Contract No. 397-3647

AGREEMENT FOR THE PROVISION OF SERVICES FOR THE MINISTRY OF EDUCATION IN RELATION TO

In-service Professional Development

Between

Ministry of Education

AND

Teachers' Refresher Course Committee (TRCC)

Dated 30 June 2008

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Ministry of Education P O Box 1666 45-47 Pipitea St Thorndon Wellington Ph: (04) 463 8000

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Contract to facilitate the delivery of a programme of teacher professional development - 'for teachers by teachers'

A. PARTIES

This contract is between the Secretary for Education acting by and through Prue Kyle, Manager, Professional Learning and Curriculum Support, Schooling, Ministry of Education.

(Referred to in this contract as the "Ministry")

AND

Teachers' Refresher Course Committee (TRCC)

(Referred to in this contract as the "Contractor")

B. PURPOSE

- a) The Contractor has agreed to provide Professional Development services to the Ministry to facilitate the delivery of a programme of teacher professional development 'for teachers by teachers'.
- b) TRCC has provided these professional development services to the Ministry for over 60 years.
- c) This contract replaces contract number 397-1727.

THE PARTIES AGREE AS FOLLOWS:

1. Term

- 1.1 Unless earlier cancelled or terminated in accordance with Clause 18, this Agreement shall commence on 1 July 2008 and expires on 30 June 2011.
- 1.2 The term of this agreement may be extended for a further period of one year following each annual review conducted under Schedule Two. Any such extension must be recorded as a Variation to this Agreement in accordance with Schedule Two.

CONTRACTOR OBLIGATIONS

2. Provision of Services

- 2.1 The Contractor shall provide the services specified in the First Schedule ("the services") in the most effective manner, in particular the Contractor shall:
 - i. provide the services in accordance with the performance measures set out in Schedule One;
 - ii. provide the Ministry with written reports as specified in Schedule Two or as otherwise required by the Ministry under this Agreement;
 - iii. ensure that the services are provided by the dates specified in Schedules One and Two;
 - iv. in providing the services, take into consideration any requests made by the Ministry. All such requests shall be made in writing;
 - v. respond to any reasonable request from the Ministry for information relating to the provision of the services.

- 2.2 The Contractor shall comply with all legal requirements that are applicable to the performance of this contract.
- 2.3 The Contractor shall comply with the behaviour standards as reflected in the Ministry's Code of Conduct and the Ministry's security requirements, health and safety policies and procedures and protected disclosures procedures.
- 2.4 The Contractor shall consult with, and inform the Ministry, of work undertaken or to be undertaken and the time spent or to be spent in providing the services.
- 2.5 In the delivery of the services the Contractor, shall be cognisant of the environment in which the Ministry of Education operates.

3. Monitoring and Evaluation

- 3.1 The Contractor shall conduct ongoing monitoring and evaluation of the services provided and shall include any modification to the services considered necessary by the Contractor or the Ministry into its operations.
- 3.2 The Contractor agrees to grant the Ministry the right to full and unrestricted access to the records related to the delivery of the services.
- 3.3 The Ministry or its nominated evaluator shall have the right to observe the operations of the Contractor, including the delivery of any services, and shall have the right to conduct interviews with anyone involved in the operations under this Agreement, providing reasonable notice is given to the Contractor.

4. Review

- 4.1 The Ministry and the Contractor will undertake a review of this Agreement at the time specified in Schedule Two.
- 4.2 The contractor will participate in good faith in the review process as set out in Schedule Two.
- 4.3 Following a review, the Ministry may propose amendments to the whole or part of this Agreement. Both parties will then, in good faith, seek to agree on what amendments, if any, will be made to this Agreement.

5. Information and Records

- 5.1 The Contractor will comply with all directions from the Ministry on the use, storage, return and destruction of any information obtained by the Contractor in providing this service.
- 5.2 The Contractor will maintain up-to-date records that clearly identify relevant time and expenses incurred in providing the services.

6. Audit requirements

- 6.1 The Contractor shall ensure that the annual financial statements of the Contractor are audited by a qualified auditor; and
- 6.2 The Contractor shall cause an auditor's report to be supplied to the Ministry as soon as practicable after its receipt by the Contractor.
- 6.3 The Contractor authorises its auditors to communicate with the Ministry in response to questions the Ministry may have in respect of information disclosed in the annual audited financial statements.

