

**OTIS SUBCONTRACT AGREEMENT - NZ
MAINTENANCE**

Between

OTIS ELEVATOR COMPANY LIMITED Auckland

And

Sub Contractor

This **Subcontract Agreement** comprises:

- 1. Terms and conditions of the contract
- 2. Environmental Health & Safety Conditions –attachment A
- 3. The Schedule

The parties agree to carry out their respective obligations in accordance with the terms and conditions of this subcontract agreement

SIGNED AS AN AGREEMENT on this day of 20

EXECUTED for and on behalf of
Sub Contractor name

EXECUTED for and on behalf of
Otis Elevator Company Limited

Signature of duly authorised representative

Signature of duly authorised representative

Name (print)

Name (print)

Title/Position (print)

Title/Position (print)
General Manager New Zealand and Pacific

THIS AGREEMENT is effective from the day referred to in Item 1 of the Schedule

BETWEEN

OTIS ELEVATOR COMPANY LTD (“Otis”)

situated at the address referred to in Item 1 of the Schedule

AND

THE PARTY REFERRED TO IN ITEM 2 OF THE SCHEDULE (“The Contractor”) situated at the address referred to in Item 2 of the schedule

RECITALS

- A. Otis is in the business of selling, installing, servicing and repairing elevators, dumbwaiters, escalators and travelators.
- B. Otis requires the Contractor to complete services on its behalf as and when contracted.
- C. The Contractor agrees to provide such services on the terms set out in this Agreement.

IT IS AGREED:

1. DEFINITIONS

1.1 In this Agreement, unless the context indicates otherwise:

“Commencement Date” means the date specified in Item 4 of Schedule;

"Confidential Information" means all information [including without limitation documents, notes, reports, data, software (including source code and object code versions), manuals, diagrams, graphs, charts, records, plans, designs, supply lists, customer lists, market research information, correspondence, letters and papers of every description and copies thereof] relating to the affairs or business of Otis or any person with whom the Contractor or the Nominated Person(s) comes into contact as a result of this Agreement, or which comes into the possession of the Contractor or the Nominated Person(s) during the Term whether or not the same was originally supplied by Otis;

“Contract Fee” means the amount payable by Otis to the Contractor specified in Item 6 of the Schedule;

"Contractor" shall include the Contractor's officers, employees, agents and authorised subcontractors;

"Contract Material" means material brought or required to be brought into existence by or at the direction of the Contractor as part of or for the purpose of performing the Services;

"Expiry Date" means the date specified in Item 5 of the Schedule;

“Nominated Person(s)” means the person(s) named in Item 3 of the Schedule;

"Otis" shall include the officers, employees, agents and contractors of Otis, any related company or affiliate of Otis, and the officers, employees, agents and contractors of such companies or affiliates;

“Otis Property” means all material, equipment or property provided or made available to the Contractor or the Nominated Person(s) by or at the request of Otis as a result of this Agreement, including but not limited to Confidential Information howsoever stored;

"**Schedule**" means the schedule to this Agreement;

"**Services**" means the services specified in Item 7 of the Schedule;

"**Area**" means the area named in Item 8 of the Schedule;

"**Term**" means the term of this Agreement as defined in Clause 2.1 and including any extension agreed by the parties pursuant to Clause 2.2.

2. TERM OF AGREEMENT

2.1 This Agreement will commence on the Commencement Date and will expire on the Expiry Date unless:

- (a) extended under Clause 2.2; or
- (b) terminated under Clause 9.

2.2 The parties may extend the Term by written agreement prior to the expiry of this Agreement.

3. OBLIGATIONS

3.1 The Contractor will:

- (a) carry out the Services in accordance with this Agreement;
- (b) carry out the Services in accordance with Otis' safety working practices and the safety working practices required by law; including but not limited to items in Attachment A
- (c) comply with directions given by Otis as to the standard of the Services completed, hours of work and any other matter or thing relating to the performance of the Services; Any change in hours of work will be negotiated between the parties.
- (d) provide all facilities, equipment and materials necessary for the performance of the Services;
- (e) provide at its own expense a motor vehicle where it is required for performance of the Services;
- (f) leave the premises where the Services are completed in a tidy condition and will remove all rubbish generated whilst carrying out the Services;
- (g) ensure that its officers, employees, agents, authorised subcontractors and the Nominated Person(s) comply with the terms of this Agreement.
- (h) close out all calls directly with Otisline within 48 hrs of completing call.
- (i) carry out all tasks in accordance with Otis Service Excellence Basic Rules.

