

MINOR WORKS MASTER AGREEMENT

DATED: [date of agreement]

AGREEMENT NO: [distinct identifying number]

FOR: [Project number and project name]

BETWEEN:

[Fletcher entity] of 810 Great South Road, Penrose (**Contractor**)

AND

[Minor Works Contractor], company number [#company number]
 of registered address [via the NZ Companies Office website]
 (**Subcontractor**)

IT IS AGREED AS FOLLOWS:

1 CONTRACT DOCUMENTS

- 1.1 This Agreement comprises, in order of precedence, any Works Order signed by both parties in accordance 3.3 and 3.4(a), Schedule 1 – Specific Conditions, the terms and conditions of this Minor Works Master Agreement, and any other documents referred to herein.
- 1.2 The Subcontractor has had access, has reviewed, and understood all documents forming part of this Agreement, irrespective of whether they are physically attached.

2 TERM

- 2.1 Subject to early termination of the Agreement in accordance with clause 18, this Agreement shall be in place for the Term specified in Schedule 1.
- 2.2 The Contractor shall have the right to extend the Term of this Agreement at its sole and absolute discretion for the Period of Extension referred to in Schedule 1 by giving written notice to the Subcontractor.

3 WORKS ORDERS

- 3.1 Where the Contractor wishes to procure works from the Subcontractor under this Agreement during the Term, the Contractor may in its sole and absolute discretion issue a draft Works Order Notice to the Subcontractor.
- 3.2 Each draft Works Order Notice shall be in a form similar to that in Schedule 2, and shall include:
 - (a) the scope of the works to be completed, including the site(s) where the works are required (**Works**);
 - (b) the commencement date for the Works;
 - (c) the completion date for the Works; and
 - (d) whether the Works are to be procured on a lump sum, measure and value and/or cost reimbursable basis.
- 3.3 If the Subcontractor wishes to perform the Works, the Subcontractor shall insert its price proposal for the Works, sign, and return the draft Works Order Notice to the Contractor within 5 working days (**Subcontractor Offer**). If the Subcontractor fails to return a Subcontractor Offer within that timeframe, the draft Works Order Notice will lapse.
- 3.4 Upon receipt of a Subcontractor Offer, the Contractor will either:

- (a) accept the Subcontractor Offer, by counter signing and returning the draft Works Order Notice, at which point it becomes a Works Order binding on both parties, and the Subcontractor will complete the Works pursuant to the terms of the Works Order Notice and this Agreement.
- (b) reject the Subcontractor Offer, by either:
 - (i) not responding to the Subcontractor’s Proposal within 20 working days, in which case the Subcontractor Offer lapses and the draft Works Order Notice is cancelled; or
 - (ii) responding to the Subcontractor’s Offer within 20 working days rejecting elements of the offer and seeking to negotiate an agreed position, in which case no obligations to undertake the Works arise until a Works Order is signed by both parties.

- 3.5 Nothing in this Agreement prevents the Contractor issuing the same draft Works Order Notice to multiple parties, requires the Contractor to issue a draft Works Order Notice to the Subcontractor, or commits the Contractor to accepting a Subcontractor Offer, or requires the Contractor to provide the Subcontractor with any minimum amount or value of work during the Term.

4 SUBCONTRACTOR’S PRIMARY OBLIGATIONS

- 4.1 For each agreed Works Order, the Subcontractor will carry out and complete the Works in accordance with:
 - (a) industry best practice;
 - (b) all applicable laws, regulations, bylaws, codes of practice, consents and alike;
 - (c) all project plans and procedures listed in Schedule 1;
 - (d) the instructions of the Contractor; and
 - (e) the terms and conditions of the relevant Works Order and this Agreement.
- 4.2 The Subcontractor will, at its own expense, obtain all permits and approvals required for the carrying out and completing the Works, except those permits and approvals listed in the Works Order as provided by the Contractor.
- 4.3 The Subcontractor is responsible for the care of the Works and must, at its own expense, make good any loss or damage which may arise or occur as a result of or in consequence of carrying out the Works.
- 4.4 The Subcontractor will, at its own cost, rectify any defects in materials or workmanship in the Works prior to the end of the defects liability period specified in the Works Order (**DLP**).
- 4.5 The Subcontractor will commence the Works on the commencement date(s) in the Works Order (**Commencement Date**).
- 4.6 The Subcontractor will regularly and diligently proceed with the Works following the Commencement Date so as to ensure it can and will complete the Works by the completion date(s) in the Works Order (**Completion Date**).
- 4.7 Should the Subcontractor or any of its employees be permitted to use any facilities, scaffolding, plant or equipment provided by the Contractor then such use shall be on the basis that no warranty or other liability on the part

Initials Subcontractor	
Initials Contractor	

of the Contractor will be created or implied as to the condition or suitability of the said facilities scaffolding, plant or equipment.

