHTNESS WARRANTY

Contract for: *[contract name]*

THIS DEED is made on ..... day of ..... 20.....

BY ..... ('the Contractor')

IN FAVOUR OF ..... ('the Principal')

### IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A** By an agreement dated the ..... day of ..... 20 ..... ('the Contract') made between the Principal and the Contractor, the Contractor agreed to carry out and complete the Works.
- B** The Contract requires the Contractor to provide the Principal with a weathertightness warranty on the terms set out in this warranty.
- C** Words and phrases with capital initial letters that are not otherwise defined in this warranty shall have the same meaning as set out in the Contract.

### BY THIS DEED

1. **THE** Contractor warrants that the Works when completed shall be weathertight in accordance with the Contract and industry standards, and shall remain watertight for a period of 10 years from the date of Completion ('the Warranty Period').
2. **THE** Contractor indemnifies the Principal in respect of all costs, losses and liabilities incurred by the failure of the Works to remain weathertight in accordance with the Contract and best New Zealand industry standards, or by any failure by the Contractor to meet its obligations under this warranty.
3. **THIS** warranty is in addition to and shall not derogate from any manufacturer's warranty or any warranty implied by law, attaching to any part of the Works.
4. **THE** Contractor must promptly take steps to remedy or procure the remedy of defects and damage in the Works arising from any failure of the Works to remain in accordance with the Contract and best New Zealand industry standards, and which are notified in writing by the Principal to the Contractor during the Warranty Period.
5. **ANY** remedial work which the Contractor is required to undertake under this warranty shall be carried out:
  - (a) to the standard required by the Contract;
  - (b) to the reasonable satisfaction of the Principal;
  - (c) without unnecessary inconvenience to any occupants;
  - (d) at the Contractor's cost; and
  - (e) subject to reasonable access being provided to the Contractor for the purpose of carrying out the Remedial Works.
6. **THE** Contractor must make good any damage to buildings or structures in the vicinity of the Works caused by:
  - (a) a failure of the Works to remain weathertight in accordance with the Contract and best New Zealand industry standards; or
  - (b) any remedial works carried out by or on behalf of the Contractor under this warranty.
7. **THE** Contractor must remedy the defects and damage notified by the Principal under this warranty within fourteen (14) Working Days of receipt of the Principal's notice or within such other reasonable time as determined by the Principal (at its discretion) as may be stated in writing in the Principal's notice under this clause.
8. **IF** the Contractor fails to adequately and satisfactorily carry out any work notified by the Principal under this warranty within the time required under clause 7, the Principal may, after giving five (5) Working Days' further written notice to the Contractor, undertake the work itself or direct others to undertake the work. In such event:
  - (a) the Contractor shall not be relieved of any of its obligations under this warranty; and
  - (b) the cost of the work undertaken by the Principal or others (including without limitation labour, materials, travel and other charges or expenses related to the work) shall be recoverable by the Principal from the Contractor on demand.

9. **THE** Contractor shall not be liable for any defect or damage caused by:
- (a) wilful act or negligence of the Principal; or
  - (b) any such operation of the forces of nature as an experienced contractor could not reasonably foresee or make provision for.
10. **NOTICES** given to the Contractor under this warranty are deemed to have been effectively served on the Contractor if given in accordance with the notice requirements in the Contract.
11. **THE** Principal may assign the benefits and rights under this warranty.
12. **THIS** warranty is governed by the laws of New Zealand.

In witness of which this deed has been executed and delivered.

**SIGNED** on behalf of the Contractor by:

.....  
Director

.....  
Director

NOTE – This warranty shall be executed by the Contractor in the manner required for execution of a deed. If the Contractor is a company it shall execute the warranty by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the warranty is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. If the Contractor is an individual, the person shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.