3.2 Otis must provide the Contractor with sufficient access to property to enable the Contractor to perform the Services. Induction courses will be subject to a separate order number and a written instruction from either the Service Supervisor or Branch Manager.

4. CONTRACTOR'S WARRANTIES

4.1 The Contractor warrants that:

- (a) the Services will be carried out by the Contractor or an authorised subcontractor, or if the Contractor is a corporation, by the Nominated Person(s);
- (b) the Services will be performed in accordance with all statutory, legal and other requirements relating to work of the nature referred to in this Agreement;
- (c) it will ensure that the Services are carried out with due care, skill and diligence and in a good and workman-like manner;
- (d) any equipment or materials supplied by the Contractor are fit for the purpose for which they are supplied;
- (e) the Contractor, the Nominated Person(s) and any authorised subcontractors, hold all qualifications, registrations and licenses required by law to perform the Services;
- (f) it will keep confidential and not use or produce the Confidential Information other than for the purposes of this Agreement and will not disclose the Confidential Information to any other party;
- (g) it will only disclose the Confidential Information to its employees, agents or authorised subcontractors on a need to know basis;
- (h) it will not disclose the Confidential Information to any third party without the prior written consent of Otis, except where the disclosure is required by law;
- (i) it will not sub-contract the performance of any part of this Agreement or alter the Nominated Person(s) without the prior written approval of Otis;
- (j) it will obtain and maintain public liability and professional indemnity insurance in the amounts set out in Item 9 of the Schedule to this Agreement.

5. CONTRACT FEE

5.1 Otis will pay the Contractor the Contract Fee.

5.2 Except for expenses which have been pre-approved by Otis in writing, the Contractor shall be responsible for the payment of out of pocket expenses incurred by the Contractor in the performance of the Services.

5.3 The Contractor shall submit tax invoices, with customer signed certificates of examination (where requested), to Otis on a monthly basis prior to the 5th day of the month following the completion of the works for fees and pre-approved expenses (supported by receipts) and shall provide reasonable particulars of time spent and services rendered.

5.4 Otis shall pay the Contractor prior to the 30th day of the month following receipt of invoice provided the Contractor has complied with Clause 5.3 above and the Services have been provided in accordance with the terms and conditions set out in this Agreement.

5.5 The Contractor will be solely responsible for and solely bear:

- (a) the payment of remuneration to the Nominated Person(s) including salary and wages, annual leave, sick leave, long service leave and all other benefits to which

the Nominated Person(s) may be entitled under any contract of service with the Contractor or under any award, statute or common law;

- (b) the payment of all taxes and duties in respect of such remuneration and benefits;
- (c) compliance with, and all costs of compliance with, all other statutory, award or other legal or contractual requirements with respect to the Nominated Person(s).

6. INTELLECTUAL PROPERTY

- 6.1 The Contractor represents and warrants that it will not, during the period of twelve (12) months after the end of the Term solicit, procure, canvass or otherwise retain any business from any client of Otis for whom or for whose benefit the Contractor has performed the Services without first obtaining written consent from Otis.
- 6.2 At all times after the end of the Term, the Contractor will not represent itself as being in any way connected with the business of Otis.
- 6.3 The Contractor agrees that the title to and intellectual property rights in or in relation to the Contract Material will be assigned to Otis upon its creation and if requested to do so by Otis, the Contractor will bring into existence, sign, execute or otherwise deal with any document or action which may be necessary to enable the vesting of such title or rights to Otis.
- 6.4 The Contractor will ensure that the Nominated Person(s) complies with any request which may be made by Otis pursuant to Clause 6.3 above.
- 6.5 At the end of the Term (or earlier if required by Otis) or upon termination of this Agreement, the Contractor will immediately deliver up to Otis all Contract Material and Otis Property.
- 6.6 Title to and the intellectual property rights in Otis Property will remain at all times with Otis and the Contractor acknowledges that neither it nor the Nominated Person(s) has any right, title or interest in such property.

7. STATUS OF THE CONTRACTOR

- 7.1 The Contractor is an independent contractor and not an employee of Otis.
- 7.2 The Contractor does not have authority to make representations, statements, warranties or enter into any agreement on behalf of Otis.

8. EXCLUSIVITY OF THE CONTRACTOR

- 8.1 Whilst it is understood by Otis that The Contractor and its related entities have forms of income other than that generated by this agreement, it is agreed between both parties that The Contractor will not perform any of the tasks listed in item 7 of the schedule in whole or in part for or on behalf of any other entity in related industries unless confirmed in writing by Otis before the event, for the duration of the Agreement.