MINISTRY OBLIGATIONS

7. Obligations and Rights of the Ministry

7.1 Subject to appropriation by Parliament, the Ministry agrees to pay the Contractor the amounts in the manner specified in the Third Schedule, subject to terms and conditions contained within this agreement.

- 7.2 The Ministry reserves the right, after consultation with the Contractor, to withhold payments or make part payment or recover overpayment in the event that the Contractor does not provide all the services specified in this agreement, fails to meet the required performance measures in Schedule One, or fails to provide reports as required under this Agreement.
- 7.3 Extra work carried out by the Contractor beyond the scope of this Agreement shall be deemed gratuitous by the Contractor who shall have no claim against the Ministry.
- 7.4 The Ministry shall use and receive information relating to the delivery of the services under this Agreement for the purpose of monitoring the delivery of the services under this Agreement, development or improvement of the services, policies, practices, and for the associated evaluation of this Agreement.

GENERAL OBLIGATIONS

8. Independent Contractor

8.1 The Contractor is not an employee, partner, joint venture partner or agent of the Ministry. The Contractor will be responsible for all taxation and ACC levies payable in respect of earnings and payments made by the Contractor under this Agreement.

9. Assignment and Subcontracting

The Contractor will not transfer or assign any of their rights or obligations under this Agreement or engage any subcontractors for the provisions of services without the Ministry's prior written approval. This approval may be conditional.

10. Confidentiality

- 10.1 Subject to the Official Information Act 1982, the Privacy Act 1993, and any other relevant legal obligation to disclose Confidential Information, the Ministry and the Contractor shall keep confidential all information relating to or arising out of this Agreement. The Contractor shall use such Confidential Information only for the purposes of providing services under this Agreement.
- 10.2 "Confidential Information" means any information disclosed by either party to the other ("the recipient") directly or indirectly in any form (a) that has been marked as confidential; (b) whose confidential nature has been made known, in writing or orally with specific written notification of such oral disclosure within (3) days thereafter; or (c) that due to its character, nature, or method of transmittal, a reasonable person under like circumstances would treat as confidential.
- 10.3 Confidential Information does not include information which: (a) is already in the recipient's possession at the time of disclosure, as shown by competent evidence; (b) becomes part of the public knowledge or literature, not through any violation of an obligation of confidence; (c) is approved for release in writing by the relevant party; or (d) is disclosed by a third party, not through any violation of an obligation of confidence.

11. Contracts Register Information

11.1 The Contractor acknowledges that the Ministry may collect and hold information about the Contractor (including the Contractor's agents, employees or subcontractors engaged in the provision of services under this contract) and that such information may be used for the purposes of managing, coordinating, and reporting on the Ministry's contracting

activities. The Ministry may be required by parliamentary select committees or under the Official Information Act, to supply information on the contractors it has engaged. This information may include the name of the Contractor, the nature of the work undertaken and its costs. The Contractor (or individual concerned) has the right of access to, and may request correction of information held by the Ministry.

12. Media

- 12.1 The Contractor shall immediately advise the Ministry (the person nominated as the contact person for the Ministry) if it becomes aware of any issue about the operation or management of this agreement that has or may have media or public interest.
- 12.2 The Contractor shall not issue to the media or any member of the public any oral or written statement about the operation of this agreement without prior consultation with the Ministry.

13. Intellectual Property Rights

- 13.1 All intellectual property rights (including copyright) in all works and material produced under this agreement ("new works") shall remain the property of the Ministry.
- 13.2 Both parties shall continue to own all intellectual property rights that they held prior to the commencement of this Agreement.
- 13.3 The Contractor agrees that it will not itself, or through any agent or third party, copy, decompile, adapt, sell, lease, licence, sub-licence or otherwise deal with the Ministry's intellectual property rights or any adaptations, variations, modifications, copies, releases or versions, or have any other programme written or developed for itself based on any work undertaken under this agreement without the Ministry's prior written consent or licence.
- 13.4 The Contractor will not infringe any third party intellectual property rights in developing any work under this Agreement, and indemnifies the Ministry against any third party claim against the Ministry for breach of the third party's intellectual property rights, as a result of the source materials used by the Contractor in delivery of the services under this Agreement.
- 13.5 In regards to any intellectual property owned by, or exclusively licensed to, the Contractor prior to the performance of any work ("existing works") the Contractor shall take all reasonable steps to ensure that the Ministry has the ongoing ability to use any new works that are derived from these existing works, without additional cost.
- 13.6 Unless agreed otherwise in writing, the Contractor will grant or gain all consents as may be necessary to enable the Ministry to use the works developed under this Agreement at no additional charge.

