

**INDEPENDENT SUB-CONTRACTOR  
NEW ZEALAND CONTRACT FOR SERVICES**

**PARTIES**

***Phoenix Contracting (NZ) Ltd*** (“the Company”)

(“the Contractor”)

(collectively referred to as “the parties”)

**1. BACKGROUND**

- 1.1 The Company is a personnel consultancy, which provides services to a third party (“the Client” or “Clients”).
- 1.2 The Contractor is in business on his or her own account and provides skills and other resources (“services”).
- 1.3 The Client determines what work is to be done.
- 1.4 The Company engages the Contractor under a contract for services to provide Services to meet Clients needs.
- 1.5 The Contractor is either an Individual Person operating on his or her own account or an enterprise that will employ or retain an Individual Person who will provide Services to the Client, through the Company, under this Contract.
- 1.6 The Contractor agrees to be bound by the following terms and conditions (“Terms”) of the Company and accepts engagement as an independent contractor on the following Terms and Conditions

**2 ASSIGNMENTS**

- 2.1 The Contractor will work on Assignments (“Assignment” or “Assignments”) for the Client. The Contractor has the right to refuse or accept any Assignments offered by the Company.

**3. NATURE OF CONTRACT**

- 3.1 This Contract establishes both the nature of the relationship between the parties and includes the Terms under which the Contractor will be engaged by the Company.
- 3.2 This Contract is between the Company and the Contractor. For the avoidance of doubt there is no contractual relationship between the Client and the Contractor.
- 3.2 The Terms contained in this Contract will come into force at the commencement date of an Assignment and will continue until the termination of an Assignment unless sooner terminated in accordance with clauses 7 or 8.
- 3.3 The Contractor understands and accepts that the nature of the engagement means that each Assignment is a separate engagement and that once an Assignment is completed without any further Assignment having been agreed, the contractual relationship terminates and there is no continuing contractual relationship.
- 3.4 The Contractor understands and accepts that upon the termination or early cessation of any Assignment, for any reason whatsoever, the Company shall not be under any obligation to offer the Contractor an alternative or additional Assignment. The Contractor further acknowledges that

nothing in this Contract shall be interpreted or understood to give any expectation that this Contract will be renewed or that any subsequent Contract will be entered into.

3.5 On acceptance of an Assignment the Contractor agrees:

3.5.1 **If the Contractor is an individual** to:

3.5.1.1 Report to work at the Client's premises at the hours stipulated by the Company; and

3.5.1.2 Perform the work required by the Client to the best of the Contractor's ability, and

3.5.1.3 Complete the entire Assignment (subject to clause 6 below).

#### **4 DUTIES OF THE CONTRACTOR**

4.1 The Contractor will perform the Services for and as required by the Client with honesty and with reasonable skill, care and diligence.

4.2 The Contractor will at all times strictly comply with all business practices, procedures and security requirements of the Client, including, but not limited to, policies relating to Health and Safety, Harassment, Confidentiality, and Computer Network Usage.

4.3 The Contractor will not remove any Client property from the Client's premises without the Client's prior written consent.

4.4 The Company may from time to time monitor the progress or performance of the Services.

4.5 **If the Contractor is an individual:**

4.5.1 At the time of signing this Contract, the Contractor declares that he/she is in good health and is not suffering from any medical, mental or physical condition that would affect his/her ability to carry out Assignments.

4.5.2 The Contractor acknowledges that he/she will not accept any Assignment with any Client unless he/she is in good health at the time and unless he/she is not at that time suffering from any medical, mental or physical condition that may affect the Contractor's ability to carry out the Assignment.

4.5.3 The Contractor will, upon reasonable requests by the Company, supply a medical certificate to confirm the Contractor's current state of good health and will in particular upon request, supply the company with evidence of his/her recovery from any accident or illness suffered by him/her.

#### **5 CONFIDENTIALITY**

5.1 The Contractor understands and accepts that the Contractor is in a position of trust in relation to both the Client and the Company and agrees to hold all Confidential Information in confidence and will not, without the written consent of the Client and/or Company directly or indirectly at any time during an Assignment or following its termination (for so long as the information continues to be Confidential Information):

5.1.1 Use any Confidential Information;

5.1.2 Disclose any Confidential Information to any person, firm, company or entity;

5.1.3 Copy any material containing Confidential Information for personal use or for use by any other unauthorised person, firm, company or entity; other than to the extent necessary to carry out an Assignment or as required by law.

5.2 "Confidential Information" in this clause means: all confidential information which is not in the public domain and which is reasonably regarded by the Client and/or Company as confidential to it, which the Contractor has become aware of in the course of carrying out this Contract or an Assignment including, but not limited to, trade secrets, confidential business and technical information, business methods and management systems, detailed information and records relating to customers, suppliers, staff and parties with whom the Client and/or Company deals commercially, strategic information relating to marketing, advertising or any other aspect of business, computer software, data and known-how not generally known to the public.

