

Short Form Agreement

Relating to Services to be provided for:

(the **Property**)

BETWEEN

(**Principal**)

AND

(**Contractor**)

FOR THE FOLLOWING SERVICES:

fmanz.org

Facilities Management Association NZ Inc

Short Form Agreement

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Further information

This agreement for services FMANZ SFC-2010 is published by the Facilities Management Association of New Zealand Incorporated.

For further information relating to this agreement, please contact FMANZ at info@fmanz.org

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NOTE: These FMANZ SFC 2010 conditions of contract have been prepared for use for contracts for acquiring planned preventative maintenance service. The conditions and the form have been prepared to accommodate a wide range of services and buildings. They are not intended to be used where the purpose is other than a business use. The conditions of contract are intended to be amended in a manner to suit the parties particular requirements by use of the special conditions.

Use of this agreement is at your own risk. You assume full responsibility and risk of loss resulting from the use of this agreement. Neither the Facilities Management Association of New Zealand Incorporated, nor any of its directors, employees or agents will be liable for any loss or damage whatsoever, whether in an action of contract, statute, tort (including, without limitation, negligence), or otherwise, arising directly or indirectly from the use of, or reliance on, this agreement.

Professional advice should be sought regarding the effect and consequences of any agreement entered into between the parties. The Facilities Management Association of New Zealand Incorporated does not purport to offer any legal advice by providing this agreement.

PREPARED BY THE FACILITIES MANAGEMENT ASSOCIATION OF NEW ZEALAND INCORPORATED

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Contract Agreement

This Agreement, dated _____ is made between:
(a) _____ (the **Principal**);
and
(b) _____ (the **Contractor**).

Introduction

A The Principal is the owner of the Property and wishes to engage the Contractor to provide the services described in Schedule 2 (the **Services**) on the terms and conditions in this agreement.

It is agreed:

- (a) In consideration of the Contractor performing the Services, the Principal shall pay the Annual Fee (as set out in the Reference Schedule) along with such other sums as become payable to the Contractor, together with GST at the times and in the manner provided for in the agreement.
- (b) The Contractor shall perform the Services in accordance with Schedule 2 for the Term (as stated in the Reference Schedule).
- (c) Each party shall do all such things as required of them under this agreement.
- (d) This agreement comprises of the following documents:
 - (i) This Contract Agreement;
 - (ii) Schedule 1 – Reference Schedule;
 - (iii) Schedule 2 – Scope of Services;
 - (iv) Schedule 3 – Special Conditions;
 - (v) Schedule 4 – General Conditions; and
 - (vi) Appendix 1 - Plant and Machinery.

For the Contractor by:

Signature of authorised signatory

Name of authorised signatory

For the Principal by:

Signature of authorised signatory

Name of authorised signatory

IMPORTANT: If the contractor is a company, then that person, if not a chief executive or general manager, is signing on behalf of the company and must have authority to enter into this agreement on behalf of that company. That written confirmation may be from a chief executive or a general manager confirming the authority (and any limitations). In all other instances, a director must sign and that signature must be witnessed. If there are two or more directors each must sign, unless the company's constitution provides otherwise.

Schedule 1 – Reference Schedule

Property Address:		
Commencement Date:		
Term:		
Annual Fee:		
Fee Review Period:		
Payment terms:		
Property Business Hours:		
Contractor's Representative and contact		
Contractor's Physical Address for		
Key Personnel:		
Contractor's Emergency Contact:		
Subcontractors:		
Principal's Address:		
Principal's Emergency Contact:		
Response Times:	Critical:	
	Urgent:	
	Routine:	
Public Liability Insurance:		
Call Out Threshold Amount:		

Schedule 2 – Scope of Services

The Contractor shall perform the following Services under this agreement as follows and if applicable to plant and machinery then in relation to that Plant and Machinery stated in the Appendix 1:

GUIDANCE NOTES:

- **Insert description of services to be performed, and state, if necessary any fee components and the basis on which the fee is calculated if particularly associated with that service.**
- **Refer clause 14 of the General Conditions if the Property is subject to green building rating requirements. Consider using FMANZ LFC:2010 if environmental objectives are a condition.**

Schedule 3 – Special Conditions

These Special Conditions are to be read in conjunction with the General Conditions set out in Schedule 4. In the event of any discrepancy or ambiguity arising between these Special Conditions and the General Conditions, the Special Conditions shall take precedence.

12 Key Personnel

- 12.1 Where there are key personnel stated in the Reference Schedule, the Contractor must not replace those persons without the prior written approval of the Principal (unless such person is permanently leaving the employment of the Contractor).

13 Response Times

- 13.1 Where the Reference Schedule includes a request for a critical or urgent response within a specified time, if the Contractor fails to respond within that time in relation to any critical or urgent response requested for the Principal, then the Principal shall only be liable to pay to the Contractor:

- (a) In relation to urgent matters, % of the agreed call out fee; and
- (b) In relation to critical matters % of the agreed call out fee.