14. Variation

14.1 The parties may, by mutual agreement in writing, vary this Agreement and any such variation will then form part of this Agreement.

15. Force Majeure

- 15.1 Neither the Contractor nor the Ministry shall be liable for any failure to perform any obligation under this Agreement if prevented from doing so by reason of war, fire, flood, storm, riot, an act of God, a restraint of Government, or any other extraordinary event beyond the control of either of the parties (a "Force Majeure event").
- 15.2 The Ministry will not pay the Contractor for any services that the Contractor is not able to perform due to a Force Majeure event.

- 15.3 Should either party know or anticipate that a Force Majeure event will prevent either party from complying with this contract, they must:
 - a) notify the other of the expected duration of that non-compliance; and
 - b) consult with the other party as to the best method of minimising the effects of that event.
- 15.4 Each party will bear its own loss or damage arising from such an event.

16. Warranty of Interest

- 16.1 The Contractor warrants that it has no actual or potential conflicts of interest and shall not undertake any further work either directly or indirectly which may place the Contractor in a conflict of interest position with respect to the Services to be provided to the Ministry.
- 16.2 If an actual or potential conflict of interest comes to the attention of the Contractor during the term of this Agreement, they will notify the Ministry of this immediately.

17. Disputes

- 17.1 Together, the parties will take all reasonable steps to resolve any dispute, question, or difference that may arise in connection with this Agreement.
- 17.2 If the parties are unable to resolve the question, dispute or difference by discussion within 14 days, the parties may refer the dispute to mediation. Mediation shall proceed in a manner agreed to by the parties.
- 17.3 If the dispute remains unresolved after mediation, the dispute must be submitted to arbitration in accordance with the Arbitration Act 1996.
- 17.4 When practical to do so, the parties will continue to perform their respective obligations under this Agreement during the resolution of any dispute.
- 17.5 The parties will share the costs of mediation or arbitration equally or as determined by the arbitrators.

18. Termination and Cancellation

Cancellation

18.1 The parties may mutually agree in writing to cancel this agreement at any time.

Termination

- 18.2 Either party to this Agreement may terminate this Agreement by giving the other party **14** days written notice of termination where either party has breached an obligation or failed to perform an obligation under this Agreement:
- 18.3 If a Contractor is unable to perform any services for more than 30 days because of a Force Majeure event, the Ministry may terminate this contract by written notice.
- 18.4 Where termination occurs under this section
 - a) the Ministry is only obliged to pay for the work already completed; and
 - b) the Contractor is not obliged to undertake further work.
- 18.5 Subject to the terms and conditions provided for in this Agreement, the parties shall not be liable to the other for damages, compensation or any other remedy at law or in equity for cancellation or termination of this Agreement.

19. Entire Agreement

19.1 This Agreement, together with the Schedules, shall be the complete and exclusive Agreement between the parties and supersedes all previous arrangements whether written, oral or both, relating to such matters.

Wellington this 30 m day of Lept 2008 SIGNATURES OF THE PARTIES TO THIS AGREEMENT Signed by Prue Kyle, Manager, Professional Learning and Curriculum Support, Schooling (Signature) For and on behalf of THE SECRETARY FOR EDUCATION In the presence of Signature of witness Name of witness Address of witness Occupation of witness Signed by Laura Collins, Executive Officer, TRCC Signature) For and on behalf of Teachers' Refresher Course Committee (TRCC) In the presence of Signature of witness Name of witness Address of witness Occupation of witness **Ministry Contact Contractor's Project Director:** Anna Sullivan Laura Collins

Team Leader

Professional Learning

PO Box 1666

Thorndon, Wellington

Ph 04 463 7011

Executive Officer

TRCC

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SCHEDULE ONE

SERVICES TO BE PROVIDED BY THE CONTRACTOR

Professional Development Programme

General

The Teachers' Refresher Course Committee (TRCC) is contracted to facilitate the delivery of a programme of teacher professional development – 'for teachers by teachers'. The programme will meet both national ministry priorities and teacher identified needs through courses and such other formats as it deems appropriate to the target group and the intended learning outcomes.

