

Contract for Temporary Labour Services

[Insert Fletcher Construction BU name]

(Contractor)

and

[Insert company name]

(Supplier)

[Date]

THIS AGREEMENT IS MADE ON THE **XX** DAY OF **MONTH** 20**XX**

BETWEEN **[Insert Fletcher Construction BU name]** ("the Contractor")

OF 810 Great South Road, Penrose, Auckland

AND **Full Subcontractor Company name**

OF **Registered address, Location, Postcode**

(hereinafter referred to as "**the Supplier**")

PROJECT **Insert**

PRINCIPAL **Insert**

Introduction and agreement

- A. The Supplier agrees to provide the Services to the Contractor on the terms and conditions contained in this Agreement.

Execution

Executed as an agreement.

[Insert Fletcher Construction BU name]

Director/Authorised Signatory

Print Name

Witness Signature

Print Witness Name

Full Subcontractor Company Name

Director

Print Name

Director

Print Name

SPECIFIC TERMS

(These Specific Terms are to be read in conjunction with the General Terms and the clause references below are to clauses in the General Terms)

Item	Description	Specific Term
1.	Services (clauses 1.1 and 5)	As described in Schedule 1
2.	Commencement Date	Insert
3.	Term	Initial Term: Insert years Renewal Term: Insert as agreed by both parties
4.	Price (clause 4)	As described in Schedule 2
5.	Payment term (clause 4.2)	The Supplier will submit monthly GST invoices, which invoices will be received by no later than the 5th of each month in respect of Services supplied during the preceding month. All invoices shall specify the amount payable, state the relevant Purchase Order number or numbers, and include reasonable detail of the Services supplied during the relevant period. The Contractor will pay for the Services on or around the 20 th of the month following the month in which the Services were supplied, provided that the invoice has been received by the 5 th of the month following the month in which the services were provided.
6.	Minimum insurance cover (clause 7)	<ul style="list-style-type: none"> • Public liability - \$10,000,000 • Professional Indemnity - \$1,000,000
7.	Minimum notice of termination (clause 11)	Notice by either party to terminate this Agreement shall be no less than the following number of Business Days, except as otherwise provided in this Agreement: <ul style="list-style-type: none"> • 20 Business Days
8.	Notices (clause 12)	<p>Contractor: Address: 810 Great South Road, Penrose, Auckland Attention: Insert</p> <p>Email Insert Attention: Insert</p> <p>Supplier: Insert Address: Insert</p> <p>Email: Insert Attention: Insert</p> <p>As updated by either party upon notice to the other party from time to time.</p>
9.	Relationship Managers	<p>The primary point of contact between the parties in connection with the Services shall be between the following Relationship Managers (or such replacement Relationship Manager as a relevant party may notify from time to time):</p> <p>Contractors Relationship Manager: Insert Address: Insert Email: Insert Ph: Insert</p> <p>Suppliers Relationship Manager: Insert Address: Insert</p>

Item	Description	Specific Term
		Email: Insert Ph: Insert
10.	Service levels / KPIs (clause 14 / Schedule 4)	As described in Schedule 4
11.	Additional Terms	<p>11.1 Customer Service and Account Management</p> <p>The Supplier will manage this account according to the account management structure set out in Schedule 3 and will nominate a relationship manager, who will be the strategic point of contact for the Supplier, supported by the Suppliers senior management and sales team.</p> <p>This relationship manager will be responsible for ensuring compliance by the Supplier to the account management structure set out in Schedule 3 and will meet with the Contractor quarterly (as required) at the Contractors offices as advised from time to time, to review performance in line with the KPIs in Schedule 4, and discuss operational matters, industry trends and other matters as they arise.</p> <p>11.2 Reports</p> <p>The Supplier must provide correctly formatted, complete and accurate management reports to the Contractor in excel, pdf or any other format as agreed to by both parties as set out in Schedule 5.</p> <p>If the Supplier does not provide the temporary labour reports in accordance with the KPI set out in Item 3 of Schedule 4.</p> <p>11.3 Other Terms</p> <p>The other terms as set out in Schedule 1 shall apply to this Agreement and the Services performed under it.</p>

GENERAL TERMS

1. Definitions and interpretation

In this Agreement, unless the context requires otherwise:

Definitions:

Agreement means this agreement, comprising the Specific Terms and the General Terms, as amended from time to time. In the event of a conflict between the General Terms and the Specific Terms, the Specific Terms shall prevail;

Applicable Law means all applicable legislation, regulations, bylaws, codes, standards, registered exchange rules and any other applicable rules (statutory or otherwise);

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for business in Auckland but excludes any day in the period from 24 December in any year to 4 January (both inclusive) in the following year;

Confidential Information means any information relating to any Group Company which by its nature, or by the circumstances of its disclosure to the holder, is or could reasonably be expected to be regarded as confidential;

Commencement Date means the commencement date specified in item 2 of the Specific Terms;

General Terms means these general terms;

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.

GST means goods and services tax payable under the Goods and Services Tax Act 1985;

Initial Term means, subject to early termination in accordance with this agreement, the initial term of this agreement set out in Item 3 of the Specific Terms.