5 CONTRACTOR'S PRIMARY OBLIGATIONS

- 5.1 The Contractor will pay the Subcontractor the price for the Works as set out in the Works Order (**Price**), where delivered in accordance with this Agreement.
- 5.2 The Contractor will provide the Subcontractor access to those parts of the site(s) that are required for the Subcontractor to complete the Works, subject to any site access conditions in Schedule 1 and the relevant Works Order (**Site Access Conditions**) and any other reasonable requirements of the Contractor (including health and safety requirements) for access to the site.

6 HEALTH AND SAFETY, ENVIRONMENT AND QUALITY

- 6.1 The Subcontractor will, in relation to health and safety, environmental protection, and quality:
 - (a) comply with all relevant laws;
 - (b) comply with all Contractor policies and procedures (including all critical risk controls and life-saving rules); and
 - (c) comply with all of the Contractor's reasonable instructions on site; and
 - (d) submit a Health & Safety Management Plan, and any other plans required in Schedule 1, to the Contractor prior to commencement of any Works under this Agreement.

7 The Subcontractor will consult, coordinate and cooperate Contractor and relevant third parties in respect of any health and safety, environmental or quality issues, including providing all reasonably requested information in relation to such matters in respect to its activities and its personnel.

8 PRIOR REPRESENTATIONS

- 8.1 The Subcontractor represents, warrants and undertakes on a continuing basis that all information and representations made by the Subcontractor to the Contractor in writing prior to or after the date of this Agreement in response to any pre-qualification or procurement process leading to this Agreement are:
 - (a) true, complete and correct and not misleading (including through non-disclosure); and
 - (b) shall not limit any other obligation under this Agreement.

8.2 The Subcontractor will notify the Contractor promptly should it become aware that any representations referred to in clause 7.1 made to the Contractor were untrue, incorrect or misleading at the time, or where the representations made at the time were true, correct and not misleading but the position has now materially changed.

8.3 The Subcontractor acknowledges that the Contractor has, in entering into this Agreement and during the term, relied on clause 7.1 and the Subcontractor's representations. Should any representations be untrue or misleading in any material respect it will be considered a material breach by the Subcontractor, and the Contractor may terminate this Agreement by written notice to the Subcontractor without any liability from the Contractor to the Subcontractor.

9 ESG REPORTING

9.1 If requested by the Contractor, the Subcontractor shall, at its cost, provide in the form, to the extent, in the manner, to whom, and at times requested by the Contractor, data, records and information relating to environmental, sustainability and governance issues, including as to:

- (a) GHG Emissions associated with the Subcontractor's activities under this Agreement (which may be provided to the Contractor directly, or via a third party supply chain portal nominated by the Contractor);
- (b) energy production or energy consumption; and
- (c) waste data relating to the Subcontractor's activities under this Agreement, including type of waste, volume or tonnage, and disposal route (landfill or diversion).

9.2 If product supply is part of this Agreement, if requested by the Contractor, the Subcontractor shall, at its cost, provide the Contractor with any Sustainable Product Certifications that it holds.

9.3 The Subcontractor shall:

- (a) collect and keep all data, information and records as may be required to enable the Subcontractor to discharge its obligations under clause 8.1 and in any event hold such data, information and records for a minimum of seven years;
- (b) ensure such data, information and records are accurate;
- (c) advise whether the data, information or records or any part of the data, information or records, has been validated by independent audit and, if so, to what verification standard; and
- (d) permit any persons appointed or approved by the Contractor to examine, monitor, measure, copy, audit and/or verify such data, information and records and will cooperate with, and provide all reasonable assistance to any such persons (including providing access to premises, plant and the Subcontractor's equipment, producing and giving access to documents and answering any relevant questions).

9.4 Breach of this clause 8 will be deemed a material breach of this Agreement, allowing the Contractor to terminate this Agreement by immediate written notice without any liability from the Contractor to the Subcontractor.

9.5 In this Agreement:

- (a) **GHG Emissions** means emissions of Greenhouse gases from all sources, categorised as Scope 1, 2 and 3 Emissions as defined by "A Corporate Accounting and Reporting Standard" published by the Greenhouse Gas Protocol.
- (b) **Sustainable Product Certifications** means Product Certifications means any certifications defined in the Fletcher Building 'Sustainability Certified Products' document (which can be accessed at <https://fletcherbuilding.com/assets/1-about-us/documents/revenue-sustainable-products.pdf>) and any third party product sustainability certifications relevant to the product supplied.