Background

This contract replaces contract number 397-1727, which was for the period 2005-2008 and has had two variations following annual reviews. This contract is for a continuation of the professional development services provided under contract 397-1727, with updated foci to reflect national initiatives and current understandings about effective professional learning.

Programme Summary

- 1. The professional development opportunities provided by the TRCC will have an explicit focus on improving student outcomes and reducing disparities through developing the capabilities of teachers in quality teaching.
- 2. Courses will be underpinned by current government initiatives such as Ka Hikitia, the New Zealand Curriculum and Pasifika Education Programme.
- 3. In particular, planning committees will be aware of, and consider, the following foci common to all centrally funded profession development programmes. Course participants will be facilitated to:
 - i. critically examine their existing beliefs, expectations and professional practices to design learning programmes that will more effectively help all students to become successful learners, particularly those who are, or are at risk of, underachieving;
 - ii. enhance their professional decision making by helping them to be able to purposefully gather, analyse, and use data, including student achievement data, as the basis for professional decision making;
 - iii. improve their practice through opportunities to take part in evidenceinformed inquiry to help them understand what is happening for their students, examine research that might help to explain this, and allow them to examine the impact of their practice on students' learning and achievement;
 - iv. raise their level of subject knowledge and pedagogical content knowledge;
 - have an understanding of the need to develop inclusive cultures which acknowledge the identity and diversity of all students, taking into account gender, culture and special needs;
 - vi. develop effective learning communities within and between education institutions; and

- vii. plan to ensure developments can be sustained over time.
- 4. The annual programme will acknowledge all sectors of the education system by providing support to early childhood, primary, intermediate, secondary and tertiary sectors.

Programme Details

- 1. The Contractor will develop, offer and organise an annual programme of professional development which will be published in advance in the *Education Gazette*. The programme should:
 - be based on an analysis of needs arrived at from consultation with teacher organisations, School Support Services contractors, sector organisations, Ministry of Education, Education Review Office, The Teachers' Council, the New Zealand Qualifications Authority and other relevant sector organisations;
 - ii. ensure a balance between supporting education institution/teacher requests and national priorities;
 - iii. take account of areas of need, such as subject associations and small subject areas or specialist content areas which are more difficult to support regionally through other professional learning options;
 - iv. compliment professional development provided by other providers as far as possible;
 - v. reflect the National Education Guidelines and/or Desirable Objectives and Practices, and the TRCC policy statements on the Treaty of Waitangi and equity issues;
 - vi. include both sector-specific and cross-sector groups of teachers.

2. Courses:

- i. generally will be held during the school holidays unless, in the light of the identified needs of the target group, the Contractor deems it important to the achievement of the intended outcomes to hold some or all components at other times:
- ii. generally will be two to five days duration;
- iii. may have both national or regional components, depending on the identified needs of the target group and appropriateness to the intended outcomes;
- iv. generally will be face to face, may involve flexible learning modes, depending on the identified needs of the target group and appropriateness to the intended outcomes: and
- v. will be consistent with current knowledge and understanding of effective professional development.

3. Māori Education Option

Where professional development is planned for, and by, Māori teachers the planning committee will be given the autonomy to develop the structure and content of the programme, and to use the allocated budget to achieve the intended outcomes in culturally appropriate ways. The planning committee will liaise with TRCC and consult with appropriate Ministry of Education personnel, Māori teacher networks and Māori groups.

4. Pasifika Education Option

Where professional development is planned for, and by, Pasifika teachers the planning committee will be given the autonomy to develop the structure and content of the programme, and to use the allocated budget to achieve the intended outcomes in culturally appropriate ways. The planning committee will liaise with TRCC and consult with appropriate Ministry of Education personnel, Pasifika teacher networks and Pasifika groups.

THE PROGRAMME

Outcomes of the Programme

The outcomes, indicators and evidence are documented as follows. This specifies the evidence that will be used to indicate progress towards the outcomes sought from the programme.

