

PHOENIX CONTRACTING (NZ) LIMITED
INDIVIDUAL EMPLOYMENT AGREEMENT

PARTIES

Phoenix Contracting (NZ) Limited (“Phoenix”)

_____ [Employee’s name] (“the Employee” or “I”)

(collectively referred to as “the parties”)

1 BACKGROUND

- 1.1 Phoenix is a personnel consultancy which provides services to a third party (“Client”). Phoenix employs me on a temporary basis to work on Assignments (“Assignment” or “Assignments”) for the Client.
- 1.2 I, _____ agree to be bound by the following employment terms and conditions (“Terms and Conditions”) of Phoenix and accept a position as a temporary employee of Phoenix, on the following Terms and Conditions:

2 ASSIGNMENTS

- 2.1 I have the right to refuse or accept any Assignments offered by Phoenix.

3 NATURE OF AGREEMENT

- 3.1 This agreement establishes the nature of the relationship between the parties and sets out the Terms and Conditions under which the Employee will be employed by Phoenix.
- 3.2 The Terms and Conditions of employment contained in this agreement will come into force at the commencement date of the Assignment and will continue until the termination of the Assignment unless sooner terminated in accordance with clause 6. I understand that Phoenix has genuine reasons based on reasonable grounds for specifying that my employment will end in this way. The nature of my employment is that Phoenix employs me to work on individual Assignments for Clients in accordance with the Client’s requirements. My employment will therefore terminate on the earlier of:
- a. The date notified to me in the Confirmation of Assignment; or
 - b. When the Client terminates the Assignment in accordance with clause 6 of this Agreement.
- 3.3 I understand and accept that the nature of my employment means that each Assignment is a separate period of employment. Once an Assignment is completed without any further Assignment having been agreed, the employment relationship terminates, and there is no continuing contractual relationship of employment. I understand there is no guarantee of continuous work and that I will be employed by Phoenix only ‘as and when’ required on an Assignment.
- 3.4 I understand and accept that upon the termination or early cessation of any Assignment, for any reason whatsoever, Phoenix shall not be under any obligation to offer me an alternative or additional Assignment.
- 3.5 I further acknowledge that nothing in this agreement, nor conversation with Phoenix or Client shall be interpreted or understood to give any expectation that this agreement will be renewed or that

any subsequent agreement will be entered into unless a formal offer is made by Phoenix to extend the Assignment.

- 3.6 On acceptance of an Assignment I agree to:
- a. report to work at the Client's premises at the hours stipulated by Phoenix, and
 - b. work to the best of my ability, and
 - c. complete the entire Assignment (subject to clause 6 below)

4 CONFIDENTIALITY

- 4.1 I understand and accept that I am in a position of trust in relation to both the Client and Phoenix and agree that I will 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):
- a. Use any Confidential Information;
 - b. Disclose any Confidential Information to any person, firm, company or entity;
 - c. 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.
- 4.2 "Confidential Information" in clause 4 means: all confidential information which is not in the public domain and which is reasonably regarded by the Client and/or Phoenix as confidential to it, which I have become aware of in the course of carrying out this agreement 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 Phoenix deals commercially, strategic information relating to marketing, advertising or any other aspect of business, computer software and data and known-how not generally known to the public.
- 4.3 Any breach of any of the above confidentiality clauses will be treated as serious misconduct.

5 DIFFICULTY IN ASSIGNMENTS

- 5.1 I will contact Phoenix immediately for assistance if I have difficulty in any Assignment.
- 5.2 If I am requested by the Client to work in a place or on tasks/duties not agreed by Phoenix I will contact Phoenix immediately.

6 EARLY CESSATION OF ASSIGNMENTS

- 6.1 If, for any reason whatsoever, I am unable to complete an Assignment, I will advise Phoenix of this as soon as practicably possible and in any event, unless there are exceptional circumstances:
- a. Where the Assignment is up to four weeks' duration, I will give Phoenix at least forty eight (48) hours notice of my inability to complete the Assignment; or
 - b. Where the Assignment is over four weeks' duration, I will give Phoenix at least five working (5) days' notice of inability to complete an Assignment.
- 6.2 If I do not give the notice set out in paragraph 6.1 above, Phoenix is entitled to deduct from any wages (including holiday pay) due to me the equivalent of the shortfall in notice.

