

MOE Conditions of Contract for Consultancy Services

Guidance Note (Contract 4)

This contract template is based on the Conditions of Contract for Consultancy Services 4th edition December 2017 (CCCS) with Special Conditions developed and approved by the Ministry of Education (the Ministry). It is for the engagement of consultants in property projects, and suitable for use in both Ministry and Board of Trustees (Board) engaged projects.

These contract templates will help the Ministry and Boards choose the correct contract with the right terms and conditions for each engagement, remove inconsistencies, and give certainty to contractors and consultants providing services to the Ministry and Boards. These contract templates are alternatives to the Government Model Contracts, which are not designed to be used for construction projects.

This contract is designed so that the Ministry approved variations to the CCCS terms and conditions are contained in Special Conditions Part A and Part B. Specific contract details can be entered in the Special Conditions Part A, and the Appendices to the contract. You must not change the terms and conditions of the contract. If you have any questions please contact your Property Advisor or email Property Help at PropertyHelp@education.govt.nz.

When to use this contract

The following are guidelines for when you should use the contract; you may find that this contract is suitable even though the work falls outside some of the guidelines. If you are in doubt, please contact your Property Advisor.

When to use this contract	
Type of work	Construction professional services, particularly complex work involving a design
Value	Over \$50,000 excluding GST
Suitable for:	Any consultancy and advisory services for property projects, particularly complex work involving a design element.
Not suitable for:	If the services required are for a one-off, technical or advisory services with low complexity and value under \$50,000 then it may be more suitable to use the ACENZ Short Form Agreement (Contract 3).
Examples:	Engineering, architectural, or design services.

Getting started

Because you are acting on behalf of the community, using public money, you need to use processes that can be verified by your auditor and the Ministry. Even when you know and trust the person who will be doing the work, there are certain basics that you need to remember when dealing with a building contract for your school.

Legal Authority

- The only “person” with the legal authority to enter into a contract on behalf of the school is the Board, or someone the Board has formally appointed at a Board meeting to act on their behalf.
- The person or people authorised to deal with the building project on the Board’s behalf should be recorded in the Board minutes for the meeting the Board made the decision.
- It is important to have details of the construction work agreed and the contract signed, before the Contractor starts any work on the project.

Executing the Contract

- Check that you have the latest version of the contract available from the Property Toolbox. The Consultant should sign the Contract before the Board’s authorised signatory(ies) signs, so you can check that no alterations have been made by the Consultant before the Board signs it.
- The Consultant should initial every page of the contract, to confirm they have read and agreed to what is on the page. This can be important if disagreements arise later.
- Before any payments are made, check that the Consultant has signed the Contract and you have confirmed that:
 - they have done all work you are paying for,
 - the work has been done to the standard required.

Conflict of Interest

The Consultant and all members of the Board are required to disclose any likely conflict of interest in writing to the Board before signing the Contract. A conflict of interest includes any family or business relationship between

- the Consultant, including the Consultant’s directors and senior managers, and
- any member of the Board or any staff at the school.

In the Contract itself, the Consultant is also required to declare:

- that they are not aware of any further conflict of interest that has not already been disclosed in writing to the Board.
- any conflict that arises after signing the Contract.
- any claims by the Ministry or any school Board against the Consultant (including a majority shareholder or director) in relation to any consultancy work of a similar nature.

Making Variations to the Contract

If the proposed Variation is less than 10% of the Project budget and will be paid for by funds held by the school for contingency purposes (i.e. outside the Contract Price), the Board can approve the Variation. If the Variation is outside these guidelines, then the Variation requires pre-approval from the Ministry and you will need to contact your Property Advisor. We recommend contacting your Property Advisor for guidance if you are in doubt.

Completing the Contract Details

It is important that you read over the whole contract to ensure you understand what you are committing the school to, and what you are entitled to expect from your Consultant.

You should keep a record of this contract stored for reference during the time that the Consultant carries out the services, and for ten years afterwards in case any defects in the Contract Works are discovered later. As there is a high probability that key people in the school will change over that time, it is important to make sure that all property documentation is kept together, and that the Board and Principal have clear records of where they are stored and how to access them. This should include any passwords or other security measures.

The form of agreement document contains guidance note and colour coded text to help you to complete the document with the relevant information required. The guidance notes and any options provided in the document which are not required should be deleted before the agreement is issued and signed.

Who are the Parties?

The Parties	
Client	<p>The contract template is for use by either the Ministry or Board of Trustees (Board).</p> <p>Note: The Board of Trustees is the legal body that has the authority to enter into contracts on behalf of the school. Select the correct Client.</p> <p>Where the school is the client insert the school's name next to "Board of Trustees" on the cover page of the Contract.</p>
Consultant	<p>It is important to use the full legal name of the Consultant. Is it a company, individual, or a company trading under a different name?</p> <p>Insert the Consultant's name next to 'Consultant' on the cover page of the Contract.</p>



What are the specific provisions of this Contract? Special Conditions Part A

Special Conditions Part A	
Additional Documents to the Agreement	It is unlikely that any additional documents will be required. However if these need to be specified these should be specified in Appendix H of the Form of Agreement for Contract 4.
Limitation of Liability	The limitation of Liability is five times the fee to a maximum of \$2,000,000 except in respect of weathertightness claims where the maximum payable is five times the fee to a maximum of \$250,000. This value cannot be amended.
Duration of Liability	The Contract provides for a standard period of six years from completion of the services.
Insurance	<p>The required level of Public Liability insurance is \$5,000,000 per incident.</p> <p>The required level of Professional Indemnity insurance is five (5) times the fee to a maximum limit of \$2,000,000 per incident.</p> <p>The minimum amount of professional indemnity insurance required shall be an amount equal to five (5) times the fee with a maximum limit of \$2,000,000 per occurrence</p>