9. INDEMNITY

- 9.1 The Contractor will release and indemnify Otis against all direct and indirect losses, damages, liabilities, claims and expenses (including without limitation legal, defence or settlement costs on a solicitor/client basis, loss of profits and consequential losses) whatsoever arising out of a referable to
 - (a) any breach by the Contractor or the Nominated Person (s) of the terms of this Agreement;

- (b) any workers' compensation or other claim in respect of "Health and Safety in Employment Act" or similar legislation, made against Otis by or in relation to any personnel engaged by the Contractor to perform work in relation to this Agreement;
- (c) any negligent or wrongful act or omission of the Contractor or Nominated Person(s); or
- (d) any injury or death to persons and any loss or damage to the property of Otis or any third party (real or personal) caused by any negligent or wrongful act or omission of the Contractor,

except to the extent that the loss or liability is directly attributable to the negligence or wrongful act or omission of Otis.

10. TERMINATION

10.1 This Agreement may be terminated at any time by the provision of 60 days prior notice in writing in the following circumstances:

- (a) by either Otis or the Contractor if the other of them commits a breach of any of the provisions of this Agreement and, if the breach is capable of rectification or remedy, such breach continues for a period of fourteen (14) days after the other party has given notice in writing that the breach be rectified or remedied;
- (b) by either Otis or the Contractor if the other ceases or threaten to cease or carry on its business or any part of it;
- (c) by Otis if the Contractor or the Nominated Person(s) is guilty of any serious or wilful misconduct;
- (d) by Otis if the Contractor becomes unable to provide the Services for a period of more than three (3) consecutive weeks or over a period aggregating more than two (2) months over a six (6) month period;
- (e) by Otis if the Nominated Person(s) ceases to provide the Services on behalf of the Contractor for any continuous period of one (1) calendar month without the written approval of Otis;
- (f) by Otis if at any time during the term of this Agreement the Contractor:
 - (i) where an individual, commits an act of bankruptcy, issues a debtor's petition, is issued with a creditor's petition, enters into an arrangement with creditors or becomes bankrupt in accordance with the Bankruptcy Act 1966; or
 - (ii) where a corporation, becomes subject to any external administration procedure governed by Part 15A or 16 of the *Companies Act 1993* including but not limited to the winding up of the Contractor or of the appointment of a receiver, administrator or other controller of any assets or of an undertaking by the Contractor;
- (g) by Otis if the Contractor or the Nominated Person(s) or any person or entity directly or indirectly related to the Contractor or the Nominated Person(s) by means of ownership or control commences or threatens to commence or carry on business in any capacity which is or is in the reasonable opinion of Otis likely to be in competition with the business of Otis.

- (h) by Otis if the Contractor of the Nominated Person(s) is or becomes charged with any criminal offence which in the opinion of Otis brings the Contractor, the Nominated Person(s) or Otis into disrepute;
- (i) by Otis where there is a breach of this Agreement by the Contractor or the Nominated Person (s) and such a breach gives rise to environmental, health or safety issues;
- (j) by Otis where in the opinion of Otis a conflict or risk of conflict of interest arises.

10.2 Otis may terminate the Agreement with immediate effect if the Contractor becomes a person whom Otis, being a wholly owned subsidiary of a corporation registered in the United States of America, is prohibited from dealings with under the laws of the United States of America

10.3 If the Agreement is terminated pursuant to clause 10.2, Otis shall be relieved of any obligation to make further payments to the Subcontractor; and shall be entitled to recover damages arising from the breach

10.4 Otis may, at any time, terminate this Agreement at its own convenience by giving the Subcontractor no less than thirty (30) calendar days written notice.

11. CONTINUING RIGHTS & OBLIGATIONS

- 11.1 Termination or expiry of this Agreement for any reason does not affect any rights of either party against the other which arose prior to the time at which such termination or expiry occurred, or which otherwise relate to or which may arise at any future time for any breach of non-observance of obligations under this Agreement occurring prior to termination or expiry.
- 11.2 Without limiting clause 10.1, the rights and obligations under Clauses 4.1 (f) to 4.1 (h) inclusive, 4.1(j) and 4.1(k), 5.5, 6, 7, 8 and this Clause 10 are continuing rights and obligations, separate and independent from the other rights and obligations of the parties, and survive expiry or termination of this Agreement.

12. NOTICE

- 12.1 Any notice, requests and other communications to be given under this Agreement will be delivered in writing by prepaid post or in person to the address of the parties stated in this Agreement.
- 12.2 Any notice that is delivered by prepaid post is deemed to have been received on the third day after posting.
- 12.3 Any notice that is hand delivered is deemed to have been received on the day of delivery.