10 SUPPLIER CODE OF CONDUCT

Initials Subcontractor	
Initials Contractor	

10.1 The Subcontractor acknowledges that it has read and understood the Contractor’s Supplier Code of Conduct, which is available at [Supplier-Code-of-Conduct.pdf](#). The Subcontractor agrees to be bound by the Supplier Code of Conduct, as may be amended from time to time, in the performance of the Subcontract Works.

10.2 Breach of this clause 9 shall be deemed a material breach of this Subcontract, allowing the Contractor to terminate this Subcontract by immediate written notice without any liability from the Contractor to the Subcontractor.

11 EXTENSIONS OF TIME

11.1 The Subcontractor shall give written notice to the Contractor if it is, or is likely to be, delayed in delivery of the Works. Such notice shall be no later than 5 working days following the circumstance giving rise to the delay.

11.2 The Contractor will grant a reasonable extension to the Completion Date only where the Subcontractor has complied with clause 11.1 and the delay is caused by:

- (a) a variation under clause 12;
- (b) any circumstance not reasonably foreseeable by an experienced subcontractor at the time of submitting a Subcontractor Proposal, and not due to the fault of the Subcontractor; or
- (c) the Contractor or other persons who as between the Contractor and Subcontractor the Contractor is responsible (unless such delay was contemplated by this Agreement).

11.3 The Subcontractor shall not be entitled to time related costs where an extension of time is granted on grounds other than those in 10.2(a).

12 VARIATIONS

12.1 The Contractor may, by written direction, instruct the Subcontractor to vary the Works. The Subcontractor must comply with any such instruction.

12.2 The Contractor may decrease or omit any part of the Works for the purpose of having that part executed by itself or another person.

12.3 When valuing variations the priority of valuation method shall be:

- (a) by agreement;
- (b) utilising scheduled rates where applicable;
- (c) adjusting scheduled rates where appropriate; or
- (d) anticipated net cost.

12.4 When valuing negative variations, the amount deducted will include an allowance for offsite overhead and margins. The amount deducted will only include an allowance for onsite overheads where the negative variation reasonably reduces those costs.

12.5 If the Contractor and Subcontractor cannot agree on a price for a Variation, the Contractor must, acting reasonably, determine the price for the Variation having regard to the Price and/or market rates for similar works.

13 PROGRESS PAYMENTS

13.1 The Subcontractor will submit to the Contractor monthly payment claims on or before the payment claim date in Schedule 1 (**Payment Claim Due Date**) in such format and through such method as the Contractor may require (i.e. by email, electronic accounts payable system and/or other

online platform). All payment claims must detail:

- (a) the Agreement and Works Order to which the payment claim relates;
- (b) the Work performed and the relevant period to which the payment claim relates;
- (c) the amount claimed for the Work performed and the due date for payment, which will be the last working day of the following month;
- (d) the manner in which the Subcontractor calculated the claimed amount;
- (e) amounts paid by the Contractor in relation to any previous payment claim; and
- (f) that the payment claim is made under the Construction Contracts Act 2002.

13.2 The Contractor will by the 20th of the month following the applicable Payment Claim Due Date provide a payment schedule to the Subcontractor. In accordance with section 19K of the Goods and Services Tax Act 1985, the Contractor and Subcontractor agree that the Contractor will issue the tax invoice in respect of a taxable supply of goods and services made by a Subcontractor to simplify the administration of invoicing and payments between the Contractor and Subcontractor. The Subcontractor and Contractor agree the Subcontractor shall not issue a tax invoice for a taxable supply made in respect of the Subcontract Works.

13.3 The Contractor will, by the last working day of the month following the applicable Payment Claim Due Date, pay the Subcontractor the scheduled amount set out in the Contractor’s payment schedule.

13.4 The Contractor will be entitled to retain from each progress payment retention monies as stated in the relevant Works Order. Any retentions withheld in accordance with this clause shall be released by the end of the calendar month following the month in which completion was certified in accordance with clause 12.3 or the end of the calendar month following the month the DLP is concluded, whichever is later.

13.5 Unless the Subcontractor has remedied the defects in the performance of its contractual obligations within 10 working days of receiving notice under the Construction Contracts Act 2002, the Contractor may use the retentions to remedy those notified defects. The Contractor’s written notice to the Subcontractor shall set out:

- (a) that it intends to use retentions for the purpose of remedying defects in performance of the Subcontractor’s obligations under the Subcontract; and
- (b) details of the defects to be remedied.