- 6.3 If, for any reason whatsoever, the Client reassesses its needs and terminates an Assignment earlier than originally indicated, then my employment will terminate and Phoenix is under no obligation to offer me an alternative or additional Assignment.
- 6.4 I understand and accept that I am not entitled to receive any compensation in the event of redundancy or early termination of an Assignment.
- 6.5 Phoenix shall be entitled to terminate this Agreement without notice in the event of serious misconduct.

7 INSURANCE

- 7.1 In the event the Client requests me to use a company vehicle, handle cheques, cash, valuables, documentation or equipment whether on or off the Client’s premises, I shall advise Phoenix immediately to allow Phoenix to verify that the appropriate insurance arrangements have been made by the Client. If I fail to advise Phoenix, I accept that I may be personally responsible for any damage or loss incurred or suffered.
- 7.2 I accept sole responsibility for the safety and security of my own personal belongings and property during each Assignment, and whilst traveling to and from Assignments.

8 PERSONAL BUSINESS

- 8.1 I accept that during each Assignment, I will not undertake any other business of any nature, either personal or business (i.e. personal telephone calls) without the Client’s prior approval and that I will reimburse the Client’s costs incurred by me in doing so.
- 8.2 I accept that I may only use the Client’s e-technology in the course of performing my work while on Assignment and not for any personal reasons. I agree to comply with any policies or procedures the Client may have in force from time to time relating to use of e-technology.

9 PUNCTUALITY

- 9.1 If I am late for an Assignment or unable to report for work for any reason whatsoever, I will immediately advise Phoenix, to enable arrangements to be made for a suitable replacement. I acknowledge that in these circumstances, Phoenix may engage a replacement employee for such period of the Assignment as Phoenix sees fit.

10 HOURS OF WORK

- 10.1 My hours of work shall be advised prior to the commencement of each Assignment.
- 10.2 If I am requested to work hours in excess of the standard hours of the Assignment I will immediately advise Phoenix before I commence such additional work.

11 CATEGORY OF WORK

- 11.1 I am available for the following categories of work on Assignments:

Note: insert appropriate descriptions as required.

Category	Description	Yes/No
Accounts		–
		–

		-
		-

12 PAYMENT

- 12.1 I agree that my wages shall be based solely on the hours worked on each Assignment. I am not entitled to remuneration when not working on an Assignment provided by Phoenix.
- 12.2 No wages shall be paid to me unless I present to Phoenix a time sheet or Client letterhead completed with the hours worked and signed by both the Client and myself.
- 12.3 I shall be paid at an hourly rate for the hours worked while on Assignment. My hourly rate shall be agreed with Phoenix prior to the commencement of the Assignment. This rate will remain fixed for the duration of the Assignment, unless otherwise agreed between Phoenix and me, and such agreement is recorded in writing. I agree not to discuss my hourly rate or employment terms and conditions with the Client or any Employee of the Client.
- 12.4 I understand that rates quoted and agreed may either include or exclude penal rates and overtime payments. These factors shall be determined and agreed between Phoenix and me prior to acceptance of each Assignment.
- 12.5 I agree to complete all documentation necessary for Phoenix to comply with its income tax obligations in respect of employees.
- 12.6 Any payment for Annual Holidays, Sick or Bereavement Leave, Public Holidays or Alternative Holidays will be calculated in accordance with the Holidays Act 2003. I will immediately notify Phoenix if I am requested to work on a Public Holiday.

During employment, or upon termination of your employment for any reason (including the end of an Assignment), you authorise Phoenix to deduct from your pay (including holiday pay) any over-payments, outstanding debts or money owed by you to Phoenix, the value of any unreturned property, or, in the event you fail to give the agreed notice of termination, a sum equivalent to the remuneration that would have been payable over the period of notice.

13 ANNUAL HOLIDAYS

- 13.1 On the understanding that the nature of my employment means that I am unlikely to work for Phoenix for a continuous period of more than twelve (12) months on any one Assignment, and that my hours will be variable, my holiday entitlement will accrue at the rate of not less than 8% of my gross earnings and will be paid to me as follows:
 - I agree to Phoenix regularly paying my 8% annual holiday pay with my pay. Phoenix will ensure that this is paid as an identifiable component of my pay.

