

Recruitment for New Zealand

Service Agreement

This agreement is made on _____ (**Agreement**).

PARTIES

Recruitment for New Zealand (**Company**)

[*Name of candidate or employer*] (**Client**)

BACKGROUND

Recruitment for New Zealand connects employment candidates with employers in New Zealand, with a focus on Engineering and Construction Companies.

OPERATIVE PROVISIONS

Definitions and interpretation

1. Definitions

- a. **Business Day** has the same meaning as “working day” in section 29 of the Interpretation Act 1999.
- b. **Client** means the person; organisation or firm to whom the Company provides professional recruiting services or other consulting services, and who is a party to this Service Agreement. This could include an employer or employee.
- c. **Employee** means the individual that is introduced to an employer by the Company in connection with the services provided under this Service Agreement.
- d. **Employer** means the person or entity that enters into an employment relationship, whatever the nature of that relationship, with an individual that is introduced to them by the Company in connection with the services provided under this Service Agreement.

2. Interpretation

In this Agreement unless the context otherwise requires:

- a. a reference to a person includes any other entity or association recognised by law and vice versa;
- b. words include singular and plural numbers;
- c. words referring to one gender include every other gender;
- d. any reference to any of the parties by their defined terms includes that party’s executors, administrators or permitted assigns or both, or being an incorporated company, its successors or permitted assigns or both;

- e. every agreement or undertaking expressed or implied by which more persons than one agree or undertake any obligation and derive any benefit under this Agreement binds and is for the benefit of such persons jointly and severally;
- f. clause headings are for reference purposes only;
- g. a reference to an Item is a reference to the corresponding Item in the Schedule(s) to this Agreement;
- h. where any word or phrase is given a defined meaning in this Agreement, any other part or speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- i. a reference to an Annexure or Schedule is a reference to the corresponding Annexure or Schedule to this Agreement;
- j. a reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
- k. no benefits under section 12 of the Contract and Commercial Law Act 2017 are intended by the parties to be created under this Agreement;
- l. all references to currency are to New Zealand currency;
- m. the calculations of all periods of time or notice exclude the day on which the period or the notice is given and the day on which the period or notice expires.

1 Confidential information

1.1 Confidential information defined

- (a) **Confidential Information** in this clause includes all inventions, techniques and information regarding the current or future business interests, methodology or affairs of either party or any person or entity with which they may deal or be concerned with and which has not previously been made public through no fault of the party claiming that this exception applies.
- (b) Such Confidential Information includes fees, commissions, fee structures and arrangements, except fee information which is made publicly available by the Company.
- (c) Such Confidential Information includes matters of a technical nature, research and development information, notes, products, know-how, trade secrets, engineering or other data, specifications, processes, formulae, manufacturing, planning or marketing procedures, techniques or information, accounting procedures or financial information.
- (d) Such Confidential Information also includes the possible or likely function, purpose or application of the above items whether in the current activities of either party or fields to which the activities of either party may reasonably extend from time to time; any part of, or improvements to the above items; any recommendation, test or report of either party or any of its consultants or agents in connection with the above items; and whether such Confidential Information is oral, written, recorded or stored by electronic, magnetic, electromagnetic or other process or otherwise in a machine readable form; translated from the original form, recompiled, made into a compilation, partially copied, modified, updated or otherwise altered; originated or obtained by, or coming into the possession, custody, control or knowledge of, either party performing its obligations under this Agreement.

1.2 Access

Each party acknowledges that in the course of the performance of its obligations under this agreement, or otherwise, it may obtain access to, or become aware of, Confidential Information which is, owned by, or lawfully in the possession of, the other party.

1.3 Non-disclosure

Each party agrees not to disclose, communicate to or place at the disposal of any third party, the Confidential Information in any form or by any means and to keep the Confidential Information in the strictest confidence.

1.4 Authorised disclosure

If one party authorises the other party to disclose any Confidential Information to any person that party agrees, prior to such disclosure, to have such person sign an acknowledgement, to the effect that the information is disclosed to that person in confidence. If disclosure is required by law the parties agree to consult together on the request for disclosure and the appropriate response before the Confidential Information is disclosed.

1.5 Use

Other than in accordance with the terms of this Agreement each party agrees not to use or modify the other's Confidential Information for its own benefit or the benefit of any other person.