13. CONFLICT OF INTEREST AND BUSINESS ETHICS

- 13.1 The Contractor warrants that no conflict of interest exists at Commencement Date or is likely to arise in the performance of its obligations under this Agreement.
- 13.2 If, during the operation of this Agreement, a conflict or risk of conflict of interest arises, the Contractor will notify Otis immediately in writing of that conflict or risk. On receipt of notification Otis may terminate this Agreement, in whole or in part, pursuant to Clause 9.2(j).

- 13.3 The Subcontractor acknowledges and agrees that it has been provided with a copy of the Otis Supplier Code of Conduct. The Subcontractor agrees to comply with the requirements of the Otis Supplier Code of Conduct, including:
- i) Complying at all times with applicable law, including laws prohibiting collusion, conflicts of interests, corruption, and unfair competition;
 - ii) Refraining (directly or indirectly) at all times from offering, promising, attempting to provide, or providing:
 - (a) any Corrupt Payment; or
 - (b) any Otis employee or Government Official, any ownership or financial interest in Vendor;
 - iii) Promptly and accurately recording in its Books and Records all transactions and expenses related to its work for Otis

14. WAIVER

- 14.1 Rights under this Agreement cannot be:
- (a) waived, except in writing signed by the party granting the waiver; or
 - (b) varied, except in writing signed by the parties
- 14.2 A waiver by Otis in respect of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any other or of any subsequent breach.

15. SEVERABILITY

- 15.1 Each provision of this Agreement is severable. If a provision or any part of this Agreement is void or voidable by either party but would not be if it were read down, then it shall be read down to that extent.

16. GOVERNING LAW

- 16.1 This Agreement is governed by the laws of the New Zealand.
- 16.2 The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of New Zealand.

17. ASSIGNMENT

- 17.1 The benefit of this Agreement will not be dealt with in any way by the Contractor (whether by assignment or otherwise) without Otis prior written consent.

- 17.2 Otis may assign or novate in whole or in part its rights and obligations under this Agreement at any time without the Contractor's prior written consent to any purchaser, beneficiary or assignee of Otis business assets.
- 17.3 In addition to its rights under Clause 16.2, Otis may assign or novate in whole or in part its rights and obligations under this Agreement at any time to any person, with the Contractor's consent (which must not be unreasonably withheld).

18. ENTIRE AGREEMENT & VARIATION

- 18.1 This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.
- 18.2 No agreement varying or extending this Agreement, including the Schedule, will be legally binding upon either party unless in writing and signed by both parties.

19. AUDIT

- 19.1 The subcontractor shall retain all records related to the Services, and shall allow Otis access to its premises for the purpose of auditing such records, for a period of five (5) years from the date of creation of the record.

20. PRIVACY

- 20.1 The parties agree that, where either party processes personal information (as that term is defined in the *Privacy Act 2020*, the party shall comply with its obligations under that act in respect of the personal information.

SCHEDULE

Item 1	Date Agreement commences	<i>Start Date</i>
Item 1A	Address of Otis	3 Fisher Crescent Mt Wellington Auckland 1060
Item 2	The Contractor	<i>Sub Contract Name</i> <i>Address</i>
Item 3	Nominated person(s)	
Item 4	Commencement Date :	<i>COMMENCEMENT DATE</i>

Item 5	Expiry/Revision Date:	End Date
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Online Subcontractor Management System Compliance, Toolbox Talks and Training Program	
	<p data-bbox="523 479 1321 546">Pegasus Online Subcontractor Management System Compliance.</p> <p data-bbox="523 600 1481 891">The subcontractor undertakes to maintain currency of annual insurance certificates, electrical registration and practicing licence details of employees, complete all training issued within the online management system. Failure to maintain online registration will result in suspension of payment automatically within the Pegasus Online Management System. All costs associated with registration of staff, training requirements are eligible for invoicing by Aotea Electric Rotorua Ltd and payable by Otis</p>

ATTACHMENT A – Environmental Health & Safety Conditions

1. Subcontractor EH&S Obligations

The Subcontractor shall work in a safe and environmentally responsible manner at all times.

1.1 Carry out any work only within the scope of the works described.

1.2 Provide experienced qualified and duly licensed personnel and adequate supervision to perform that work.

1.3 Ensure that no employee is permitted to work on any Otis site without safety induction training including training in Otis Safety Handbook, applicable aspects of the Otis World Wide Job Safety Standard (WWJSSS), Job Hazard Analysis and use of fall protection and any special site requirements.