14 PUBLIC HOLIDAYS

- 14.1 I am entitled to public holidays in accordance with the Holidays Act 2003.
- 14.2 I am entitled to be paid for public holidays that fall on days which would otherwise have been working days for me during an Assignment. I will be paid not less than my relevant daily pay for that day. In instances where I am not on Assignment when a public holiday falls, I will not be entitled to be paid for public holidays occurring at that time.
- 14.3 A Client may require me to work on a public holiday, which falls during the period of an Assignment and I agree I will only work if directed by Phoenix. Where I work on a public holiday I will be paid for the hours I actually work at the rate of time-and-a-half. Where the holiday would otherwise be a working day for me, I will also receive a paid Alternative Holiday to be taken on a

day agreed between me and Phoenix, or as provided for in the Holidays Act 2003. An Alternative Holiday will be paid at the rate of my relevant daily pay on the day the Alternative Holiday is taken.

15. SICK LEAVE

- 15.1 The following entitlements in this Clause 15 are instead of, and not in addition to the sick leave set out in the Holidays Act 2003.
- 15.2 If I have completed six (6) months' current continuous employment with Phoenix or, over a period of six (6) months, if I have worked for Phoenix for:
- a. at least an average of ten (10) hours a week during that period; and
 - b. no less than one (1) hour in every week during that period or no less than forty (40) hours in every month during that period;
- I shall be entitled to five (5) days sick leave in each ensuing period of twelve (12) months.
- 15.3 Sick leave may be taken on a day that would otherwise be a working day for me during an Assignment and provided:
- a. I am sick or injured; or
 - b. my spouse (including de facto) is sick or injured; or
 - c. a person who depends on my care is sick or injured.
- 15.4 I may carry over up to fifteen (15) days' sick leave to a maximum of twenty (20) days' current entitlement in any year. Any accumulated sick leave will not be paid out on termination of my employment with Phoenix or at the end of an Assignment.
- 15.5 If I intend to take sick leave, I must notify Phoenix as early as possible before I am due to start work on the day that leave is to be taken; or if that is not practicable, as early as possible after that time.
- 15.6 I may be required to produce proof of sickness or injury to support a claim for sick leave (at my own expense) if the sickness or injury is for a period of three (3) or more consecutive calendar days, whether or not the days would otherwise be working days for me. This does not prevent Phoenix from requesting proof to establish that there are no relevant health and safety reasons that would prevent me from working. If Phoenix has reasonable grounds to suspect that the sick leave I am taking is not genuine, I understand that I may be required to produce proof of the illness or injury, in accordance with the Holidays Act 2003.
- 15.7 Payment for sick leave shall be at the rate of my relevant daily pay.

16. BEREAVEMENT LEAVE

- 16.1 The following entitlements in this Clause 16 are instead of, and not in addition to the bereavement leave set out in the Holidays Act 2003.
- 16.2 In each ensuing period of twelve months I shall be entitled to bereavement leave if I have completed six (6) months current continuous employment with Phoenix or, over a period of six (6) months, I have worked for Phoenix for:
- a. at least an average of the (10) hours a week during that period; and
 - b. no less than one (1) hour in every week during that period or no less than forty (40) hours in every month during that period.

- 16.3 I will be entitled to three (3) days' bereavement leave when these days fall on days that would otherwise be working days for me during an Assignment and the bereavement relates to the death of my:
- a. Spouse
 - b. Parent
 - c. Child
 - d. Brother or Sister
 - e. Grandparent
 - f. Grandchild or
 - g. Spouses parent
- 16.4 I am entitled to one (1) day's bereavement leave on the death of any other person if Phoenix accepts that I have suffered a bereavement as a result of the death. I will only be entitled to take this one (1) day's bereavement leave if it falls on a day that would otherwise be a working day for me during an Assignment. When deciding whether to accept that I have suffered bereavement as a result of the death, Phoenix will consider such relevant factors as:
- a. my taking significant responsibility for all or any of the arrangements for the ceremonies relating to the death;
 - b. any cultural responsibilities I may have in relation to the death;
 - c. the closeness of the association between me and the deceased person.
- 16.4 If I intend to take bereavement leave, I must notify Phoenix of that intention as early as possible before I am due to start work on the day that intended to be taken as bereavement leave; or if that is not practicable, as early as possible after that time.
- 16.5 Upon request by Phoenix, I will provide proof of bereavement to assist Phoenix in determining my entitlement to one (1) day's paid bereavement leave in accordance with Clause 16.4 above.
- 16.6 Payment for bereavement leave shall be at the rate of my relevant daily pay.

17. RELEVANT DAILY PAY

- 17.1 For the purposes of clauses 14, 15 and 16, "relevant daily pay" in the accordance with the Holidays Act 2003, means:
- The amount of pay that I would have received had I worked on the day concerned; or
 - If it is not possible for Phoenix to determine my relevant daily pay, it must be calculated in accordance with the formula set out in section 9(3) of the Holidays Act 2003.