1.6 Safe custody

To ensure the continued proprietary and confidential nature of the Confidential Information each party agrees to:

- (a) initiate and maintain a system for the proper and secure custody of any Confidential Information within its custody or control;
- (b) maintain complete and accurate records of the location of the Confidential Information within its custody or control (including all copies); and
- (c) obtain the signature of confidentiality undertakings by its advisers, employers, and contractors, if reasonably required by the other party.

1.7 Re-delivery

If either party so requests upon reasonable notice, the other party agrees immediately to:

- (a) disclose and deliver to, or do everything necessary to procure the disclosure and delivery to, the requesting party or as it may direct, all Confidential Information (including copies) which is in a physical form whether those copies are in the same form as the original or capable of being recreated into such or other form by any method;
- (b) deliver any part of the Confidential Information which is stored by any means by which no original or copy is kept at the relevant time (but by use of any method, an original or copy may be re-created) by creating and delivering a printed copy of such Confidential Information to the requesting party or as it may direct, and then destroying the means of re-creation so as to prevent the future recreation of such Confidential Information;

- (c) certify in writing to the requesting party that it has returned all forms of Confidential Information and that it no longer has any part of the Confidential Information in its possession, custody or control;
- (d) ensure that the requesting party, its officers or agents have access to the premises in which Confidential Information may be, or is supposed to be, or has been kept from time to time.]

2 Warranties and liabilities

2.1 Limitation/exclusion of contract and tort liability

- (a) Under no circumstances will the Company or its employees or agents be liable in contract, tort (including negligence) or any other principle of legal liability, or to compensate the Client for any loss, injury, or damage arising directly or indirectly from:
 - (i) any act, omission, error, default or delay by the Company or its employees or agents;
 - (ii) any act, omission, error, default or delay in respect of the provision of services to the Client;
 - (iii) any act, omission, error, default or delay by an Employer or an Employee;

whether in the case of the services are provided by the Company, or of any other person, and whether the loss, injury or damage is the direct or indirect result of negligence or otherwise.
- (b) In any event, under no circumstances will the Company, its employees, or agents be liable to the Client in contract, tort (including negligence) or any other principle of legal liability, for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss whatsoever.
- (c) If for any reason the Company is liable to the Client in contract, tort, (negligence) or any other principle of legal liability, the maximum liability of the Company to the Client is [amount] in respect of any one event or connected series of events, with a maximum liability in any 12 month period of \$1,000, irrespective of the number of events.
- (d) Each limitation or exclusion in this clause and each protection given to the Company by any provision of this clause is to be interpreted as a separate limitation or exclusion applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances.
- (e) Nothing in this clause limits the right of the Client to enforce this Agreement by seeking an order for specific performance in any court of competent jurisdiction.
- (f) Clients who are commercial entities, including but not limited to employers, agree that they are supplying and acquiring goods and services for business purposes and pursuant to s 5D of the Fair Trading Act 1986 (FTA) they contract out of sections 9, 12A, 13 and 14(1) of the FTA and pursuant to s 43 of the Consumer Guarantees Act 1986 (CGA) they agree that the provisions of the CGA do not apply to this Agreement.
- (g) This clause survives termination of this Agreement.

2.2 Limitation of liability

- (a) The Company is not liable to the Client for any loss or damage arising directly or indirectly in connection with this Service Agreement, including (but without limitation) any loss of profit, business, revenue, goodwill or anticipated savings. This exclusion of liability applies to liability in contract and/or tort (including negligence) or any other principle of legal liability.
- (b) In the event that any limitation or provision contained in this Service Agreement is invalid for any reason and the Company becomes liable for loss or damage that would otherwise have been excluded, such liability is limited to the amount of the monthly fee then in force.