5.3 Any breach of this clause is grounds for immediate termination of this Contract.

## **6 DIFFICULTY IN ASSIGNMENTS**

6.1 The Contractor will contact the Company immediately for assistance if it has difficulty in any Assignment.

## **7 EARLY CESSATION OF ASSIGNMENTS**

7.1 If, for any reason whatsoever, the Contractor will be unable to commence or complete an Assignment, the Contractor will advise the Company of this as soon as practicably possible and in any event, unless there are exceptional circumstances:

7.1.1 Where the Assignment is up to four weeks' duration, the Contractor will give the Company at least forty eight (48) hours' notice of inability to complete the Assignment; or

7.1.2 Where the Assignment is over four weeks' duration, the Contractor will give the Company at least five (5) days' notice of inability to commence or complete the Assignment.

7.2 If the Contractor does not give the notice set out in paragraph 7.1 above, the Company is entitled to deduct from any moneys due to the Contractor the equivalent of the shortfall in notice.

## **8 TERMINATION**

8.1 The Company may, without prior notice, terminate an Assignment for the following reasons:

8.1.1 if so requested by the Client for any reason;

8.1.2 if the agreement between the Client and the Company is terminated for any reason;

8.1.3 **If the Contractor is an individual** and if the Contractor:

8.1.3.1 is, due to a physical or mental condition, injury or illness, unable to perform the Assignment;

8.1.3.2 commits any misconduct or is convicted of any statutory or criminal offence;

8.1.3.3 behaves, dresses, or conducts his/her affairs in a manner which brings or is likely to bring the Company or the Client into disrepute or causes or is likely to cause either of them embarrassment;

8.1.3.4 if for any reason unable to fulfil the requirements of the Assignment.

**9 INSURANCE**

- 9.1 In the event the Client requests the Contractor to use the Client's vehicle, handle cheques, cash, valuables, documentation or equipment whether on or off the Client's premises, the Contractor shall advise the Company immediately to allow the Company to verify that the appropriate insurance arrangements have been made by the Client. If the Contractor fails to advise the Company, the Contractor accepts that the Contractor may be responsible for any damage or loss incurred or suffered.
- 9.2 The Contractor accepts sole responsibility for the safety and security of the Contractor's belongings and property during each Assignment, and whilst travelling to and from Assignments.

**10 PERSONAL BUSINESS**

- 10.1 The Contractor accepts that during each Assignment, the Contractor will not undertake any other business of any nature, either personal or business (e.g. telephone calls) without the Client's prior approval and that the Contractor will reimburse the Client's costs incurred in doing so.
- 10.2 The Contractor accepts the Client's e-technology may only be used by the Contractor in the course of performing the Services while on Assignment and not for any personal reasons. The Contractor agrees to comply with any policies or procedures the Client may have in force from time to time relating to use of e-technology.

**11 PUNCTUALITY**

- 11.1 If the Contractor is late for an Assignment or unable to report for work for any reason whatsoever, the Contractor agrees to immediately advise the Company, to enable arrangements to be made for a suitable replacement. The Contractor acknowledges that in these circumstances, the Company may engage a replacement contractor or temporary employee for such period of the Assignment as the Company sees fit.

**12 HOURS OF WORK**

- 12.1 The Contractor's hours of work shall be advised prior to the commencement of each Assignment.
- 12.2 If the Contractor is requested by the Client to provide services in excess of the agreed hours of the Assignment, the Contractor will immediately advise the Company before commencing such additional work.

**13 CATEGORY OF WORK**

- 13.1 In addition to any agreed Services to be performed on Assignments, the Contractor advises that it is also available for the following Services on Assignments for clients:

Note: insert appropriate descriptions as required.

Category	Description
Accountancy	

## **14 PAYMENT FOR SERVICES**

- 14.1 The Contractor agrees that payment shall be based solely on the hours worked on each Assignment as agreed between the Company and the Client. The Contractor is not entitled to payment when not working on an Assignment provided by the Company.
- 14.2 The Contractor shall be paid at an agreed hourly rate (plus GST when invoiced) for the hours worked while on Assignment. The Contractor's hourly rate shall be agreed with the Company prior to the commencement of the Assignment. This rate will remain fixed for the duration of the Assignment, unless otherwise agreed between the Company and the Contractor, and such agreement is recorded in writing.
- 14.3 The Contractor understands that no payment shall be made to the Contractor unless the Contractor presents to the Company:
- 14.3.1 An invoice for services provided and,
- 14.3.2 A schedule showing the hours worked and the services provided to the Client; signed by both the Client and the Contractor
- 14.4 With respect to GST the Contractor understands that:
- 14.4.1 A contractor carrying on taxable activities and with total taxable supplies **of less than** the threshold set by the Inland Revenue Department may opt to register for GST with the Inland Revenue Department
- 14.4.2 A contractor carrying on taxable activities and with total taxable supplies **of more than** the threshold set by the Inland Revenue Department will register for GST with the Inland Revenue Department and will provide the Company with GST Invoices
- 14.5 The Contractor will seek independent advice on tax obligations.