The effectiveness of the programme will be measured using a variety of strategies.

Samples of supporting data/evidence may be attached as an appendix and suggested processes may include:

- gathering baseline information in relation to intended outcomes;
- on-going formative evaluation in relation to programme outcomes;
- providing summative information about teachers' knowledge, skills and attitudes in relation to programme outcomes and reflections on the extent to which the programme had an impact on teaching and learning.

1. Operational Outcomes (Quantitative)

The operational outcomes of the programme, as stated in the programme summary in Schedule One on page 7 of the Agreement, are for:

Туре	Target Number of Courses	Target Participant Days	
General	8 per year (minimum)		
Māori focus	2 per year (minimum)		
Pasifika focus	1 per year (minimum)		
Total	11 per year (minimum)	3340 per year	

Notes:

- i. One participant day is equal to 6-8 hours.
- ii. Each participant day for course run under the Māori and Pasifika options is counted as two participant days in terms of reporting targets.

2. Effectiveness Outcomes (Qualitative)

All participants will have:

- demonstrated an improved understanding of subject content and pedagogy;
- increased their knowledge in ways that contribute to student learning;
- reviewed their educational practice and established procedures to incorporate developing understandings into their teaching and learning practices;
- reviewed their educational practice and established procedures to incorporate the needs of diverse learners/Maori and Pasifika students into their teaching and learning;

• analysed data within their own education institution contexts as the basis for making decisions about learning needs.

Evaluation of Programme Effectiveness

An evaluation of programme effectiveness is to be provided in each milestone. Reporting will include an evaluation of each course in terms of:

- participant satisfaction;
- participant learning at the conclusion of the course;
- participant learning and shifts in practice three months later;
- course directors satisfaction; and
- course directors assessment of the effectiveness of the course.

The TRCC will also provide the Ministry with a summary of the evaluations for each course.

SCHEDULE TWO

REPORTING

Milestones

The Contractor shall provide a Milestone Report to the Ministry within 5 working days of the expected date of completion of each milestone specified in this Schedule.

The Contractor shall provide a report summarising the work during the milestone period, commenting on any progress on milestone tasks, successes and emerging issues, and noting any planned modifications to the programme(s) as a result of ongoing formative assessment and reflection. Each progress report must include an explanation for any variance from the milestone tasks.

Milestone reporting will be quarterly on the last working day of the month throughout the duration of the contract as follows:

Milestone 1 October

Milestone 2 January

Milestone 3 April

Milestone 4 July

In addition the Annual Report of the TRCC, including a set of audited accounts, will be submitted by September 30 each year.

1. Work to be completed to achieve Milestone 1:

- a) Expected date of completion of milestone 1 is last working day of September.
- b) Details of the tasks to be completed by the Contractor to achieve this milestone are set out in the table below.

Milestone Tasks	Comments on Successes, Emerging Issues and/or Explanations of Variance
1.1 Liaise with the Ministry personnel assigned to the project.	
1.2 Prepare a course programme based on the consultation and points outlined in Schedule One - Programme Details.	

- 1.3 Submit the progress report to the Ministry (including electronic copy in RTF format) by the milestone report date on each of the above tasks and relevant performance measures, as per Schedule One Programme Outcomes, including:
 - A summary statement of any trends and issues that TRCC has identified and actions required, including any recommendations to the Ministry;
 - any variance, actual or anticipated, with explanation; and
 - a copy of income and expenditure statements showing monies received and the amount spent on each aspect of the programme.

2. Work to be completed to achieve Milestone 2

- a) Expected date of completion of milestone 2 is last working day of December.
- b) Details of the tasks to be completed by the Contractor to achieve this milestone are set out in the table below.

Milestone Tasks	Comments on Successes, Emerging Issues and/or Explanations of Variance
2.1 Liaise with the Ministry personnel assigned to the project.	
Prepare a course programme based on the consultation and points outlined in Schedule One - Programme Details.	
2.3 Submit the progress report to the Ministry (including electronic copy in RTF format) by the milestone report date on each of the above tasks and relevant performance measures, as per Schedule One - Programme Outcomes, including:	
 A summary statement of any trends and issues that TRCC has identified and actions required, including any recommendations to the Ministry; 	
 any variance, actual or anticipated, with explanation; and a copy of income and expenditure statements showing monies received and the amount spent on each aspect of the programme. 	