Insolvency Event means in respect of either party (other than for the purpose of solvent reconstruction or amalgamation):

a receiver, receiver and manager, liquidator, interim liquidator, statutory manager, trustee, administrator, controller, inspector appointed under any companies or securities legislation, or similar official is appointed in respect of that party or any of its property, or any security over any substantial part of its assets is enforced;

the party ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that party's creditors or threatens to do so, or stops payments to its creditors generally;

the party is, becomes, or is deemed to be insolvent or bankrupt;

a distress, attachment or other execution is levied or enforced upon or commenced against any substantial part of its assets and is not stayed within 14 days;

anything having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction; or

in the event that the party is an individual, anything having a similar effect to any of the events specified above happens in respect of that individual;

Price means the price calculated in accordance with item 4 of the Specific Terms;

Renewal Term means, subject to early termination in accordance with this agreement, and subject to the option granted in clause 3 being exercised in accordance with its

terms, the renewal term, if any, set out in Item 3 of the Specific Terms.

Representative means, in respect of a party, its directors, officers, employees, agents, advisors and sub-contractors (as applicable);

Services means the services specified in item 1 of the Specific Terms;

Specific Terms means the specific terms which precede these General Terms;

Sustainable 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; and

Term means the Initial term of this Agreement and the Renewal Term, if any.

- 1.1 A reference to a statute includes amendments to that statute and any statute to the extent passed in substitution for that statute.
- 1.2 If any matter requires agreement between the parties, such agreement must be express and in writing and shall be at the absolute discretion of each party.
- 1.3 All references to "including" shall be construed to mean "including without limitation".
- 1.4 The singular shall include the plural and *vice versa*.

Scope and nature of Agreement

- 2.1 This Agreement is entered into by the Supplier for and on behalf of the Contractor. The Contractor agrees that the Supplier enters into this Agreement in its own right and as a consequence the benefit of the respective duties and obligations of the Contractor under this Agreement to the supplier Company are held on trust by the Supplier for the benefit of the Contractor. Without limiting this clause 2.1, the Supplier agrees that where the project suffers any loss or damage arising from a breach of this Agreement, the Contractor may recover that loss or damage (but subject to any limitations of liability set out in this Agreement)
- 2.2 The Contractor acknowledges that:
 - (a) The Contractor may enforce the terms of this Agreement directly against the Supplier.
 - (b) if the Contractor suffers loss as a result of the Suppliers actions or omissions under this Agreement, the Contractor shall be entitled to claim such losses.
- 2.3 The parties acknowledge and agree that this Agreement is a contract for services and that the real nature of the relationship between them is that of independent contractor and principal.

3. Term and renewal

- 3.1 This Agreement will commence on the Commencement Date and will continue for the Initial Term.
- 3.2 The Contractor will have the option, but not the obligation, to renew this agreement for the Renewal Term and will do so by giving written notice to the Contractor prior to the expiration of the Initial Term of its intention to renew.

4. Price

- 4.1 The Contractor will pay the Price for the Services. The Supplier agrees that it will not be entitled to any other payments or reimbursements in respect of the Services.
- 4.2 The Supplier will submit monthly GST invoices to the Contractor which will be paid in accordance with the payment

terms specified at item 5. Payment will be made by direct credit to a bank account nominated by the Supplier.

- 4.3 The Supplier will submit its payment claims (including any invoices and supporting information) 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).
- 4.4 The Contractor shall not be required to pay the Supplier's invoices where the Supplier has not provided the Contractor with all proof of insurances required under this Agreement.
- 4.5 The Supplier warrants that the Price is no less favourable than the price paid by any other purchaser of the same Services supplied by the Supplier in substantially similar volumes or circumstances.

5. Services

5.1 The Supplier agrees to provide the Services to the Contractor on the terms and conditions contained in this Agreement.

5.2 The Supplier warrants and undertakes that:

(a) it has read and understood the Contractor's Supplier Code of Conduct, which is available at <https://fletcherbuilding.com/assets/4-investor-centre/other-documents/Supplier-Code-of-Conduct.pdf>.

The Supplier 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. Breach of this clause 5.2(a) shall 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 Supplier.

(b) the Supplier will, and will ensure that its Representatives will, perform the Services under this Agreement in an efficient, proper, and professional manner, in accordance with all Applicable Law ;

(c) any representations, whether oral or in writing, that the Supplier has made to the Contractor as to the Supplier's qualifications, experience, capacity to provide the Services and any other relevant matter before entering this Agreement are true and complete;

(d) the Supplier will supply all materials, equipment and machinery (as applicable) necessary for the provision of the Services, and will ensure that all such materials, equipment and machinery are fit for their intended purpose and comply with Applicable Law;

(e) the Supplier and each of its Representatives will not use any of the Contractor's equipment unless the Contractor specifically approves such use (which will be solely at the Contractor's discretion);

(f) the Supplier will maintain all licences, consents and permits required by Applicable Law for the performance of the Services; and

(g) the Supplier, at the Supplier's own cost, shall make good any errors, defects or omissions in the Services provided to the Contractor.

5.3 The Supplier will perform the Services at the location notified to the Supplier by the Contractor from time to time, if applicable.

5.4 The Contractor does not guarantee nor warrant that there will be a minimum or maximum amount of Services purchased.

5.5 Unless agreed between the parties, nothing in this Agreement shall be construed as appointing the Supplier as the exclusive supplier of any services to the Contractor.

6. Health and Safety and Environment

6.1 The Supplier must (and must ensure that the temporary labour workers it supplies to the Contractor (the **Candidates**) will) comply with all applicable laws, including (without limitation) the Health and Safety at Work Act 2015 (**Health and Safety Legislation**) and environmental laws and resources consents applicable to the Project, including all related legislation including all regulations and codes of practice. The Supplier must also ensure that all Health and Safety Legislation is complied with by its employees, agents,

sub-Suppliers (if permitted) and any other person at or in the vicinity of any place where the Services are carried out (each a "Workplace").