## **15 COMPANY PROPERTY/CLIENT PROPERTY**

- 15.1 If, during any Assignment, the Contractor is provided with a uniform, clothing or equipment or entrusted with any cash or cheques or other valuables the Contractor will return the property undamaged and account for any cash or cheques or other valuables upon demand by the Client or upon completion of the Assignment. The value of any unreturned property or equipment may be deducted from any fees for services due to the Contractor.
- 15.2 The Contractor understands that the Contractor will be liable for any wilful or negligent actions or omissions by the Contractor causing damage or loss to the Client or Company during the Assignment.

## **16 INTELLECTUAL PROPERTY**

- 16.1 Any invention, improvement, design, process, patent, trade mark, copyright, system or other intellectual property right (collectively called "Creation(s)") made or discovered by the Contractor during the fulfilment of any Assignment (whether capable of being patented or registered or not) shall forthwith belong to and be at the absolute disposal of the Company.
- 16.2 Where the Creations are created by the Contractor as part of the Company providing services to the Client and the agreement between the Company and the Client provides that the Client shall own the rights in the Creation then the Company shall assign such rights in the Creation to the Client.

- 16.3 The Contractor agrees that, if and whenever called upon to do so, (whether during or after the termination of any Assignment) the Contractor will execute all instruments and do all things necessary for vesting the rights of the Creations in the Company (or its assignee) absolutely as sole beneficial owner.
- 16.4 Notwithstanding this clause [16] should the Contractor be able to establish that any Creation was made prior to entering into these Terms and Conditions or created subsequently but for services unrelated to the services supplied pursuant to these Terms and Conditions, such Creation shall remain the Contractor's property.

## **17 USE OF MATERIAL**

- 17.1 The Contractor confirms that all materials, ideas, systems or other creative and literary property conceived or furnished by the Contractor for the Company or any Client of the Company will be the Contractor's own creation or be fully cleared by the Contractor for such use and that such material will not violate or infringe upon any rights of any third party (being a person, firm or corporation).

## **18 FURTHER CONTRACTING OR EMPLOYMENT**

- 18.1 Should the Contractor make an approach to, or be approached by, the Client or any other person, firm or organisation where the introduction has resulted as a consequence of any Assignment, or where the Contractor has/have previously worked for the Client as a consequence of any Assignment, to take on employment or engagement as an independent contractor, whether on a permanent, part-time, fixed term, temporary or casual basis, the Contractor will immediately notify the Company before accepting any such employment or engagement.

This requirement applies for six (6) months after completion of each assignment.

## **19 TOOLS AND EQUIPMENT**

- 19.1 The Contractor will provide any tools and equipment (including vehicle) required by the Contractor to work on the Assignment. The Contractor will be entirely liable for any damage or loss arising out of or in connection with the use of the Contractor's tools and equipment (including vehicle).
- 19.2 The Contractor agrees that he will not drive any Client or Company vehicle unless authorised by the Client or Company to do so, and the Contractor holds the appropriate class of licence for that vehicle.

## **20 HEALTH AND SAFETY**

- 20.1 The Contractor acknowledges that it has been informed by the Company of its responsibilities under the Health and Safety in Employment Act 1992 (and its amendment Acts). The Contractor agrees to comply with all the provisions of the Health and Safety in Employment Act 1992 and any amending or substituting Acts. In particular, the Contractor agrees to take all practicable steps to ensure the Contractor's safety and that of the **Contractor's employees, and sub-contractors**, and to ensure that no action or inaction on the part of the Contractor causes harm to any other person at work. In particular, the Contractor agrees to:

- 20.1.1 Report to the Company and to the Client any safety issues or hazards of which the Contractor becomes aware;

- 20.2.2 Ensure all appropriate protective clothing and equipment is worn;
- 20.1.3 Follow all of the Client's instructions with regard to health and safety;
- 20.1.4 Be aware of, and adhere to, all of the Client's policies and procedures concerning health and safety;
- 20.1.5 Not use any piece of equipment, that the Contractor is not familiar with, has not been trained in the use of, or is not qualified to use;
- 20.1.6 Immediately inform the Company if it believes that the working conditions at the Client's premises are for any reason unsafe;
- 20.1.7 Inform the Company and the Client as soon as practicable if the Contractor is involved in any accident, incident or near miss at the Client's premises; and
- 20.1.8.1.1 **If the Contractor is an individual**, advise the Company and the Client if the Contractor is feeling unduly stressed or fatigued as a result of work. The Contractor understands and accepts that in undertaking the Assignments provided by the Company a reasonable amount of pressure and stress is to be expected and is accepted as a normal part of providing the Services.
- 20.1.9 Will complete the Phoenix Health and Safety Programme as soon as possible after signing this agreement, if not already done so.

