

School Infrastructure NSW

Contract Agreement for Maintenance

[INSERT RFT ID]

Contract Agreement for Maintenance

[Insert location and trade type]

Between

The Crown in right of the State of New South Wales
acting through the Department of Education and its
administrative unit, School Infrastructure NSW
(**SINSW**)

and

[INSERT REGISTERED NAME OF CONTRACTOR]
(**You**)

CONTRACT NUMBER: [SINSW - INSERT]

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Contract Agreement Maintenance

EXECUTION DATE

THIS AGREEMENT is made on:

PARTIES

Principal:	The Crown in right of the State of NSW acting through the Department of Education and its administrative unit School Infrastructure NSW (ABN 40 300 173 822) of Level 8, 259 George Street, SYDNEY NSW 2000 (SINSW)
Contractor:	[Insert Entity Name] (ABN/ACN [Insert ABN/ACN]) of [Insert Address] (You)

Agreement

1. You have agreed to enter into this Contract Agreement with SINSW.
2. In doing so, you agree to deliver maintenance services on Department of Education sites.
3. Your appointment to the Local Contractor Panel is limited to the Contract Region, Assets and Service Types nominated in Annexure 1 (Contract Information).
4. This Local Contractor Agreement is comprised of this document and the following documents:
 - (a) Annexure 1 – Contract Information
 - (b) Annexure 2 – Rates and Prices
 - (c) Annexure 3 – Agreement Terms
 - (d) Annexure 4 – Work Order Conditions;
 - (e) Annexure 5 – Scope of Services; and
 - (f) Annexure 6 – Asset Standards.
5. This Local Contractor Agreement does not in any way restrict or otherwise affect the unfettered discretion of SINSW to exercise any of its executive or statutory functions and powers.

EXECUTED AS A DEED

Signed, sealed and delivered by the State of NSW through the Department of Education (ABN 40 300 173 822) by its authorised delegate in the presence of the named witness.

PRINCIPAL	Authorised Delegate	Witness
Name (Block Letters)		
Signature		
Date		

Signed, sealed and delivered by the Contractor in accordance with Section 127 of the *Corporations Act 2001*.

CONTRACTOR	*Director / *Company Secretary	Director
Name (Block Letters)		
Signature		
Date		

Annexure 1 - Contract Information

Item	Description	Contract-specific information
1	Offer Term	2 years commencing on 1 July 2023, with 3 x 1 year options, terminable by either party on one month's notice
2	Service Type	<i>[insert description of trade etc]</i>
3	Assets	<i>[insert description of Assets covered by this deed – could be “unlimited” or “Dubbo High School” depending on the circumstances]</i>
4	Contract Region	<i>[insert name of region]</i>
5	Your Contact Person	
6	SINSW's Contact Person	
7	Address for service of notices	<i>[each party]</i>

Annexure 2 – Rates and prices

[Pricing schedule to be inserted post tender – will align with the schedule issued for completion by tenderers]

Proactive Maintenance Service Cost (If Used)

School	Service	No. of Services	Cost Per Service	Lump Sum Cost

Reactive Maintenance Rates

Qualification	Hourly Rate	Out of Hours Rate
Tradesperson		
Apprentice/Trainee		
Other (specify)		

	% Mark-up
Materials	
Plant & Equipment	

Rates:

- Normal hourly rate applies for the hours between 6:00am and 6:00pm on business days.
- Out of Hours rate applies to time outside the normal rate including Saturday and Sunday, Public Holidays or 27-31 December
 - o 6:00pm-6:00am Monday to Friday
 - o Saturdays and Sundays

Annexure 3 – Agreement Terms

1. Definitions

In these Agreement Terms (and, where applicable, in the Work Order Conditions and the Scope of Services):

Aboriginal Owned Business means a verified indigenous business and verified by one of the following:

- (a) Supply Nation; or
- (b) NSW Indigenous Chamber of Commerce.

Apprentice means a person employed to learn a trade under a skilled employer.

Asset means any asset listed in the Contract Information.

Asset Maintenance Standards means the standards developed by School Infrastructure NSW for NSW Department of Education assets to be maintained to.

Asset Management Unit (AMU) means the Asset Management Unit for the Contract Region, and when used generically, refers to Asset Management Units across the State, of which there are eight (8).

Asset Services Officer is a person employed by School Infrastructure NSW. They are employed in one of the eight regional Asset Management Units across the state. Their responsibilities include providing day to day support and advice to schools on asset matters, working with Local Contractors to resolve assets that have failed and to ensure assets are maintained.

Each Asset Service Officer has approximately 10 schools they are responsible for

Associate means an officer, employee, worker, agent, consultant or subcontractor.