1.4 Every employee shall be issued with an Otis Subcontractor Identification and Training Record and will carry at all times, which confirms that such training has been carried out.

1.5 Respect and comply with Otis Safety Handbook, and applicable aspects of the Otis WWJSSS as updated from time to time, which shall be incorporated into the Statement of Work

1.6 Comply with all applicable safety laws, regulations and rules. This shall include labour laws and environmental laws, which shall include providing adequate notices relating to the Work to proper authorities and securing and paying for all necessary licenses or permits needed in connection with the Work.

1.7 The subcontractor will be issued with an Otis Safety Bag at no cost to the subcontractor company. The subcontractor employee must sign a Safety Bag receipt acknowledgement which will be filed by the respective Otis Supervisor and Auckland Storeman.

Subcontractors will be responsible for the continued upkeep of the bag which will include restocking of any or all of the original contents. The safety bag will be subject to annual and random inspections as per HSQ15.

Operators shall be trained and competent to use the protective equipment in accordance with manufacturer specifications, and the Otis safety handbook.

1.8 Lifting & rigging equipment includes but is not limited to chain blocks, slings / ropes / chains, rope falls, shackles, gantries, winches, reeving blocks, lever hoists.

Otis will supply the lifting & rigging equipment that Otis, in its discretion, deems required for the Subcontract Works. All risk of loss or damage to Otis equipment shall be borne by the Subcontractor.

If the required Otis-supplied lifting and rigging equipment is not available, or if the Subcontractor wishes to supply his own lifting & rigging equipment, the Subcontractor shall obtain written approval from Otis prior to bringing such equipment onto site. The Subcontractor shall supply with its application for approval evidence that:

- an electrical certification has been done on the equipment within the last three (3) months;
- a load test has been done on the equipment within the last twelve (12) months, by a third party properly trained to NZQA requirements as being qualified to conduct such tests;
- positive latching hooks are in place on all lifting equipment with a safe working load of 2.0 ton or less;
- lifting appliances clearly display their maximum safe working load;
- electrical and load test tags are fitted to the equipment, displayed and dated.

Otis may approve an application from the Subcontractor to supply its own lifting and rigging equipment at Otis' sole discretion, and is under no obligation to grant such an approval.

If the Subcontractor:

- a. brings lifting and rigging equipment on to the site that has not been supplied or approved by Otis; or
- b. brings lifting or rigging equipment on to the site that does not comply with the above requirements;

the Subcontractor shall be considered to have breached the Subcontract and the terms of clause 10.1 of the Subcontract shall apply.

Additionally, Otis will recertify the equipment or engage a third party to do so, and will charge a fee of \$1,000 to do so per piece of equipment.

Any Lifting and rigging equipment that is past the valid test date must be tagged as not to be used with a Warning tag, removed from site and removed as soon as practicable from the site.

1.9 Ensure that all risks to employees, Otis personnel, customers, Public and environment are identified and effectively controlled. If unsafe / environmentally unsound conditions are identified, immediate action is taken to address them.

1.10 Carry out regular audits and inspections to verify compliance of employees with Otis safe working practices and that suitable site conditions are provided.

1.11 Permit inspection / audit by Otis personnel or authorised representative at any time in respect of criteria advised by Otis. Agree that site can be shut down immediately if unsafe / environmentally unsound conditions are identified.

1.12 The Subcontractor shall report to Otis in writing immediately, but in no event any longer than 24 hours, any injury or dangerous occurrence to the Subcontractor's employees that occurs in connection with the performance of the Work. Further, the Subcontractor will cooperate with Otis in investigating accidents / incidents, according to criteria that will be provided by Otis.

Provide adequate First Aid facilities and equipment in accordance with the Regulations for employees.

1.13 Any material or substance brought onto site which has health, fire or explosion risks must be used and stored in accordance with regulations and current recommendations, and that information in the form of a Material Safety Data Sheet (MSDS) must be provided to any other person who may be affected on site.

1.14 Ensure that workplaces are kept tidy and all debris, waste materials etc, and are cleared as work proceeds.

1.15 Waste shall be disposed of in appropriate containers, in compliance with any applicable MSDS, and otherwise in an environmentally sound manner.

1.16 Maintain specified levels of Public Liability or other insurance as specified in contract, in respect of works subcontracted

1.17 Maintain records including: Safety & Environment (S&E) procedures; training records & certifications for employees working on sites; history of accidents, incidents, citations, prosecutions, records testing and inspection of safety gear, lifting equipment, electrical tools etc