## 21 DISPUTE RESOLUTION

- 21.1 Dispute: Subject to clause 21.6, where any question, dispute or difference ("Dispute") arises between the parties concerning or in any way arising out of this Contract or the performance of either party of the terms of this Contract, the parties will make a genuine effort to resolve the question, dispute or difference using the procedures set out in this clause and without resorting to litigation.
- 21.2 Representatives for Negotiation: The party seeking resolution of a Dispute ("First Party") must provide written notice of the same to the other party ("Other Party") and nominate in that notice its representatives for the Negotiation. The Other Party must within 7 days notify the First Party in writing of the names of its representatives for the Negotiation. Each representative nominated will have authority to settle the Dispute.
- 21.3 Referral to Mediation: If the parties are unable to resolve the Dispute by discussion and Negotiation within 7 days of receipt of the written notice from the Other Party, then the parties must immediately refer the Dispute to Mediation.
- 21.4 Conduct of Mediation: The mediation must be conducted in terms of the LEADR New Zealand Inc Standard Mediation Agreement. The Mediation must be conducted by a mediator and at a fee agreed by the parties. Failing agreement between the parties, the mediator will be selected and his/her fee determined by the Chair for the time being of LEADR New Zealand Inc. The mediator's fee will be borne equally between the parties.
- 21.5 Referral to Arbitration: If the Dispute remains unresolved after the Mediation, then the dispute must be submitted to the Arbitration of a single arbitrator agreed on between the parties, or in default of agreement to be nominated by the President of the New Zealand Law Society. The Arbitration will be conducted in accordance with the Arbitration Act 1996 and the provisions of the Second Schedule of the Act will apply. The parties reserve the right to appeal to the High Court on any question of law arising out of an award.

21.6 Urgent Interlocutory Relief: Nothing in this clause will preclude or prevent either party from taking immediate steps to seek urgent interlocutory relief before an appropriate Court.

**22 DURATION AND VARIATION OF CONDITIONS**

22.1 Subject to clause 22.2, the Terms and Conditions set out in this Contract will apply to every Assignment which the Contractor undertakes for the Company after the date recorded herein.

22.2 Notwithstanding the provisions of any clause in this Contract, the Terms and Conditions contained in this Contract may be varied by agreement between the Company and the Contractor, such agreement shall be recorded in writing.

**23 RELATIONSHIP OF THE PARTIES**

23.1 The Contractor understands that the Contractor is an independent contractor only and does not have the Company's authority to say or do anything on the Company's behalf except as specified in this Contract. No relationship of an employment, agency, partnership or a fiduciary nature is created by this Contract.

23.2 The Contractor is not entitled to any paid annual holidays, sick leave or bereavement leave, redundancy or severance compensation, compensation for loss of office or any other form of remuneration, benefit or any other compensation or benefits of an employee whether in terms of the Employment Relations Act 2000 or otherwise, from either the Company or the Client.

23.3 The Contractor understands that the Contractor is responsible for any and all income tax, ACC levies, GST and all other taxes, levies and fees resulting from the Contractor's performance of the Services.

**24 COMPLETENESS**

24.1 The Terms and Conditions set out in this Contract represent the entire agreement of the parties and replace any previous agreements and understandings.

**CONTRACTOR'S DECLARATION**

The Contractor declares that:

26.1 The Contractor has read and fully understood the above Terms and Conditions and agrees to be bound by them on each and every Assignment undertaken on behalf of the Company.

SIGNED by the Contractor: \_\_\_\_\_

Date: \_\_\_\_\_

SIGNED for and on behalf of the Company: \_\_\_\_\_

Date: \_\_\_\_\_

**Acknowledgements:**

I acknowledge that I have been given a reasonable opportunity to seek independent advice before entering into this Agreement and have had sufficient time to do so.

I acknowledge that all representations, verbally or in writing, made when applying for this position, are true and correct.

I agree that I have not deliberately failed to disclose any matter which may have materially influenced Phoenix's decision to contract my services.

I confirm that I do not have any disability, medical condition, injury or illness which could affect my ability to carry out my responsibilities under this Agreement.

**SIGNED by the Contractor:**

**Date:**