Business Day means a day other than a Saturday, Sunday, a public holiday in NSW or 27 to 31 December.

Contact Person means a contact person appointed by a party under clause 4.1.

Contract Information means Annexure 1 to the Form of Agreement.

Contract Region means the region listed in the Contract Information.

Defect means a fault, error, failure, degradation, deficiency or issue with your work such that your work does not comply with SINSW's specifications and requirements for the Work Order.

Documents means all computer disks, samples, prototypes, test results, manuals and other materials and documents.

Facilities Maintenance Contractor means the Contractor engaged by School Infrastructure NSW to act as their Agent. The Facilities Maintenance Contractor will provide a number of services on behalf of SINSW as their Agent. This includes the procurement (Tendering and engagement) of Local Contractors to be contracted directly to School Infrastructure NSW.

Form of Agreement means the document to which these Agreement Terms are attached.

Local Contractor means a contractor that has their business located in the community where the school or NSW Department of Education site is located. A local contractor also includes Aboriginal Owned Businesses. Local Contractors are engaged directly to School Infrastructure NSW to undertake Maintenance services.

Contractor Agreement Maintenance (or Agreement) means the Form of Agreement signed by you and SINSW, incorporating these Agreement Terms and the other Annexures.

Offer Term means the period set out in the Contract Information.

Panel means the panel (or panels) of suppliers who have entered into a Local Contractor Agreement on similar terms to this Agreement.

Principal Contractor has the meaning given in regulation 293 of the *Work Health and Safety Regulation 2017* (NSW) as amended or replaced from time to time.

Maintenance means the works, services and actions to be carried out by the Local Contractor under this contract.

Scope of Services means Annexure 5 to the Form of Agreement.

Service Type means the trade or work type listed in the Contract Information.

SINSW is School Infrastructure NSW which sits within the NSW Department of Education.

SINSW Agent is the Facilities Maintenance Contractor engaged by SINSW to provide a number of contract administrative services.

WHS Law means the Work Health and Safety Act 2011 (NSW), the Work Health and Safety Regulation 2017 (NSW), SafeWork NSW approved Codes of Practice and the NSW Government Work Health and Safety Management Guidelines (edition 6) and relevant standards as replaced, supplemented or amended from time to time.

WOMS means Work Order Management System, comprising an online platform for electronic distribution of Work Orders and submission of relevant documentation.

Work Order is an order issued to a Local Contractor for Maintenance work. A work order is issued via SINSW Work Order Management System. All work orders must comply with the Work Order Conditions.

Work Order Conditions are the terms and conditions that apply to Work Orders issued by School Infrastructure NSW (SINSW) under a Contract Agreement - Maintenance for Maintenance works.

Work Order Contract (or WOC) means the contract formed by a Work Order, which comprises the Work Order, the Work Order Conditions, and any other documents or requirements identified by the Work Order.

2. Your standing offer

2.1 Your offer

- (a) You offer to carry out work in accordance with Work Orders issued during the Offer Term.

- (b) Your offer is for the Service Type, Assets and Contract Region set out in the Contract Information.

2.2 Your resources, qualifications, competence and experience

- (a) You warrant that you have the resources, qualifications, competence and experience to comply with any Work Order issued to you during the Offer Term.
- (b) You must notify SINSW promptly, with details, of any change in circumstances affecting your resources, qualifications, competence and experience to respond to any Work Order at any time.

2.3 Maintenance Panel operation

You acknowledge and agree that:

- (a) SINSW may not issue any Work Orders to you or to any member of the Panel.
- (b) SINSW may use other contractors, including contractors outside the Panel or contractors from another Contract Region.
- (c) SINSW may ask you to quote separately for particular work or services even though you have made the standing offer set out in this agreement.
- (d) the Panel remains "open" and SINSW may add new contractors to the Panel over the Offer Term.
- (e) the Panel arrangement remains subject to any ratified trade agreements which include government procurement provisions which apply to SINSW.

2.4 Relationship between parties and documents

You acknowledge and agree that:

- (a) a breach of any Work Order or Work Order Condition is also a breach of this Agreement; and
- (b) this Agreement does not create a relationship of employment, trust, agency, joint venture or partnership between you and SINSW.

3. Work Orders

3.1 Form of Work Orders

Work Orders will be issued by SINSW through its Work Order Management System, or by email to your address listed in the Contract Information Schedule.

3.2 Work Orders

- (a) Subject to clause 3.2(b), Work Orders once issued are binding and must be complied with.
- (b) You may reject a Work Order for "Reactive Maintenance if you are unable to perform the required work as per "work order conditions" within the required timeframe.
- (c) Your rejection must be through the Work Order Management System. It must be submitted in writing to the contact person nominated on the Work Order within the relevant time frames.