6.2 The Supplier must also comply with any task specific (i.e. job safety environmental analysis (**JSEA**)) and/or site specific Health and Safety Plan agreed between the parties in writing. The Supplier must, and must ensure that any Candidates, comply with the Contractor's reasonable instructions when on site.

6.3 The Supplier shall comply, and shall ensure that the Candidates comply, with the Contractor's Health and Safety and environmental policies, procedures and security requirements, including any requirements for access to the Site, and including the Contractor's Critical Risk Controls and Life-Saving Rules. If requested by the Contractor, the Supplier will provide information in relation to health and safety and environmental matters, including in relation to itself and the Candidates.

6.4 If no Health and Safety Plan or JSEA is agreed under clause 6.2 then to the extent that:

(a) the Workplace is at the Contractor's premises or at any site controlled by the Contractor; or

(b) any of the Contractor's employees, agents or other Suppliers will carry out work at, or proximate to, the Workplace,

then the Supplier must comply with the Contractor's Health and Safety and environmental procedures (as notified by the Contractor to the Supplier in writing from time to time) and comply with any reasonable direction or requirement of the Contractor in relation to health and safety and environmental matters.

6.5 Without limiting in any way the Supplier's obligations under Health and Safety Legislation and the Health and Safety Plan, the Supplier must have in place a written health and safety policy and health and safety procedures addressing, at a minimum:

(a) appropriate protective safety clothing and equipment;

(b) hazards identified and control measures to be taken, together with procedures for the identification and control of any new hazards identified;

(c) emergency procedures;

(d) training, experience and qualifications of all its employees, agents and Suppliers (including certificates of competence where required); and

(e) procedures for the reporting and recording of accidents or other incidents.

6.6 The Supplier must ensure that its employees, agents and sub-Suppliers and Candidates are properly trained in relation to health and safety, and environmental protection, including, without limitation, training in relation to safe working methods (including, without limitation, the proper use of equipment to be used in the performance of their duties and the avoidance of all hazards associated with their working environment) and occupational first aid, and will ensure, so far as is reasonably practicable, that they do not cause risks to the health and safety of any persons or damage or contamination to the environment.

6.7 The Supplier must:

(a) ensure all relevant personnel attend the Contractor's health and safety and environmental meetings, seminars and inductions as may be required by the Contractor from time to time;

(b) provide the Contractor with, and ensure Candidates provide, such assistance as it may reasonably require to conduct any incident investigation;

(c) immediately notify the Contractor (verbally and in writing) if it is aware, in respect of any Workplace:

(i) any hazard may or does exist;

(ii) any accident, serious harm or "near miss" accident or serious harm to any person has occurred and what steps (if any) have been or are proposed to be

taken in relation thereto, or any damage or contamination caused to the environment; or

- (iii) any regulatory notice (including any improvement or prohibition notice) is likely to be or has been issued,

and will ensure that Candidates will do the same (as may be reasonably applicable to them).

- 6.8 Breach of this clause 6 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 Supplier.

7. Insurance

The Supplier will maintain in full force and effect during the Term comprehensive insurance cover with responsible and reputable insurers as would be prudent for persons engaged in businesses and owning property similar to the Supplier in the same geographic area. Such insurance will include cover for the matters, and at least the minimum amounts, specified in item 6 of the Specific Terms (if any) and will be on an occurrence basis; that is, it will cover any claim made for injuries or damages arising out of an event occurring during the term of the policy regardless of whether the claim is made after the expiration of the term of the policy. Promptly after the date of this Agreement, and on each expiration of any such certificate of insurance, the Supplier will provide to the Contractor a certificate of insurance evidencing the insurance cover referred to in this clause 7.

In the event the Supplier fails to provide the evidence of insurance required, the Contractor may, if it chooses, arrange the required insurance. All costs associated with the Contractor arranging the required insurance will be borne by the Supplier.

8. Liability and indemnity

- 8.1 The Supplier will immediately notify the Contractor of damage or loss to any of the Contractor's property or any property of a third party, or of any event or circumstance that might result in a claim against the Contractor or the Supplier. Following such notice, under the Contractor's supervision, the Supplier will use all reasonable endeavours to repair any damage or loss for which the Supplier may be responsible.
- 8.2 The Supplier agrees to indemnify each Group Contractor and each of their Representatives for any liability, damage, loss, cost or expense (including damage to property, plant or equipment) suffered or incurred as a direct or indirect result of any act or omission by the Supplier or the Supplier's Representatives in breach of any warranty, undertaking or obligation under this Agreement or any Applicable Law or any other act or omission, negligence or recklessness of the Supplier or any of its Representatives.

9. Confidentiality

- 9.1 The Supplier agrees to treat as confidential any Confidential Information that comes into its possession and will ensure that all Confidential Information that is in the Supplier's possession or control is protected at all times from unauthorised access or use. The Supplier will not use or disclose any Confidential Information, except so far as may be reasonably necessary to enable the Supplier to fulfil the Supplier's obligations under this Agreement (and then subject to suitable confidentiality undertakings from the person to whom any Confidential Information is disclosed).
- 9.2 The Supplier undertakes that, during and after the Term, it will comply with securities law and registered exchange rules to the extent applicable to any Confidential Information that comes into its possession in the performance of this Agreement or otherwise. Each party agrees not to make any announcement or disclosure as to the existence or subject matter of this Agreement except in a form and manner as approved by the Contractor and the Supplier.

10. Conflicts

During the Term, the Supplier shall not enter into any contracts, business interests and/or activities (either directly or indirectly) which may conflict in any way with the

Supplier's obligations under this Agreement or prevent the Supplier from properly performing its obligations under this Agreement.

11. Termination

- 11.1 Without prejudice to any other right or remedy, whether under this Agreement, statute or otherwise, either the Contractor or the Supplier may terminate this Agreement by notice to the other party if:

- (a) the other party breaches any material obligation of that party under this Agreement and the breach is not capable of being remedied, or the breach is capable of being remedied and the defaulting party fails to remedy the breach to the non-defaulting party's satisfaction within 14 days after notice in writing has been given to the defaulting party requiring such breach to be remedied; or
- (b) an Insolvency Event occurs in respect of the other party, and, if the Supplier fails to meet any of the KPIs four times within a 6 month period, such failure will be deemed to be a breach of a material provision of this agreement that is incapable of remedy, giving the Contractor the right to immediately terminate this agreement in accordance with clause 11.1(a) of the General Terms.

- 11.2 The Contractor may terminate this Agreement immediately if the Supplier or a Candidate breaches any obligations regarding health, safety, the environment, or the Contractor's drug and alcohol policy.

- 11.3 Termination of this Agreement shall:

- (a) not affect any provisions of this Agreement which are intended to continue after the Term (including clauses 8, 9 and 11.2) and shall also be without prejudice to any claim by either party against the other party arising out of any breach or non-performance by that party of any obligations imposed on that party under this Agreement at any time prior to termination; and
- (b) require the Supplier to return all the Contractor documents (including correspondence, lists of clients or customers, notes, memoranda, plans, drawings and electronically stored material) made or compiled in the course of providing the Services or otherwise acquired by the Supplier concerning the business or affairs of any Group Contractor, within five days of the termination of this Agreement.

12. Notices

Every notice or other communication given under or in connection with this Agreement will be in writing and addressed to the relevant party in accordance with item 8 of the Specific Terms and personally delivered or sent by pre-paid registered mail or email. No notice or communication is effective until received. Every notice or other communication will be deemed to have been received three Business Days after it has been put into the post (if sent by pre-paid registered mail) or when it passes the point in the sender's computer system that the communication could not be stopped by the sender from being transmitted (if sent by email) and, in either case, if deemed receipt occurs after 5.00pm on a Business Day, deemed receipt will be deferred until 8.30am on the next Business Day. The Supplier consents to the receipt of commercial electronic messages from and relating to any Group Contractor.

13. Guarantee and Indemnity

- 13.1 NOT USED.
- 13.2 NOT USED.
- 13.3 NOT USED.

14. Key performance indicators

The Supplier must comply with each of the service levels or key performance indicators, if any, referred to in item 10 of the Specific Terms (the KPIs). If in the reasonable opinion of the Contractor, the Supplier fails to perform to the standard required by a KPI, the Contractor may require the Supplier to submit to the Contractor, within the period specified by the Contractor, a remedial plan and, on notification by the

Contractor that the remedial plan is reasonably acceptable to the Contractor, implement the remedial plan.

15. Assignment

15.1 The Supplier may not assign any of its rights or obligations under this Agreement, except with the prior written consent of the Contractor. Any change in the effective management or control of the Supplier or any parent Contractor of the Supplier, through whatever means, shall be deemed to be an assignment of this Agreement requiring the prior written consent of the Contractor.

15.2 The Contractor may assign any of its rights or obligations under this Agreement to any Group Contractor or to a third party purchaser of all or any part of the Contractor's business and assets whom the Contractor reasonably believes will be able to honour such rights and obligations, without the consent of the Supplier.

16. Intellectual Property

Any intellectual property created by the Supplier or any of its Representatives in the course of this Agreement belongs to the Contractor. The Supplier hereby assigns (or shall procure such assignment) to the Contractor of the Supplier's entire right, title and interest in any such intellectual property. The Supplier will, and will ensure that all Candidates will, do whatever is necessary (including signing any document required by the Contractor) to ensure that such intellectual property rights are vested in the Contractor.

17. Cost Savings

The Supplier will work with the Contractor to identify and, to the extent reasonably possible, give effect to opportunities to reduce costs relating to the supply of the Services. Any realised cost savings will be given effect to under a proportionate reduction in the Price of the Services.

18. Prior representations

(a) The Supplier represents, warrants and undertakes on a continuing basis that all information and representations made by the Supplier to the Contractor, whether oral or in writing prior to or after the date of this Agreement, including in response to any pre-qualification questions or procurement process leading to this Agreement are:

- (i) true, complete and correct and not misleading (including through non-disclosure); and
- (ii) shall not limit any other obligation under this Agreement.

(b) The Supplier will notify the Contractor promptly should it become aware that any representations referred to in clause 18(a) 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.

(c) The Supplier acknowledges that the Contractor has, in entering into this Agreement and during the term, relied on clause 18(a) and the Supplier's representations. Should any representations be untrue or misleading in any material respect it will be considered a material breach by the Supplier, and the Contractor may terminate this Agreement by written notice to the Supplier without any liability from the Contractor to the Supplier.

19. ESG Reporting

(a) If requested by the Contractor, the Supplier 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, reports and information relating to environmental, sustainability and governance issues, including as to:

- (i) GHG Emissions associated with the Supplier'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);
- (ii) energy production or energy consumption; and

(iii) waste data relating to the Supplier's activities under this Agreement, including type of waste, volume or tonnage, and disposal route (landfill or diversion).

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

(c) The Supplier shall:

(i) collect and keep all data, information and records as may be required to enable the Supplier to discharge its obligations under clause 23(a) and in any event hold such data, information and records for a minimum of seven years;

(ii) ensure such data, information and records are accurate;

(iii) 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

(iv) 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 Supplier's equipment, producing and giving access to documents and answering any relevant questions).

(d) Breach of this clause 19 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 Supplier.

20. Dispute Resolution

If any dispute or difference of any kind whatsoever shall arise between the Contractor and the Supplier under this Agreement either party may give to the other party a notice that a dispute exists, specifying its nature, the point(s) in issue and its intention to refer the dispute to arbitration. If the parties fail to resolve such dispute by further consultation within a period of thirty (30) days from the date upon which such notice of dispute has been given, then either party may, by written notice, 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

(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.

The agreement to arbitrate contained in this clause is governed by, and will be interpreted in accordance with, the laws of New Zealand.

Nothing in the agreement to arbitrate prevents either the Contractor or the Supplier 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 Agreement.

21. Other

(a) This Agreement constitutes the entire agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

- (b) No waiver of any breach of, or failure to enforce any provision of, this Agreement by any party shall in any way limit the right of such party thereafter to enforce and compel strict compliance with the provisions of this Agreement.
- (c) No party shall vary this Agreement except in writing (but not by email) signed on behalf of both parties, except that the Contractor may vary the General Terms from time to time by notice in writing to the Supplier.
- (d) If any term of this Agreement is, or becomes, unenforceable, for any reason, the relevant term is to be considered to be modified to the extent necessary to remedy the unenforceability. If this is not possible, the provision is to be severed from this Agreement, without affecting the enforceability of any other term of this Agreement.
- (e) The Contractor is entitled to set-off, deduct or withhold against and from any sums that would otherwise be due to the Supplier any amount in respect of genuine claims it may have against the Supplier in relation to or in connection with the Subcontract or any other legally binding agreement between the Supplier and the Contractor, including overpayments, loss and damages (whether liquidated or otherwise).
- (f) Where any provision of this Agreement is expressed to be for the benefit of any person other than either party, such provision is intended to confer a benefit on such person, enforceable at the suit of that person, in terms of the Contracts (Privity) Act 1982.
- (g) This Agreement shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- (h) This Agreement may be executed in counterpart copies each of which will be deemed an original, and all of which together will constitute one and the same instrument.

SCHEDULE 1: SERVICES

1. Services

- 1.1 The Supplier will be appointed to the Contractors temporary labour panel for the provision of temporary contract labour services for blue collar and white collar roles **as prescribed and directed by the Contractor** at the Location(s) where the Company conducts business and in accordance with the **service levels** in **Schedule 4**.
- 1.2 Should the Supplier fail to meet the KPIs four times in six months then this would qualify as a material breach that is incapable of remedy and therefore gives the Company the right to terminate the agreement in accordance with **clause 11.1** of the **General Terms**.
- 1.3 A Candidate is defined as a person or persons who are nominated by the Supplier to fulfil the temporary role as defined by the Contractor
- 1.4 The Supplier will provide temporary contract labour services to the Contractor including:
 - 1.4.1 Candidate sourcing or search of the Supplier 's database to identify suitable Candidates;
 - 1.4.2 Candidate screening, background checks and pre-commencement activities including:
 - 1.4.2.1 checking employment history, especially CV gaps;
 - 1.4.2.2 verification of trade and professional qualifications;
 - 1.4.2.3 verification of employment eligibility/visa status;
 - 1.4.2.4 identification (passport or other photo ID corroboration, or a mix of other documentation);
 - 1.4.2.5 confirmation of home address;
 - 1.4.2.6 conduct of reference checks;
 - 1.4.2.7 skills and ability tests; and
 - 1.4.2.8 facilitation of criminal history checking
 - 1.4.3 Account management and reporting; and
 - 1.4.4 Management of payroll and human resource issues.
- 1.5 Where the Candidate screening and background checks indicates that the Candidate is by reason of temperament, qualifications, or experience unsuitable for the position proposed, is of bad character, or the information provided by the Candidate is incorrect, then the Candidate must not be provided to the Contractor.
- 1.6 The Supplier will take all reasonable steps to establish that all Candidates submitted to the Company are:
 - 1.6.1 New Zealand citizens (as appropriate); or
 - 1.6.2 not illegal workers.
- 1.7 The Supplier will not engage illegal workers in any capacity to carry out any services for the Company and will notify the Contractor immediately if it becomes aware of the involvement of an illegal worker in the performance of the services.
- 1.8 The Supplier must ensure that the terms of its engagement of Candidates includes terms which enable it to withdraw any offer or terminate any engagement in its absolute discretion.

- 1.9 While performing services, the Supplier must use reasonable endeavours to ensure Candidates conform and comply with the Contractor's standards and business practices.
- 1.10 If the Contractor requests the Supplier to provide services outside the scope of this Agreement, the Supplier will submit a formal, written proposal outlining the additional work to be performed and any proposed additional costs to the Company.

2. Candidate Capabilities

- 2.1 The Supplier must ensure that all trade and professional qualifications of Candidates are kept current in accordance with:
 - 2.1.1 legislation (includes acts, ordinances, regulations, rules, by-laws, orders, awards, proclamations and subordinate legislation);
 - 2.1.2 any professional requirements; and
 - 2.1.3 undertakes an annual check of all qualifications of Candidates to confirm they are current.
- 2.2 The Supplier must require its Candidates to notify it immediately upon loss of any qualification relevant to the labour they provide. Upon receipt of such notification, if the Candidate is providing labour to the Contractor, the Supplier must notify the Contractor, and if requested by the Contractor must replace the Candidate with a Candidate who holds the required qualification at no additional cost to the Company.
- 2.3 The Supplier will maintain records of the trade and professional qualifications of all Candidates and will, if requested by the Company provide a copy of these records.

3. Ordering

- 3.1 The Contractor will specify its requirements when contacting the Supplier and requesting Candidate(s).
- 3.2 The Supplier will ensure they match the Company's requirements in the job briefing they receive and follow a thorough process incorporating the points identified in **Item 1.4 of Schedule 1**, to source the appropriate Candidate for the position requested.
- 3.3 The Contractor may terminate any Candidate at any time by providing 4 hours' notice to the Supplier or by paying the Supplier the applicable rates equivalent to 4 hours work in lieu of such notice. For the avoidance of doubt, **Item 3.3 of Schedule 1** does not apply in the case of replacement by the Company in accordance with **Items 5.2 or 5.3 of Schedule 1**.

4. Advertising

- 4.1 The Supplier will only undertake advertising if approved by the hiring manager or an authorised representative of the Contractor.
- 4.2 The Supplier, when required, will:
 - 4.2.1 provide an outline of the advertising strategy;

- 4.2.2 place display advertising through the Contractor's preferred advertising provider; and
- 4.2.3 obtain prior written approval (including by email) to all advertising.

5. Warranty Period

- 5.1 The Supplier warrants that all Candidates who provide labour under this Agreement:
 - 5.1.1 have appropriate minimum prescribed standards in the areas of numeracy, literacy and conventional reasoning;
 - 5.1.2 have undertaken appropriate pre-employment medical screening and been indicated medically fit to provide labour requested and meet minimum prescribed medical standards associated with their employment category; and
 - 5.1.3 hold all relevant trade and professional qualifications and have the required skill, trade or professional qualifications, which are required by law or are necessary to allow the effective delivery of the labour.
- 5.2 If the Contractor notifies the Supplier that the Contractor is dissatisfied with the performance of a Candidate within the warranty period outlined in **Item 5.3 of Schedule 1** the Supplier will replace or remove the Candidate at no cost to the Contractor.
- 5.3 A warranty period of 4 hours applies from time of commencement in which Candidates will be removed or replaced at no cost, if the Contractor is dissatisfied with their performance.

6. Medical Tests and Assessments

- 6.1 The Supplier must ensure that every Candidate supplied is medically fit to perform the duties they have been engaged to do as per warranty provided in **Item 5.1.2 of Schedule 1**.
- 6.2 As part of the Supplier's pre-employment medical, all Candidates must complete drug and alcohol assessments within one month prior to commencing on the Projec. The cost of the drug and alcohol assessments shall be borne by the Supplier.
- 6.3 The drug and alcohol assessment used must be able to detect drug usage at least 1 week after the assessment has been completed.
- 6.4 At the Contractor's discretion, the Supplier will organise the Candidate to undergo the Contractor's pre-employment medical from the Contractor's preferred medical practitioners.
- 6.5 Pre-employment medicals will be provided to HR representatives at the respective Contractor sites.
- 6.6 If the Contractor chooses that the Candidate undergo the Contractor's pre-employment medical, the Contractor will either be directly invoiced from the examining medical practitioners, or will be invoiced by the Supplier, depending on the requirements of the Contractor site.

7. Personal Protective Equipment (PPE)

- 7.1 The Supplier will ensure that Candidates are provided with appropriate personal protection equipment (PPE) as prescribed by the Project they present for work at any Contractor site.
- 7.2 This shall include as a minimum but not be limited to lace-up safety boots/shoes, NZTA approved, hi visibility vests, safety glasses and gloves.
- 7.3 The Supplier will also ensure that Candidates are provided with any additional personal protective equipment required by the Project.
- 7.4 The personal protection equipment the Supplier provides must meet the relevant New Zealand Standards (as appropriate) and the Candidate must be adequately trained in the safe use of all personal protection equipment.

8. Health and Safety

- 8.1 The Supplier and the Contractor will consult and collaborate with respect to the health and safety of the Supplier's employees while on the Contractor's sites. The Supplier and the Contractor will work together to establish appropriate procedures for ensuring that feedback from Candidates regarding health and safety on the Contractor's sites is appropriately gathered and provided to the Contractor.

9. Notification of Accident or Injury

- 9.1 Where an accident or injury occurs involving a Candidate on the Contractor's work sites the Supplier must:
 - 9.1.1 notify the Contractor in writing immediately after becoming aware of such accident or injury and, in any event, no later than one Business Day after becoming aware of such accident or injury;
 - 9.1.2 provide the Contractor with full disclosure of all of the circumstances surrounding such accident or injury;
 - 9.1.3 prepare an incident investigation report and provide the Contractor with a copy of the report;
 - 9.1.4 provide the Contractor with full details of any worker's compensation claim made by the Candidate in respect of such accident or injury including details of the outcome of such a claim;
 - 9.1.5 cooperate with the Contractor in respect of any investigation of the incident conducted by the Contractor including responding to any queries made by the Contractor (or a representative of the Contractor) within one Business Day of the query being received; and
 - 9.1.6 provide the Contractor with regular updates in relation to the return to work status of the Candidate.
- 9.2 The Supplier will ensure that it obtains the consent of all workers to disclose personal information to the Contractor to enable the Supplier to comply with this **Item 9 of Schedule 1**. The Supplier's compliance with **Item 9.1.5 of Schedule 1** shall only be if and to the extent that such compliance does not prejudice the Supplier's rights.