3 Terms

1. This Service Agreement apply to every such transaction between a Client and the Company unless a Client is advised in writing of any additions or alterations or until it is withdrawn by the Company.
2. The Company will provide services on the terms contained in this Service Agreement only, except where variations are agreed and confirmed in writing prior to the commencement of the assignment.
3. Acceptance of services from the Company will be deemed to be acceptance by the client of these Terms and Conditions, notwithstanding anything contrary on the client order or in the enquiries.
4. The Company will take all caution in providing accurate information to the Client. However, the Company does not accept liability for the accuracy or completeness of the information provided by a candidate or third party.
5. The Client agrees to pay the Company all fees and costs contained in the Schedule to the Service Agreement.
6. The Client agrees that the Company is not directly or indirectly a party to any employment relationship that may be formed between individuals. The Client agrees that the Company does not have control over any aspect of any employment relationship, and the concept of "triangular employment" does not include the Company as a party.
7. The Client agrees to indemnify and hold the Company harmless as a consequence of any claim made in relation to any employment relationship that is formed as a result of services provided by the Company whether or not pursuant to or in respect of any fine, court costs, legal costs and disbursements payable by the Company as a consequence of any prosecution brought against the Company pursuant to any law or for any damages claimed at common law.
8. The Client agrees and acknowledges that they shall indemnify the Company against all liabilities, losses or damages suffered or incurred by any third party (direct, indirect or consequential) arising out of or in connection with any action or omission of any Employer or Employee.
9. The Company shall not be liable under any circumstances whatsoever for any loss, damage or expense however occasioned, suffered or incurred by the client arising from or in any way connected with the actions of an Employee. The Client will be responsible for all acts and omissions of any Employee or Employer whether willful or negligent and whether occurring on or off the premises of the client or the designated work venue. The Client shall indemnify the Company against any liability, loss damages or expenses arising out of any claim or complaint by any Employer or Employee relating directly or indirectly to the employment relationship that may be formed as a result of services provided by the Company.

10. The Client is responsible for the cost of obtaining employment or immigration support from advisors or lawyers.
11. If an immigration advisor or lawyer is required, the Client acknowledges that they have been advised to use a provider recommended by the Company. If the Client chooses to use a provider that is not recommended and this causes delay or additional work to the Company, the Client agrees that the Company will charge an additional fee.
12. The Client acknowledges that the Company may be paid a referral fee or commission from third parties who are engaged by the Client.
13. Unless otherwise agreed between the Parties in writing, a 3-month guarantee is offered to Employers for all permanent appointments, providing the invoice is paid by the due date.
 - a. The guarantee period commences from the date that an Employee started work.
 - b. Should an Employee resign or have their employment terminated within the guarantee period because he or she has not performed satisfactorily in the capacity for which they were hired and providing reasonable notice has been given, Recruitment for New Zealand will be given no less than an exclusive period of 8 weeks to find a replacement Employee to refill the vacated position.
 - c. Provided the terms of the guarantee in this clause, have been adhered to, a credit will be issued and held on the client account with Recruitment for New Zealand.
 - d. A new invoice will be issued for the new Employee (replacement) and any credit held may be used to offset this invoice (if appropriate).
 - e. If a suitable replacement is not found within a reasonable and agreed timeframe the original placement fee will be credited and held on account.
 - f. This credit will remain valid for a period of 6 months after the date of the credit, after which time this will be forfeited.
 - g. If the Employer elects not to replace the role or hire Recruitment for New Zealand (trading as Recruitment for New Zealand, then the credit held on account will be for 50% of the original placement fee. The remaining 50% of the fee will be retained by Recruitment for New Zealand.
 - h. The guarantee period is not valid in circumstances that are out of the Company's control, including, but not limited to; restructuring, redundancy and force majeure.

4 Fees

1. Unless otherwise agreed the fee structure is as provided for in the Schedule to this Service Agreement.
2. All fees and charges are payable within 7 days of agreeing to this Service Agreement. Time of payment is paramount and is the essence of the services provided by the Company. No purported claim or dispute raised by the Client is grounds for the client withholding payment of any monies due to the Company from the provision of professional services, nor shall such purported claim or dispute confer on the Client any right to offset payment due to the Company. If it is necessary for the Company to seek legal remedies to obtain payment of amounts owed to the Company by the Client, the Client agrees to reimburse the Company for all of its legal and other

expenses when the Company is successful in obtaining judgment against the client for outstanding monies.

3. If an Employee accepts a permanent or fixed term position with an Employer (regardless of role) either during or at the conclusion of their contract or during the 6 month period following conclusion of the contract, a "Permanent Placement Fee" or "Further Engagement Fee" is payable. This will be based on the fee structure as provided for in the Schedule to this Service Agreement.
4. The cost of a customised or campaign advertising (e.g. print advertising in specialist publications) is paid for by the Employer and is invoiced monthly. All customised or campaign advertising campaigns will be subject to prior authorisation from the Employer.
5. Recruitment for New Zealand may require interest to be paid on any amount which is more than 7 days overdue. Interest will be calculated at the rate of 5% above Recruitment for New Zealand's main trading bank's 90-day bank bill buy rate, as at the close of business on the date payment became due.
 - a. The Client will be liable to pay any costs of recovery of overdue amounts including legal costs on a solicitor/client basis.
 - b. If the Client does not pay any amount notified as overdue within 5 working days of notice demand, they irrevocably authorise Recruitment for New Zealand to withdraw the services of the Client (but without removing obligation to pay the Company), until such overdue amounts are paid with interest and costs, as applicable.
6. Recruitment for New Zealand can undertake criminal conviction history checks upon request at an additional cost of \$49.00 + GST. Recruitment for New Zealand will notify the Client once they have received the results.

5 Termination

This Agreement continues until termination by agreement between the Company and the Client or unless earlier terminated by operation of any of the provisions of clause 5(a).

- (a) Regardless of any delay, previous neglect or waiver of their respective rights under this clause one party may terminate this Agreement if any of the following events occur in relation to the other party:
 - (i) by the relevant party breaching this Agreement and such breach is incapable of being remedied, or, if capable of being remedied, continues un-remedied for 10 business days after written notice of such breach has been given to the relevant party by the other party;
 - (ii) if the relevant party commits an act of bankruptcy or makes any assignment or composition with its creditors;
 - (iii) the relevant party is or becomes unable to pay its debts as they fall due or is deemed or is unable to pay such debts as defined in any applicable limited company legislation or suspends payment to its creditors or ceases or threatens to cease to carry on its business or convenes a meeting of its creditors to propose a scheme of arrangement with its creditors;
 - (iv) liquidation proceedings are commenced for the relevant party;

- (v) the relevant party has a receiver or manager or statutory manager appointed;
- (vi) the relevant party transfers or disposes of or threatens to transfer or dispose of a substantial part of its assets for inadequate consideration;
- (vii) if there is a change of effective management or control of the relevant party.

6 Consequences of termination

Upon termination of this Agreement:

- (a) the Client will return to the Company all documentation, electronic storage media, and other information delivered to the Client or obtained by the Client during the term of and relating to the performance of this Agreement (**Confidential Information**); or
- (b) at the option of the Company, the Client will destroy or erase the Confidential Information and certify through a responsible officer of the Client that such destruction or erasure has occurred and that no copies or storage of such Confidential Information remains in existence.

7 Force Majeure

7.1 Conditions of force majeure

Neither party is in breach of this Agreement if its breach is caused by an act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of either party.

7.2 Modification of force majeure

If either party is unable to perform its duties and obligations under this Agreement as a direct result of any such reasons that party must give immediate written notice to the other of such inability stating the reason.

7.3 Suspension of agreement

- (a) The operation of this Agreement will be suspended during the period (and only during the period) in which the reason continues. Immediately upon the reason ceasing to exist the party relying upon it must give written advice to the other of this fact.
- (b) If the reason continues for a period of more than 60 business days and substantially affects the commercial basis of this Agreement the parties agree to consult together for the purposes of agreeing what action should be taken in the circumstances and, if appropriate, must negotiate in good faith to amend and modify appropriately the provisions and terms of this Agreement as necessary to deal with the reason for the inability to perform.
- (c) If such negotiations are unsuccessful the party not claiming relief under this clause has the right to terminate this Agreement upon giving 20 business days written notice of such termination to the other party in which event clause 5 will apply.

8 Severance

If any term of this Agreement is illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, legislation or other provisions having the force of law or any

decision of any court or other body or authority having jurisdiction, such term will be deemed to be deleted from this Agreement on condition that if either party considers that any such deletion substantially affects or alters the commercial basis of this Agreement it may give notice in writing to the other to terminate this Agreement immediately in which event clause 5 will apply.

9 Notices

- (a) Any notice, document, request, demand or other communication (**Notices**) to be given for the purposes of this Agreement must be in writing and may be served personally or sent by registered mail or document exchange to the address of the party or such other address as that party may notify the other party in writing, from time to time or by facsimile or electronic mail to the facsimile or electronic mail number of that party specified or such other facsimile or electronic mail number as that party may notify the other party, in writing, from time to time.
- (b) Notices given:
 - (i) personally are deemed served upon delivery;
 - (ii) by post or document exchange are deemed served 2 business days after posting;
 - (iii) by airmail to an address outside New Zealand are deemed served 5 business days after posting;
 - (iv) by facsimile or electronic mail are deemed served upon receipt of the correct answer-back or receipt code in the case of facsimile and transmission in the case of electronic mail.
- (c) Any such notice which has been served on a non-business day, is deemed served on the first business day after such day.
- (d) A notice may be given by an authorised officer, employee or agent of the party giving the notice.
- (e) Time is of the essence.