3. Work to be completed to achieve Milestone 3

- a) Expected date of completion of milestone 3 is the last working day of March.
- b) Details of the tasks to be completed by the Contractor to achieve this milestone are set out in the table below.

Milestone Tasks	Comments on Successes, Emerging Issues and/or Explanations of Variance
3.1 Liaise with the Ministry personnel assigned to the project.	
3.2 Prepare a course programme based on the consultation and points outlined in Schedule One - Programme Details.	
3.3 Submit the progress report to the Ministry (including electronic copy in RTF format) by the milestone report date on each of the above tasks and relevant performance measures, as per Schedule One - Programme Outcomes, including:	
 A summary statement of any trends and issues that TRCC has identified and actions required, including any recommendations to the Ministry; any variance, actual or anticipated, with explanation; and a copy of income and expenditure statements showing monies received and the amount spent on each aspect of the programme. 	

Work to be completed to achieve Milestone 4

- a) Expected date of completion of milestone 4 is the last working day of June.
- b) Details of the tasks to be completed by the Contractor to achieve this milestone are set out in the table below.

Milestone Tasks	Comments on Successes, Emerging Issues and/or Explanations of Variance
4.1 Liaise with the Ministry personnel assigned to the project.	
4.2 Prepare a course programme based on the consultation and points outlined in Schedule One - Programme Details.	

- 4.3 Submit the progress report to the Ministry (including electronic copy in RTF format) by the milestone report date on each of the above tasks and relevant performance measures, as per Schedule One Programme Outcomes, including:
 - A summary statement of any trends and issues that TRCC has identified and actions required, including any recommendations to the Ministry;
 - any variance, actual or anticipated, with explanation; and
 - a copy of income and expenditure statements showing monies received and the amount spent on each aspect of the programme.

Milestone reports for the period July 2009 – June 2011 will follow the same format as the above. These may be reviewed during the annual review.

Review

- 1. During the term of this Agreement, the Ministry and the Contractor shall engage in an annual review:
 - (a) Each year, the annual review is to begin by 1 April, and conclude by 31 May;
 - (b) there shall be a meeting or a series of meetings between the Ministry and the Contractor in which matters specified below are to be discussed, and where possible agreed;
 - (c) the Ministry and the Contractor shall be entitled to request from the other any financial or other information necessary for the purposes of the annual review.
- 2. The matters to be discussed, and where possible agreed in the annual review are:
 - (a) the performance of the Contractor in the delivering and the reporting on the services are as specified in Schedules One, Two and Three;
 - (b) the financial statements prepared by the Contractor;
 - (c) renegotiation of Schedules One, Two and Three as necessary in order to incorporate in the Agreement any changes made as a result of Government policy, or as agreed by the parties.

SCHEDULE THREE

Budget & Payment Schedules

Subject to the Agreement terms and conditions the Contractor shall be paid a maximum of \$NZ443,910.00 (exclusive of GST) per year for the next three years.

The following amounts shall be paid by automatic payment on the 28th of each month for the duration of the contract, unless revised as part of the annual review.

Payment Schedule:	Date	Fees/Costs \$	GST\$	Total \$
	28 July	\$36,992.00	\$4,624.00	\$41,616.00
	28 August	\$36,992.00	\$4,624.00	\$41,616.00
	28 September	\$36,992.00	\$4,624.00	\$41,616.00
	28 October	\$36,992.00	\$4,624.00	\$41,616.00
	28 November	\$36,992.00	\$4,624.00	\$41,616.00
	28 December	\$36,992.00	\$4,624.00	\$41,616.00
	28 January	\$36,992.00	\$4,624.00	\$41,616.00
	28 February	\$36,992.00	\$4,624.00	\$41,616.00
	28 March	\$36,992.00	\$4,624.00	\$41,616.00
	28 April	\$36,992.00	\$4,624.00	\$41,616.00
	28 May	\$36,992.00	\$4,624.00	\$41,616.00
	28 June	\$36,998.00	\$4,624.75	\$41,622.75
Total Budget		\$443,910.00	\$55,488.75	\$499,398.75