10. Obligations

- 10.1 The Supplier must, in the provision of the Services and at no extra cost to the Contractor:
 - 10.1.1 manage efficient and clear communication with all of the Contractor's employees and the Contractor as appropriate;
 - 10.1.2 maintain a close awareness of the requirements of the Contractor;
 - 10.1.3 maintain a close understanding of issues relating to the Services being undertaken by the Supplier
 - 10.1.4 institutionalise continuous improvement tools where appropriate to achieve year over year improvements in cost, delivery and quality; and
 - 10.1.5 arrange its resources to provide the Services to relevant New Zealand Standards (as appropriate) and in accordance with this Agreement.

11. ACC, Statutory Holidays, Sick/Bereavement Leave, Kiwisaver and Superannuation

- 11.1 The Supplier acknowledges that it is the employer of the Candidates and that the Contractor has no obligations to the Candidates in the nature of employer/employee obligations.
- 11.2 The Supplier acknowledges that it is responsible for compliance with workers compensation legislation and accident compensation obligations, including the payment of ACC levies for employees including the Candidates, and that any obligations arising from this Agreement under such legislation are the responsibility of the Supplier not the Contractor.
- 11.3 The Supplier acknowledges that it is responsible for making superannuation contributions in respect of any of its employees (including the Candidates), in accordance with applicable superannuation legislation arising out of the provision of the Services by the Supplier.
- 11.4 Notwithstanding any other provision in this Agreement, the Contractor does not have any liability or obligation for salary, wages, payroll tax, PAYE taxation instalments, superannuation (including KiwiSaver), ACC or worker's compensation, annual leave, sick leave or long service leave, or any other benefits in respect of or associated with any employee of the Supplier, including the Candidates.
- 11.5 The Supplier indemnifies the Contractor (including its officers, servants, Suppliers, employees or agents) against any claim made by a Candidate in relation to any of the items specified in **Item 10**, or any claim by a Candidate that the Candidate is an employee of the Contractor, and any liability, loss, damage, cost, or expense (including legal costs) which is incurred or suffered by any of them arising out of any breach of **Item 11.1 to 11.5** of this **Schedule 1** by the Supplier (including its officers, servants, Suppliers, employees or agents).

12. Change of Law

- 12.1 All fees in **Schedule 2** (being ACC, Kiwisaver, Statutory Holiday, Annual Leave and Sick/Bereavement Leave) are fixed for the Term subject to any Change of Law that necessitates an increase, or change in payments required in relation to ACC, Kiwisaver, Statutory Holiday, Annual Leave, Sick/Bereavement and which is payable by the Supplier. If a Change of Law occurs that necessitates an increase or change in payments in relation to these items, the fees will increase by the

amount of the increase in costs to the Supplier, and the Supplier will provide the Contractor with evidence of the increase.

- 12.2 “Change of Law” means the introduction of, or change in, a law that takes effect after the date of this Agreement and which is not anticipated as at the date of this Agreement.

13. Audit

- 13.1 The Supplier shall provide such proof as the Contractor reasonably requires of compliance by the Supplier with all relevant legislation (acts, ordinances, regulations, rules, by-laws, orders awards, proclamations and subordinate legislation) and all necessary license and permit requirements, relating to the provision of the Services.
- 13.2 The Contractor may conduct audits to ensure that the Supplier is complying with its general obligations under this Agreement.

The audits undertaken will include, but are not limited to:

13.2.1 Reviewing:

- 13.2.1.1 reports submitted by the Supplier in accordance with the requirements of this Agreement;
- 13.2.1.2 the Supplier’s database;
- 13.2.1.3 the Supplier’s records;
- 13.2.1.4 the Supplier’s sub Suppliers records; and
- 13.2.1.5 investigating complaints to ensure the Supplier has complied with due process.

13.2.2 conducting surveys with the Contractor’s staff on the Supplier’s performance.

- 13.3 The Supplier grants the Contractor the right to access the Supplier’s premises on reasonable notice by the Contractor and to access the Supplier’s records for the purposes of conducting the audit referred to above. The Contractor will keep any information obtained during the course of such audit confidential.

14. Poaching

- 14.1 The Supplier acknowledges that this is not a exclusive agreement for the services and that other suppliers will be employed for similar or the same services to the project.
- 14.2 Candidates that leave Supplier’s, wil not be approved to work on the project via another company of a similar nature for a period of 3 months unless.
- approved by the previous Supplier
 - the original Supplier’s contract is terminated.
 - the original Supplier, dismissed the candidate.

15. Payments

15.1 All payments are condition on :

- Timesheet signed by the candidate
- Timesheet signed by a authorised signatory
- Approved rate (plus any agreed changes)
- No Payments will be made for no shows.

SCHEDULE 2: PRICE

1. The fees (being ACC, Kiwisaver, Statutory Holiday, Annual Leave, Sick/Bereavement Leave and Public Liability Insurance) in **Table B1** and **B2** are fixed for the term of this Agreement, subject to **Item 12** in **Schedule 1**.
2. The margin expressed as \$/hr in **Table B1** and **B2** will be fixed for 12 months. On the 12 month anniversary and each subsequent anniversary of this Agreement the margin shall be reviewed in accordance with “the Labour Cost Index (Salary and Wage Rates), Table 5.3” referenced from www.stats.govt.nz.
3. All fees are expressed in New Zealand dollars.