10 Assignment

No party may sell, transfer, assign, license, franchise, perform on behalf of a third party or otherwise part with possession of, mortgage, charge or encumber any right or obligations under this Agreement without the prior written consent of the other party (which consent cannot be unreasonably withheld). The party not assigning or dealing with the agreement (**Non-assigning Party**) may require that in the case of assignment or other agreed dealing with the agreement:

- (a) the party assigning or dealing with the agreement in the above manner (**Assigning Party**) must pay all fees and expenses (including legal fees on a solicitor/client basis) incurred by the non-assigning party in connection with the investigation of the proposed assignee or other third party and otherwise relating to the proposed assignment or dealing; and
- (b) the proposed assignee or other third party agrees in writing with the non-assigning party to observe and perform the terms, conditions and restrictions applying to the assigning party in this Agreement whether express or implied as if the proposed assignee or other third party was an original contracting party to this Agreement.

11 General provisions

11.1 Entire agreement

The parties acknowledge that this Agreement sets forth the entire agreement and understanding of the parties and supersedes all prior to oral or written agreements, understandings or arrangements relating to its subject matter.

11.2 Privacy Policy

The parties agree to the Company's Privacy Policy.

11.3 Amendment

This Agreement cannot be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the parties.

11.4 No waiver

No failure or delay on the part of either party to exercise any right or remedy under this Agreement is a waiver of such right or remedy nor does any single or partial exercise of any right or remedy under this Agreement preclude the exercise of any other right or remedy or preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

11.5 Public statements

- (a) The parties agree that, subject to the requirements of applicable law, none of them will disclose any of the terms of this Agreement to any third parties other than their professional advisers, and further neither of them will, and will not permit their advisers to, make any public announcement or issue any press release or other publicity relating to this Agreement without the prior written approval of the other party as to its form and content.
- (b) The parties agree that they will issue a joint press release and/or coordinated press releases announcing the execution of this Agreement and all issues of disclosure and publicity (whether required by law or otherwise) will be coordinated by representatives appointed by each party to consult with the other parties.

11.6 Costs

Each of the parties is responsible for its respective legal and other costs incurred in relation to the preparation of this Agreement.

11.7 Further assurance

Each party agrees with due diligence to sign all deeds, assignments and documents and to do everything that the other party may reasonably require to carry out the terms of this Agreement.

12 Governing law

This Agreement is governed by and construed in accordance with the laws of New Zealand for the time being in force, and the parties agree to submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

13 Dispute resolution

- (a) If any dispute between the parties arises concerning this Agreement the parties agree that the dispute:
 - (i) will first be referred by any responsible representative of either party to the chief executive officers of each party who must meet together with the objective of reaching an acceptable commercial solution to the problem;
 - (ii) if such an agreed solution cannot be reached to the satisfaction of both parties within 5 days of the reference of the dispute to the chief executive officers of the parties either of those officers may then refer the dispute to mediation or conciliation in accordance with the rules of the New Zealand Dispute Resolution Centre.
- (b) If the dispute is not settled by agreement between the parties within 30 days of the commencement of conciliation proceedings then either party may refer the matter to arbitration in accordance with the Arbitration Act 1996. The decision of the arbitrator is final and binding on the parties.
- (c) While any such dispute remains unresolved the parties agree to continue the performance of the agreement to the extent that such performance is possible given the nature of the dispute.
- (d) Any information or material or settlement proposals disclosed or made during the preceding dispute resolution proceedings are made on a without prejudice basis and the parties agree to use their best endeavours to ensure that all such information, material and proposals and the existence of any dispute between them is kept strictly confidential.

Executed as an Agreement on _____.

Signed for and on behalf of the Client by its
duly authorised representative in the
presence of:

Signature

Witness Signature

Date

Print Name

Date

Signed for and on behalf of Recruitment for
New Zealand by its duly authorised
representative in the presence of:

Signature

Witness Signature

Date

Print Name

Date