14 COMPLETION

14.1 The Works will not be complete until:

- (a) the Works are complete and free from all but minor defects;
- (b) all surplus materials, plant and rubbish have been removed from the site(s); and
- (c) any warranties or guarantees specific in the Works Order have been provided in a form approved by the Contractor.

Initials Subcontractor	
Initials Contractor	

14.2 The Subcontractor will promptly notify the Contractor in writing when it considers the Works have reached completion. Such notice will include the date the Subcontractor believes completion was achieved.

14.3 Following notice under clause 12.2, the Contractor will confirm completion, or, reject completion setting out details of those matters outstanding.

15 FINAL PAYMENT CLAIM

15.1 The Subcontractor must provide a final payment claim within 1 month of the Contractor confirming completion of the Works in accordance with clause 12.3. Following submission of the final payment claim, save to the extent included in that final payment claim, the Subcontractor waives any right to bring any action, claim, demand, or proceedings in connection with the relevant Works Order.

15.2 If the Subcontractor fails to provide a final payment claim as required by clause 13.1, the Contractor shall make a reasonable assessment of the amount due and notify the Subcontractor accordingly. If the Subcontractor fails to object to that assessment within 1 week, the Contractor's assessment shall be final, and the Subcontractor waives any right to bring any action, claim, demand, or proceedings in connection with the relevant Works Order.

16 SET OFF

17 The Contractor shall be permitted to set-off or deduct any amounts (liquidated or otherwise) in respect of its genuine claims from any payment that may be due to the Subcontractor.

18 INSURANCE

18.1 The Subcontractor will effect and maintain the insurances set out in Schedule 1 (*Subcontractor Insurances*) on terms and conditions acceptable to the Contractor, and must provide satisfactory evidence of such insurances to the Contractor before commencing the Works.

18.2 If the Subcontractor fails to arrange or keep in force any insurance required under this Agreement, the Contractor may, after notifying the Subcontractor in writing, arrange or keep in force that insurance and the Subcontractor shall indemnify the Contractor for the cost of so doing.

19 LIABILITY

19.1 To the extent permitted by law, the Subcontractor will indemnify the Contractor for any liability, fine, penalty, costs, damage, loss or expense that arise out of, or in consequence of:

- (a) the construction of, or remedying of defects in, the Works,
- (b) a failure to comply with the terms of this Agreement or the relevant Works Order; or
- (c) this Agreement or any Works Order being terminated for default under clause 18.1.

19.2 The Subcontractors liability to indemnify the Contractor will be reduced proportionately to the extent the Contractor, its servants, or agents, have contributed to the loss, liability, or loss.

20 ASSIGNMENT OR SUBCONTRACTING

20.1 The Subcontractor shall not assign, change, novate or sublet all or any part of its rights and/or obligations under this Agreement without the prior written approval of the Contractor. For the purposes of this clause any change in

ownership or controlling interest in this Agreement shall be deemed to be an assignment.

20.2 No such assignment or subcontracting will affect or limit the Subcontractor's liability or responsibility to complete the Works and to comply with this Agreement or relevant Works Order Notice.

21 TERMINATION

21.1 The Contractor may terminate this Agreement or any Works Order for default by written notice if the Subcontractor:

- (a) is in default of or fails to observe or comply with the Agreement and that default has not been remedied within 48 hours of notice to remedy the same;
- (b) breaches any of its obligations under the Agreement regarding health, safety, the environment, or the Contractor's drug and alcohol policy;
- (c) makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, that party's creditors;
- (d) goes into receivership or has a receiver, trustee and/or manager (including a statutory manager) appointed in respect of all or any of that party's property; or
- (e) is the subject of liquidation proceedings commenced in the High Court.

21.2 Termination of this Agreement under clause 18.1 shall be without prejudice to any rights, liabilities or obligations of the parties arising or accruing under the Agreement prior to the date of termination.

21.3 The Contractor may at any time for the Contractor's convenience terminate the Agreement or any Works Order by giving 5 days written notice to that effect.

21.4 Where the Agreement or a Works Order Notice is terminated under clause 18.3, the Subcontractor will be entitled to be paid for Work properly performed up until the date of termination. The Subcontractor will have no right to be paid or recover any other amounts in connection with the termination or this Agreement or a Works Order.