- (i) For Next Day or Urgent callout repairs – response required by 6:00pm.
- (ii) Same Day Callout – response required within 15 minutes.
- (iii) Out of Hours – response required within 30 minutes as work is possibly vandalism/security issue/storm damage.
- (d) Your rejection must specify the reasons why you cannot comply with the Work Order.
- (e) SINSW will monitor rejected Work Orders and the reasons given for rejecting Work Orders.

3.3 **Formation of Work Order Contract**

Each Work Order is binding and in itself is a separate contract which incorporates the Work Order Conditions.

3.4 **No payment without a Work Order**

You will not be paid for work or services unless a Work Order for that work or those services has been issued to you.

4. **Performance management**

4.1 **Contact persons**

You and SINSW will respectively appoint a contact person, with responsibility for the co-ordination and management of this Agreement. The initial nominated Contact Persons are named in items 5 and 6 of the Contract Information Schedule.

4.2 **Meetings and reviews**

You must make your Contact Person available at all times during business hours, and at all other times on reasonable notice by SINSW's Contact Person, to meet with SINSW's Contact Person and discuss any arrangements, queries, concerns, issues or disputes arising under or in connection with this Agreement, including any management and review meetings.

4.3 **Reports**

You must provide to SINSW:

- (a) the reports with the content and in the frequency and form (electronic or physical) that are set out as to be provided to SINSW in this Agreement; and
- (b) all other reports, data or information that SINSW may reasonably request.

4.4 **Performance Management**

- (a) You will be subject to a regular performance monitoring and review process.
- (b) This process is based on the Performance Management section of the NSW Government's [buy.nsw](http://buy.nsw.gov.au) website.
- (c) If you receive a performance report that identifies 'unsatisfactory performance', you are to provide, within 5 Business Days of being notified, an 'action plan' to improve your performance.

- (d) The action plan must cover, as a minimum, how the issue(s) occurred; how and when this issue(s) will be resolved and what will be done to prevent it happening again.
- (e) Your progress against the action plan will be monitored to ensure all proposals are appropriately implemented.
- (f) Information relating to your performance may be shared with other Government Agencies.

5. Disputes

- (a) In the event of a dispute between yourself and SINSW in relation to the subject matter of this Agreement, the parties agree to meet in good faith to settle the dispute within 10 Business Days.
- (b) Notwithstanding the existence of a dispute, you must continue to perform your obligations under this Agreement and each Work Order Contract.

6. Notices

Any notice given under this Agreement:

- (a) must be in writing addressed to either SINSW's Contact Person or your Contact Person (as applicable) at the address shown in the Contract Information or the address last notified by the intended recipient to the sender;
- (b) must be signed by an authorised officer of the sender; and
- (c) will be taken to have been received:
 - (i) if delivered by hand, when it is delivered unless delivery occurs on a day which is not a Business Day or later than 4.00 pm (local time) on a Business Day, in which case it will be taken to have occurred at the commencement of business on the next Business Day;
 - (ii) if sent by email, the notice will be deemed to be served and be received upon receipt by the recipient's email server (even if received or categorised or filtered as unwanted email or spam), unless the sender received an automated notice that such delivery has failed.

7. Termination of Contract Agreement

- (a) SINSW may terminate this Contract Agreement or any Work Order Contract at any time for its sole convenience on 30 days written notice.
- (b) Without limited clause 7(a), SINSW also has a right to terminate this Contract Agreement if it is not satisfied with your performance under any Work Order or if it believes that you may not be able to comply with the Agreement for any reason. Before terminating under this clause 7(b), SINSW will give you notice of its intention and reasons and will allow you at least 14 days to respond.
- (c) Termination of the Contract Agreement does not affect your obligations or entitlements under any then current Work Order Contract unless SINSW elects to also terminate that Work Order Contract.

8. Other Government agencies

If another Government agency wishes to contract with you on terms similar to the Contract Agreement- Maintenance the Offer Term, you must negotiate in good faith with that agency and seek to agree terms that are equally as favourable as those in the Contract Agreement - Maintenance.

9. General

9.1 No assignment

Unless otherwise agreed in writing, you must not assign, subcontract or seek to transfer this Contract Agreement.

9.2 Governing law and jurisdiction

This Contractor Agreement is governed by the law in force in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to hear appeals from those courts.

9.3 Severability

If any part or provision of the Contract Agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of the Contract Agreement will continue to operate.

9.4 Entire agreement

The Contract Agreement constitutes the entire agreement between you and SINSW about its subject matter and supersedes any previous understandings or agreements on that subject matter.

Annexure 4 – Work Order Conditions

See separate document.

Annexure 5 – Scope of Services

See separate document.

Annexure 6 – Asset Maintenance Standards

See separate document.