18 PHOENIX PROPERTY / CLIENT PROPERTY

- 18.1 If, during any Assignment, I am provided with a uniform or equipment or entrusted with any cash or cheques or other valuables I will return the uniform or equipment 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 my wages, including holiday pay.

- 18.2 I understand that for some Assignments, the use of protective equipment or clothing may be required. If so, this will be provided by Phoenix or the Client unless I notify Phoenix that I wish to provide my own equipment. I understand that if Phoenix or the Client provides equipment or clothing for me, I may be required to pay a bond that will be repaid in full once the equipment or clothing is returned in good condition at the end of the Assignment.
- 18.3 I understand that I will be liable for any wilful or negligent actions or omissions by me causing damage or loss to the Client or Company during the Assignment.

19 INTELLECTUAL PROPERTY

- 19.1 Any invention, improvement, design, process, patent, trade mark, copyright, system or other intellectual property right (collectively called "Creation(s)") made or discovered by me 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 Phoenix.
- 19.2 Where the Creations are created by me as part of Phoenix providing services to the Client and the agreement between Phoenix and the Client provides that the Client shall own the rights in the Creation then Phoenix shall assign such rights in the Creation to the Client.
- 19.3 I agree that, if and whenever called upon to do so, (whether during or after the termination of any Assignment) I will execute all instruments and do all things necessary for vesting the rights of the Creations in Phoenix (or its assignee) absolutely as sole beneficial owner.
- 19.4 Notwithstanding this clause 19, should I 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 my property.

20 USE OF MATERIAL

- 20.1 I confirm that all materials, ideas, systems or other creative and literary property conceived or furnished by me for Phoenix or any Client of Phoenix will be my own creation or be fully cleared by me 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).

21 FURTHER EMPLOYMENT

- 21.1 Should I 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 interview for an Assignment, to take on employment or engagement as an independent contractor, whether on a permanent, part-time, fixed term, temporary or casual basis, I will immediately notify Phoenix before accepting any such employment or engagement.
- 21.2 This requirement applies for six (6) months after completion of each Assignment.

22 USE OF OWN VEHICLE

- 22.1 I will not use my own vehicle for any business purposes of the Client without prior authority from Phoenix.
- 22.2 Where I do use my own vehicle, whether with prior authority from Phoenix or not, I will be entirely liable for any damage or loss arising out of or in connection with the use of my vehicle.
- 22.3 Where I have prior authority from Phoenix for me to use my vehicle for business travel whilst on Assignment, I will be reimbursed at rates set by Phoenix and advised to me by Phoenix and I accept responsibility for arranging business insurance cover on my vehicle.

22.4 I agree that I will not drive any Client or Phoenix vehicle unless I hold the appropriate class of licence for that vehicle.

23 HEALTH AND SAFETY

23.1 At the time of signing these Terms and Conditions I declare I am in good health and I am not suffering from any medical condition which would affect my ability to carry out Assignments.

23.2 I acknowledge that I will not accept any Assignment with any Client unless I am in good health at the time and unless I am not at that time suffering from any medical condition which may affect my ability to carry out the Assignment.

23.3 I will, upon reasonable requests by Phoenix, supply a medical certificate to confirm my current ability to perform the requirements of the Assignment and will in particular supply Phoenix with evidence of my recovery from any accident or illness suffered by me during my employment upon request.

23.4 I acknowledge that I have been informed by Phoenix of my responsibilities under the Health and Safety in Employment Act 1992 (and its amendment Acts). I undertake to take all practicable steps to ensure my own safety and to ensure that no action or inaction on my part at work causes harm to any other person. In particular, I agree that I will:

- a. Report to Phoenix and to the Client any safety issues of which I become aware;
- b. Wear all appropriate protective clothing and equipment required, whether this is provided to me or I choose to provide my own;
- c. Follow all of the Client's instructions with regard to health and safety;
- d. Make myself aware of, and adhere to, all of the Client's policies and procedures concerning health and safety;
- e. Not use any piece of equipment, with which I am unfamiliar, have not been trained in the use of, or am not qualified to use.
- f. Immediately inform Phoenix if I believe that the working conditions at the Client's premises are for any reason unsafe;
- g. Advise Phoenix and the Client if I am feeling unduly stressed or fatigued as a result of my work. I understand and accept that in undertaking the Assignments provided by Phoenix a reasonable amount of pressure is to be expected and is accepted as a normal part of my employment; and
- h. Inform Phoenix and the Client as soon as practicable if I am involved in any accident or near miss at the Client's premises.