22 DISPUTES

22.1 The Parties will use reasonable endeavours to resolve disputes in relation to the Works and/or this Agreement amicably at project level. A written notice giving details of the dispute shall be served on the other party in the first instance.

22.2 If no agreement or settlement has been reached within 20 days of the notice referred to in clause 17.1, or such further time as the parties may agree, then either party may give to the other party by further notice may require the dispute to be referred to arbitration for determination before a sole arbitrator, as follows:

- (a) in accordance with the Arbitration Act 1996 (and clause 5 of Schedule 2 of that Act applies);
- (b) by a sole arbitrator agreed upon by the parties and failing agreement, by an arbitrator appointed by AMINZ or equivalent body at the request of either party;
- (c) the seat and location of the arbitration will be Auckland, New Zealand;
- (d) the language of the arbitration will be English; and

Initials Subcontractor	
Initials Contractor	

- (e) the award of the arbitrator will be final and binding on the parties, subject to the rights of appeal on a question of law pursuant to clause 5 of Schedule 2 of the Arbitration Act.
- 22.3 The agreement to arbitrate contained in this clause is governed by, and will be interpreted in accordance with, the laws of New Zealand.
- 23 Nothing in the agreement to arbitrate prevents either the Contractor or the Subcontractor from seeking an interim injunction or other urgent interim relief for any conduct or threatened conduct that is or would be a material breach of this Subcontract.
- 24 **NOTICES**
- 24.1 All notices or other communication required by this Agreement will be in writing, addressed to the relevant party and sent to such party in accordance with the notice details set out in Schedule 1.
- 25 **MEDIA**
- 25.1 The Subcontractor shall not make any public announcement, respond to media requests, issue any press release or other information (including digital images) concerning this

Subcontract, its subject matter, the Project, the Contractor or any client of the Contractor, in any media or in its marketing material, including on social media, without the prior written approval of the Contractor. The Subcontractor shall refer to the Contractor any enquiries from any media or third parties, including members of the public, concerning the same.

26 GENERAL

- 26.1 The Agreement is governed by, and is to be construed in accordance with, New Zealand law.
- 26.2 No waiver or any breach of, or failure to enforce any provision of, this Agreement or any Works Order at any time by either Party shall in any way limit the right of such Party thereafter to enforce and compel strict compliance with the provisions of this Agreement or the relevant Works Order.
- 26.3 The Agreement constitutes the entire agreement between the parties in relation to its subject matter. The Subcontractors standard terms and conditions, if any, do not form part of this Agreement or the relevant Works Order.
- 26.4 Neither party shall vary this Agreement (including a Works Order) except in writing signed on behalf of both Parties.

EXECUTED AS AN AGREEMENT:

EXECUTED by

The **Contractor** by:

 Authorised Signatory

 Print Name

EXECUTED by

The **Subcontractor** by:

 Authorised Signatory

 Print Name

Initials Subcontractor	
Initials Contractor	

SCHEDULE 1 – SPECIFIC CONDITIONS

MINOR WORKS MASTER AGREEMENT NO. [INSERT NUMBER FROM FIRST PAGE]

Clause 2.1: Term	Commencement Date: [Insert] Expiry Date: [Insert]
Clause 2.2: Period of Extension	Click or tap here to enter text.
Clause 4.1(c): Project Plans	[List all project management, H&S plans etc that the Subcontractor is required to comply with. Examples below, delete if not applicable] [Health and Safety Plan] [Project Management Plan] [Environmental Management Plan]
Clause 4.2: Permits and Approvals	
Clause 5.2: Site Access Conditions	
Clause 6.1: Subcontractor Plans	
Clause 13.1: Payment Claim Due Date	
Clause 18.1: Subcontractor Insurances	Click or tap here to enter text.
Clause 24.1: Notices	
Other Conditions	

Initials Subcontractor	
Initials Contractor	

SCHEDULE 2 – FORM OF WORKS ORDER NOTICE

WORKS ORDER

1. Project name	
2. Minor Works Master Agreement No.	
3. Date	
4. Contractor	
5. Subcontractor	
6. Works	
7. Commencement date of Works	
8. Completion date of Works	
9. Pricing Method	
10. Subcontractor Price	
11. Defects Liability Period	
12. Retentions	
13. Warranties and Guarantees	
14. Other Conditions of Works Order	

EXECUTED AS AN AGREEMENT:

EXECUTED by

The **Contractor** by:

Authorised Signatory

Print Name

EXECUTED by

The **Subcontractor** by:

Authorised Signatory

Print Name

Initials Subcontractor	
Initials Contractor	