14 Call Out Threshold

- 14.1 Where a Call Out Threshold is stated in the Reference Schedule, then before undertaking any additional works or emergency works which exceed this threshold, the Contractor must obtain the Principal's consent. If the Contractor fails to obtain this consent, then the Principal shall only be liable upto the Call Out Threshold.

15 Margin and Hourly rates

- 15.1 If applicable, the following rates and margins shall apply for any works not included in the Services:

Schedule 4 – General Conditions

1. Annual Fee

The Contractor warrants that the Annual Fee is sufficient to undertake the Services for the duration of the Term, and includes all consumables.

2. Representatives

Each party shall during the Term maintain a representative authorised to give and receive notices in relation to this agreement.

3. Principal's Obligations

The Principal shall provide reasonable access to the Property and shall pay the Contractor for the Services in accordance with this agreement.

4. Contractor Obligations

4.1 In providing the Services the Contractor shall exercise the degree of skill, care and diligence normally expected of a competent and experienced contractor performing services of a similar nature to the Services.

4.2 The Contractor shall in the execution and performance of the Services comply with all statutes, regulations, ordinance, by-laws and lawful requirements of any Authorities which relate to or affect the Property or the Plant and Machinery. For the avoidance of doubt, this includes the Building Act 2004 and the Health and Safety in Employment Act 1992.

4.3 The Contractor shall perform the Services in a manner which minimises disruption to occupants of the Property and to the operation of the Plant and Machinery, and shall comply with all reasonable directions and requirements of the Principal in that regard.

5. Subcontracting

Unless stated in the Reference Schedule, the Contractor shall not subcontract any part of the Services without the Principal's consent.

6. Indemnity and Insurance

6.1 The Contractor warrants that the Contractor currently holds a policy of Public Liability Insurance for the amount of liability stated in the Reference Schedule.

6.2 If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming party and/or a third party has contributed to the loss or damage, the liable party shall only be liable to the proportional extent of its own contribution.

7. Payment

7.1 The Principal shall pay the Contractor for the Services the Annual Fee, at the times and in the manner set out in the Reference Schedule.

7.2 Late payment shall not constitute a default, but the Principal shall pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Contractor's overdraft rate plus 2% and in addition the reasonable costs of any actions taken by the Contractor to recover the debt.

7.3 Where Services are carried out on a time charge basis, the Contractor may purchase such incidental goods and/or services as are reasonably required for the Contractor to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Principal. The Contractor shall maintain records which clearly identify time and expenses incurred.

8. Variations

The Principal may order variations to the Services in writing or may request the Contractor to submit proposals for variation to the Services. The parties will agree the cost of such variation before the Contractor undertakes the work.

9. Notices

Any notice required under this agreement may be given to a party at the address stated in the Reference Schedule. A party may, by notice, change that address from time to time.

10. Expiry and Termination

10.1 The Principal, by 30 days written notice, may suspend all or part of the Services and the Contractor shall immediately take steps to suspend all or part of the Services as set out in the notice. The Principal shall only be liable for costs properly incurred up to the date of the notice.

10.2 Either party may (in the event the other Party is in material default) terminate the agreement by notice to the other party.

10.3 Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

10.4 Should the Principal enter into an unconditional agreement for the sale and purchase of the Property during the term of this agreement, then, following ten days prior written notice before the date of settlement, this agreement will terminate upon the settlement of the sale. The Principal shall only be liable to the Contractor for costs properly incurred up to the date of settlement.

10.5 Where either party breaches this agreement, the defaulting party is liable to the other for all reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. Neither party shall be liable to the other under this agreement for any indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.

10.6 Neither Party shall be liable for any loss or damage occurring after a period of six years from the date on which the Services were completed unless otherwise agreed.

11. Disputes

11.1 The parties shall attempt in good faith to settle any dispute by mediation.

11.2 This agreement is governed by the New Zealand law, the New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

12. Assignment

The Contractor may not assign, novate, or charge any of its rights or obligations under this agreement without the prior written consent of the Principal. The Principal may assign its rights under this agreement at any time.

13. General

13.1 Each party shall bear their own legal costs in relation to the preparation, execution and performance of its obligations under this agreement.

13.2 A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this agreement does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this agreement. A waiver of a breach does not operate as a waiver of any other breach.

13.3 This agreement when signed by the parties shall represent the entire understanding of the parties, and cannot be varied or amended except in writing by both parties.

13.4 The contractor is not authorised to act as the Principal's agent, and, further, in the performance of the Services the Contractor is not a partner, joint venture, servant, or employee of the Principal.

13.5 The Contractor shall not, without the Principal's prior written consent, use any information provided by the Principal for purposes unrelated to the Services.

14. Environmental Objectives

The Principal may advise the Contractor of any environmental objectives applicable to the Property. The Contractor is to have regard to such requirements in performing the Services.

Appendix 1 – Plant and Machinery

The following Plant and Machinery are to be maintained under this agreement as part of the Services:

GUIDANCE NOTES:

- **Insert description of plant and machinery to be maintained as part of the Services along with the location of the plant and machinery in the Property.**
- **If the plant and machinery being serviced is critical to the Property, then FMANZ LFC:2010 should be used**