EXAMPLE Table B1 - Fees

ACC	Kiwisaver	Satutory Holiday	Annual Leave	Sick/Bereavement Leave	Public Liability	BC Margin including all PPE	*BC Offshore Hire Margin including all PPE	WC Margin including all PPE
2.00%	3.00%	4.20%	8.00%	1.50%	0.10%	\$3.50	\$5.00	\$2.70

*Blue Collar Offshore Hire is defined as the carpenters, excavator operators, and grader operators sourced offshore to meet the rising demand of the skills shortage.

4. The hourly casual pay rate will be market driven but **MUST** meet at least the minimum wage.
5. In addition to the hourly casual pay rate (base rate), the following rates and fees set out in **Table B1** are payable, in each case as applicable as a margin on top of such base rate or as a percentage on cost calculated by multiplying such percentage by such base rate. For the avoidance of doubt, it is acknowledged that each margin and percentage on cost is applied separately to the original base rate (not on a compound, cumulative basis).
6. The Charge rate of a Candidate will be determined as indicated by the following example Rate Card in **Table B2** below:

EXAMPLE Table B2 – Rate Card

	2.00%	3.00%	4.20%	8.00%	1.50%	0.10%		\$3.50	
Hourly Casual Pay Rate \$	ACC	Kiwisaver	Stat Holiday	Annual Leave	Sick/Bereavement Leave	Public Liability	LOADED COST	MARGIN	CHARGE RATE, Excl GST
\$25.00	\$0.50	\$0.75	\$1.05	\$2.00	\$0.38	\$0.03	\$29.70	\$3.50	\$33.20

7. The fees for taking on casual Candidates to “permanent employment” are set out in **Table B3** below:

Table B3 - Fees for taking on casual to “permanent employment”

Length of Service of Candidate	Fixed Fee
Less than 6 weeks	\$1,500
Between 6 weeks and 4 months	\$1,000
More than 4 months	No Charge
Candidates that are introduced to the Supplier by employees of the Contractor – More than 4 weeks	No Charge

8. Rates

Insert Supplier company name here	
Role (examples listed)	Total Cost
GATE KEEPER	\$25.00
LABOURERS Grade 1	\$23.00
LABOURERS Grade 3	\$25.00
LABOURERS Grade 4	\$28.00
LEADING HAND LABOURER Grade 5	\$32.00
HAMMER HANDS	\$32.00
CARPENTERS	\$40.00
LEADING HAND CARPENTER	\$45.00
TRAINEE OPERATOR	\$28.00
EXCAVATOR OPERATOR	\$40.00
SKILLED OPERATOR	\$45.00
INTERMEDIATE OPERATOR	\$33.00

SCHEDULE 3: ACCOUNT MANAGEMENT STRUCTURE

The Supplier will deal with any enquiries, issues or complaints in accordance to the account management structure as set out below :

Escalation	Nominated Personnel	Email	Phone
First level of escalation	Insert FCC labour supervisor	Insert	Insert
Second level of escalation	Insert FCC Project Lead	Insert	Insert

**SCHEDULE 4: SERVICE LEVEL AGREEMENT / KEY
PERFORMANCE INDICATORS**

No	Metric	Metric Measurement	KPI
1	Candidate Request Fill Rate	The Supplier is to provide Candidates to the locations as requested by the Contractor within the timeframe as stipulated by the Contractor	95%
2	Candidate Changes	The Supplier is to highlight changes in employee rates on a monthly basis. Note : Changes must be proposed by Superintents or Engineers and approved by HR and Procurement	90%
3	No Shows	No more than 5 no shows per month	75%
4	Invoice Accuracy & Timeliness	The Supplier invoices are to contain no material errors such as an error in the invoiced amount when compared to the quoted rate and to rates agreed in the Agreement. Invoices are to be issued in a timely manner and contain necessary information for approval by the Contractor.	100%

Additional KPI's may be added as agreed to by both parties

SCHEDULE 5: REPORTS

No	Reports	Description	KPI No	Frequency
1	Candidate Request	Report details ratio of the number of Candidates requested by the Contractor compared to the number of Candidates supplied	KPI 1	Monthly
2	Candidate Changes	Report highlighting <ul style="list-style-type: none"> - Name of Candidate - Rate, Change in Rate, approval of rate change. 	KPI 2	Monthly
3	Headcount	Report details the number of new placements for the month and number of Candidates onsite for the month	N/A	Monthly
4	Safety (where Required)	Report provides a high level summary and specific detail on any safety incident. <ol style="list-style-type: none"> 1 Summary details: <ol style="list-style-type: none"> (a) Number of lost time In injuries (LTIs) (b) Lost time injury frequency (LTI FR) (c) Number of medical treatment injuries (MTIs) (d) Medical treatment injury frequency (MTI FR) (e) Number of other incidents (f) Other incidents frequency (g) Number of total recordable injuries (TRI) (h) Total recordable injury frequency (TRI FR) 2 Safety incidents details: <ol style="list-style-type: none"> (a) Date of injury (b) Date of report (c) Days elapsed (d) Candidate name (e) Business Unit (f) Site (Suburb) (g) City (h) Region (i) Job Commencement Date for the injured employee (j) Number of days since commencement of this Job (k) LTI/ MTI/ Other Incident (l) Number of days lost (m) Industry type (n) Job description (o) Description of incident (p) Corrective action (q) Report to WorkSafe (r) Notified by (s) WorkSafe NZ investigation required? (t) Date investigation completed 	N/A	Monthly

No	Reports	Description	KPI No	Frequency
5	Temp to Perm	Report details the Candidates transferring from casual employment to permanent employment with the Contractor per location and per Business Unit	N/A	Monthly
6	Tenure	Report details the tenure Candidates have been with the Contractor per location and per business unit	N/A	Monthly