24 RESOLUTION OF EMPLOYMENT RELATIONSHIP PROBLEMS

24.1 Where Phoenix is advised of the existence of an employment relationship problem ("the problem") by me, Phoenix will discuss and attempt to resolve the problem directly with me, in the first instance.

24.2 If the problem is not resolved, Phoenix or I may request mediation assistance or determination of the problem under the Employment Relations Act 2000.

24.3 If I believe I have a personal grievance, I must raise the grievance with Phoenix within 90 days beginning with the date of the alleged action giving rise to the grievance, or coming to the notice of me, whichever is the later.

24.4 A copy of the Act is available for my reference from Phoenix.

25 DURATION AND VARIATION OF CONDITIONS

- 25.1 Subject to clause 25.2, these Terms and Conditions will apply to every Assignment which I undertake for Phoenix after the date recorded herein.
- 25.2 Notwithstanding the provisions of any clause in this agreement, the Terms and Conditions contained in this agreement may be varied by agreement between Phoenix and me; such agreement shall be recorded in writing.

26 PHOENIX / CLIENT RULES AND POLICIES

- 26.1 I agree to comply with all Phoenix and Client rules, policies and procedures as notified by Phoenix/Client from time to time.

27 EMPLOYEE PROTECTION PROVISION

- 27.1 If Phoenix proposes to restructure (as defined in section 69L (1) of the Employment Relations Act), and the proposal may result in your work being performed for a new employer, Phoenix will:
- a. discuss and negotiate with the new employer as to whether you may:
 - i) transfer to the new employer on the terms and conditions of employment set out in this Employment Agreement; or
 - ii) transfer to the new employer on different terms and conditions of employment; or
 - iii) not transfer to the new employer; and
 - b. meet with you after discussion with the new employer to:
 - i) convey the outcome of the discussion and negotiation outlined in 27.1(a) above; and
 - ii) outline your entitlements as set out in this provision.

28 COMPLETENESS

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

29 EMPLOYEE'S DECLARATIONS

I, _____ declare that:

- 29.1 I have read and fully understood the above Terms and Conditions and agree to be bound by them on each and every Assignment I undertake on behalf of Phoenix.
- 29.2 In particular, I have read clause 23 and understand my obligations in relation to health and safety while on Assignments, and will complete the Phoenix Health and Safety Programme as soon as possible after signing this agreement, if I have not already done so.
- 29.2 I agree and fully understand that, due to the nature of my employment and the fact that my Assignments will vary and generally be on short notice, whilst Phoenix will be able to verbally advise me of the details of the Assignment, it may be unable to provide me with the following information in writing, prior to commencing the Assignment:

- a. A description of the work to be performed by me; and
- b. An indication of where I am to perform the work; and
- c. An indication of the hours I will be required to work;
- d. The date on which my Assignment will commence, and the date on which it is, at the commencement of the Assignment, expected to end; and
- e. The wages payable to me.

29.3 I agree and fully understand that:

- a. Phoenix's offer(s) of Assignments may be intermittent and I cannot be guaranteed full time, ongoing employment by Phoenix; and
- b. My employment with Phoenix terminates once an Assignment is completed without any further Assignment having been offered and agreed to be undertaken by me; and
- c. Prior to signing the above agreement I have been given a reasonable opportunity to seek independent advice; and
- d. Phoenix will not always be able to give me a reasonable opportunity to seek independent advice before agreeing to undertake an Assignment due to the nature of the work being at short notice.

29.4 I agree that should I receive a written Confirmation of Assignment, I will return a signed copy as soon as practicable.

30 COMPANY'S DECLARATIONS

30.1 Phoenix agrees that it will brief the Employee prior to the Employee accepting an Assignment and provide the following information to the Employee verbally before he/she commences the Assignment:

- a. A description of the work to be performed by the Employee; and
- b. An indication of where the Employee is to perform the work; and
- c. An indication of the hours the Employee will be required to work;
- d. The date on which the Assignment commences, and the date on which it is, at the commencement of the Assignment, expected to end; and
- e. The wages payable to the Employee.

30.2 Phoenix will endeavour to provide the information set out in paragraphs 30.1(a) – (e) above in writing, as soon as reasonably possible.

SIGNED by the Employee:

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 employ me.

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.

I confirm that I understand the terms of this offer and accept employment on these terms.

SIGNED by the Employee:

Date: