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(Company Name)

# Individual Employment Agreement

## Permanent / Part Time Employee

The Act requires two copies of this agreement to be signed and returned **1-2 days BEFORE** the employment commences:

- One copy retained by the Employee
- One copy retained by the Employer

**PLEASE NOTE:** Where there is more than one possible clause, 'optional' is stated. **USE ONLY ONE** and strike out all others. Both the employer and employee are to initial the strike out as recognition that this has been accepted by both parties.

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**SUMMARY OF YOUR EMPLOYMENT DETAILS**

<b>PRINCIPAL WORK LOCATION</b>	
<b>DATE OF THIS AGREEMENT</b>	
<b>EMPLOYMENT COMMENCEMENT DATE</b>	
<b>HOURS AND DAYS OF WORK</b>	<p>Minimum hours per week.</p> <p>Days and hours (define):</p>
<b>REMUNERATION</b>	\$                      gross per
<b>PAYMENT FOR WORK DONE ON PUBLIC HOLIDAYS</b>	Time and a half of ordinary pay
<b>ADDITIONAL EMPLOYMENT BENEFITS</b>	As detailed in Schedule 3
<b>PERFORMANCE REVIEW</b>	Annual
<b>REMUNERATION REVIEW</b>	Annual
<b>PAY PERIOD</b>	
<b>ANNUAL HOLIDAYS</b>	4 weeks each year
<b>SICK LEAVE</b>	10 days each year
<b>MAXIMUM SICK LEAVE ACCUMULATION</b>	20 days
<b>BEREAVEMENT LEAVE</b>	<ul style="list-style-type: none"> <li>• 3 days on the death of your partner, parent, child, sibling, grandparent, grandchild, or your partner's parent</li> </ul>

PERMANENT / PART TIME INDIVIDUAL EMPLOYMENT AGREEMENT

	<ul style="list-style-type: none"><li>• 1 day on the death of any other person that the employer accepts is a close associate, or whose death imposes cultural or ceremonial responsibilities upon you</li></ul>
<b>TERMINATION</b> <ul style="list-style-type: none"><li>• <b>NOTICE PERIOD</b></li><li>• <b>TRIAL/ PROBATION PERIOD</b></li></ul>	1 week

The above table is to be read in conjunction with the relevant clauses in this agreement.

## 1.0 DUTIES AND PARTIES

### 1.1 Parties to this Agreement

1.1.1 Between \_\_\_\_\_ (“The Employer”)

And \_\_\_\_\_ (“The Employee”)

1.1.2 This is an Individual Employment Agreement between the Employer and Employee.

1.1.3 The parties agree that this Agreement shall be administered in accordance with the true intent of its terms and provisions, and that each will provide the other with the fullest co-operation to maintain a harmonious employment relationship.

1.1.4 Rural Contractors New Zealand facilitates the provision of this agreement in good faith however, they do not accept any responsibility or liability for any disputes between the parties to this agreement.

### 1.2 Object of the Agreement

1.2.1 This agreement replaces any previous agreement, understanding or arrangement between the parties whether written or verbal, express or implied, prior to the date of the agreement.

1.2.2 The object of this Agreement is to establish and maintain a secure and stable employment relationship for the benefit of both parties.

1.2.3 This agreement recognises the need for flexibility, compatibility and co-operation that is required for both parties for the successful continuance of the business.

### 1.3 Term of the Agreement

1.3.1 This Agreement shall come into effect on the date it is signed by both parties and shall continue in force until terminated by either party in accordance with this agreement.

1.3.2 The parties agree that the Employee shall commence employment on the date as advised in your Summary above.

### 1.4 Position

1.4.1 The position is that of a \_\_\_\_\_

1.4.2 The Employee reports to \_\_\_\_\_

1.4.3 See Schedule One for the Employee’s job description (ensure both parties sign the job description). Due to the nature of the work there may be slight changes to work tasks during peak or off peak seasons.

1.4.4 Any substantial change in the duties or reporting relationships shall require the written agreement of the Employee that should not be unreasonably withheld.

1.4.5 The principle place of work is as follows:

Employer Name \_\_\_\_\_

Street Name & No. \_\_\_\_\_

Town \_\_\_\_\_ Post Code \_\_\_\_\_

1.4.6 The Employee is required to attend during working hours at the Employer's place of work and such other places as the Employer may reasonably require without any accompanying change in remuneration or allowances. The Employee accepts that the Employer may change its place of work without any change in the Employee's remuneration or allowances.

1.4.7 The Employee agrees to fulfil other duties that, although not specified, may be required by the Employer, or supervising manager from time to time, provided that such are not unlawful or unsafe.

## 1.5 Hours of Work

1.5.1 The ordinary hours of work shall be as described in Schedule Two.

1.5.2 The Employee agrees to maintain such time recording systems provided by the Employer to accurately record hours worked, absences and, where required, breaks taken.

## 1.6 Rest and Meal Breaks

1.6.1 During the Employee's ordinary hours, they shall be entitled to breaks in accordance with the following;

Time period	Break
Between two and four hours	One 10 minute paid rest break
Between four and six hours	One 30 minute unpaid break
Between six and eight hours	One 10 minute paid rest break
Beyond eight hours	Cumulative repetition of the above

1.6.2 The timing of the rest and meal breaks are to be mutually agreed between the parties where possible. Where the Employee and Employer are unable to agree on the timing of the breaks, the breaks are to be taken in the middle of the work period provided it is reasonable and practical to do so.

## 1.7 Trial Period

**Applicable for new (first time) employees only and where the Employer has less than 20 Employees.**

**Strike out and both parties are to initial if this clause does not apply.**

1.7.1 The Employer and Employee agree that the Employee's employment is subject to a trial period of **90 days** commencing on the first day of employment, meaning the day the Employee actually starts work.

- 1.7.2 The Employer may dismiss the Employee or give notice of dismissal during the trial period and if the Employer does so, the Employee is not entitled to bring a personal grievance or any other legal proceedings in respect of the dismissal.
- 1.7.3 During the Trial Period the Disciplinary Proceedings clause of this Agreement or any Employer policy regarding the Employer's obligations (including any process requirements) in relation to performance, conduct, training or any other matter relating to the Employee's employment will not apply. Except that the Employer retains the right to dismiss the Employee with immediate effect for serious misconduct, as defined in the Termination clause and Schedule Four of this agreement.
- 1.7.4 Notwithstanding any other provision in this employment agreement, the notice period for termination of employment during the trial period is **one week**.
- 1.7.5 Both parties acknowledge the good faith obligation in Section 4(1A)(b) of the Employment Relations Act to be active, constructive, responsive and communicative does still apply in their dealings with each other.
- 1.7.6 Notwithstanding any other provision in this Employment Agreement, the Employer is not required to comply with section 4(1A)(c) of the Employment Relations Act during the Trial Period. Section 4(1A)(c) requires the Employer to provide the Employee with access to relevant information and an opportunity to comment on the relevant information before any proposed decision is made which will or is likely to have an adverse effect on the continuation of the Employee's employment.
- 1.7.7 If the Employer dismisses the Employee during the trial period, the Employer is not required to comply with a request under section 120 to provide the Employee with a written statement of the reasons for dismissal.
- 1.7.8 The Employee agrees that the Employer has drawn attention to and explained the provisions of this clause and been advised of their right to seek independent advice. The Employee agrees that they have been given the opportunity to raise any issues in relation to this clause with the Employer and that, where applicable, the Employer has bargained in good faith by considering and responding to the issue(s) raised.

## 1.8 Probationary Period

**Optional – In addition to Trial Period** (Also include clause 1.8.2 – 1.8.6 below. Strike out this 1.8.1 if not applicable)

- 1.8.1 After successful completion of the trial period, the parties agree that the Employee will be subject to the results of a further **3 month** probation period, which will commence on the day after the expiry of the trial period.

**Optional – Instead of a Trial Period** (strike out this 1.8.1 if not applicable)

- 1.8.1 The Employer and Employee agree that this employment shall be subject to a **3 month** probation period commencing on the day the Employee actually starts work. This allows each party to assess the suitability of the position and the appointment.
- 1.8.2 During this period, the Employer shall follow a fair process to assess your suitability for the position and the for permanent appointment, including:
- Informing you if there are any shortcomings or issues with your work or behaviour;
  - Providing any reasonable support or ongoing training that may be required to address the performance or behavioural concerns.
- 1.8.3 The Probation Period may be extended for a further period to provide more opportunity to address shortcomings and issues and/or meet the standards required. Failure to address any issue(s) raised, or the occurrence of other competency, behaviour or conduct problems, may lead to dismissal with notice (or payment in lieu thereof) during, or at the end of, the probation period. However, nothing in

this clause shall prevent the Employee's summary dismissal for serious misconduct.

- 1.8.4 During the probationary period, if your performance or behaviour are not meeting the Employer's expectation, the Employer will:
- In the first instance, issue a written warning;
  - In the second instance, dismiss you.
- 1.8.5 While considering if employment will continue past the Probation Period the Employer will ensure a fair process has taken place. However, may take into consideration the fact that the Employee's employment is subject to a Probation Period.
- 1.8.6 If either party decides not to continue the employment beyond the end of the Probation Period, it shall give the other party at least **one weeks' notice**. The parties may agree to terminate the employment at any time during the probation period.

## 2.0 REMUNERATION

### 2.1 Remuneration Rate

- 2.1.1 Refer to Schedule Three for Remuneration rates.

### 2.2 Payment of Remuneration and Deductions

- 2.2.1 Remuneration shall be paid:                      Weekly                      Fortnightly
- 2.2.2 Remuneration will be paid by direct credit to a bank account nominated by the Employee.
- 2.2.3 All remuneration plus any outstanding holiday pay due, less any authorised deductions, shall be paid with the next pay run following termination of this Agreement.
- 2.2.4 Following consultation with the Employee, the Employer may make deductions from the Employee's remuneration for:
- (a) Monies owing in respect of accounts paid by the Employer on behalf of the Employee including, but not limited to, private toll calls, power and charge accounts.
  - (b) Monies to repair or replace damage or loss to the Employer's equipment, caused by willful or careless action or inaction, misuse, or abuse.
  - (c) Any overpayments of remuneration made by the Employer, where deductions arising from such circumstances and occurring in one pay period may be made from subsequent pay periods.
  - (d) Those authorised by the Employee.
  - (e) Those provided for under another Act.
  - (f) Those ordered by the Courts.
  - (g) Time lost by the Employee due to employment default, sickness, accident (where no special leave has been approved), absence at own request.
  - (h) Remuneration or other monies paid in advance.
  - (i) Unreturned goods, overalls, equipment, tools or stock.
  - (j) Other legitimate debt owing by the Employee to the Employer.
- 2.2.5 In the event of termination of employment, the Employee agrees that deductions from their final



pay may be made for any of those specified above. Following consultation the Employer will give the Employee notice of this prior to any deduction being made.

#### 2.2.6 ACC Payments

- (a) All payments made to the Employee by the Employer in relation to work related accidents/injuries, whether relating to first week earnings related compensation or otherwise, shall be treated as advances of remuneration. These advances shall be recoverable at the discretion of the Employer should the Employee's claim for earnings related compensation be ultimately rejected or, with respect to the payment of the first week earnings related compensation, be determined by ACC to be a non-work injury.

#### 2.2.7 Recovery of ACC Payments

- (a) Where, pursuant to the above ACC Payments clause, advances relating to injury require recovery, such payment may be recovered by either:
  - (i). Debiting the appropriate portion of unused sick leave in respect of the period over which the advance was paid; or
  - (ii). Deduction from remuneration at an agreed rate, provided that such repayments shall be made within three months of the resumption of paid employment.
  - (iii). If the Employee's employment is terminated for any reason whatsoever prior to repayment occurring, a deduction may be made from the final pay, including holiday pay, owing.

## 2.3 Reimbursing Allowances

#### 2.3.1 Vehicle

- (a) Where the Employee is required to use his/her own road vehicle on the Employer's business the Employee shall be reimbursed at the rate set out in the Motor Vehicle Policy.

#### 2.3.2 Tools

- (a) Where the Employer agrees that the Employee will provide tools for the Employer's business for use on the Employer's premises, the Employee shall be reimbursed at the rate set out in the Tools Policy.

2.3.3 With the exception of the specific allowances prescribed above (clauses 2.3.1 and 2.3.2) the wage paid will not be subject to additional claims for payments in the form of allowances to recognise any features or conditions of work encountered in the workplace. Compensation for such features and conditions are incorporated in the rate of pay specified in clause 2.1.1 Schedule Two of this agreement.

## 3.0 LEAVE

### 3.1 Annual Holidays

3.1.1 At the end of each completed 12-months of current continuous employment the Employee shall be entitled to paid annual holiday of 4 weeks during the subsequent 12-month period.

3.1.2 Note that each reference to "12-months" is a reference to the Employee's anniversary date of commencing employment.

3.1.3 Payment for annual holidays shall be in accordance with the Holidays Act 2003 and its amendments. Holiday pay shall be calculated on the basis of the greater of the Employee's ordinary weekly pay immediately before the period of their holiday or the Employee's average weekly earnings from the employment during the 12-month period immediately before the end of the Employee's last pay period before the annual holiday.

3.1.4 Such annual holidays shall be taken at a time or times arranged between the Employer and the

Employee so as to take into account, as far as practicable, work requirements and the efficient performance of the Employee's duties. If the parties cannot agree, the Employer shall decide. In doing so, the Employer shall give not less than 14 days' written notice before annual holidays are to be taken.

## 3.2 Cashing up of Annual Holidays

- 3.2.1 An Employee may request, and an Employer may agree, to cash up a maximum of **one week** of his/her statutory annual holidays and can make his/her first request once he/she has worked for the Employer for a period of at least 12 months and has entitled holiday's available.
- 3.2.2 One week can be cashed up for each entitlement year, which is a period of 12 months continuous employment beginning on the anniversary of the Employee's employment. An Employee who has large amounts of holidays from previous years cannot backdate the cashing up. An Employee can request less than one week and within the same year make a further request, provided the total request for the entitlement year does not exceed one week.
- 3.2.3 Such request by the Employee to cash up holidays must be in writing. The Employer will consider the request within a reasonable time and reply in writing.
- 3.2.4 The Employer is under no obligation to agree to a request, nor is the Employer required to give a reason for declining a request. If the Employer agrees to the request, they will make payment as soon as practicable and the rate of pay will be the greater of ordinary weekly pay, or average weekly earnings for the last 12 months.

## 3.3 Public (Statutory) Holidays

- 3.3.1 Public holidays shall be allowed and paid in accordance with the Holidays Act 2003 and its amendments
- 3.3.2 If Christmas Day, Boxing Day, New Year's Day or January 2nd falls on a Saturday or Sunday and the day would otherwise be a working day for the Employee, the public holiday must be treated as falling on that day.
- 3.3.3 If Christmas Day, Boxing Day, New Year's Day or January 2nd falls on a Saturday and the day would not otherwise be a working day for the Employee, the public holiday must be treated as falling on the following Monday.
- 3.3.4 If Christmas Day, Boxing Day, New Year's Day or January 2nd falls on a Sunday and the day would not otherwise be a working day for the Employee, the public holiday must be treated as falling on the following Tuesday.
- 3.3.5 If Waitangi Day and/or ANZAC Day falls on a Saturday or a Sunday, and the day would otherwise be a working day for the Employee, the public holiday will be treated as falling on that day. However, if the day falls on a Saturday or a Sunday, and the day would not otherwise be a working day for the Employee, the public holiday will be treated as falling on the following Monday.
- 3.3.6 The Employee should note that where they are required or has agreed to work on a public holiday but does not work on the day because they:
- (a) Become or remains sick or injured; or
  - (b) Have a spouse or dependent who becomes or remains sick or injured; or
  - (c) Suffers a bereavement (as defined in clause 3.4),

they will not be entitled to time and a half payments, nor an alternative holiday. The day will still be considered a public holiday, and the Employee's entitlement to sick leave will not be affected.

- 3.3.7 Where the Employee is to start work on a day and finish work the following day, and one of the days is a public holiday, the Employer and Employee may agree that the work period shall be treated as not part of a public holiday, and that a period of 24 hours that starts or finishes during the public holiday and includes the period from when the Employee is to start work to when the Employee is to finish work is to be treated as a public holiday. In the event that both days are public holidays, two separate periods of 24 hours are to be treated as the respective public holidays in accordance with the requirements set out in this clause.
- 3.3.8 In all other instances, the public holidays listed in clause 3.3.1 will be observed on the calendar day they fall on.
- 3.3.9 Where the Employer requires the Employee to work on a public holiday, the Employee agrees to do so. However, the Employee will not work on a public holiday unless requested to do so.
- 3.3.10 If the Employer requires the Employee to work on a public holiday:
- (a) The Employee shall be paid at least the portion of the Employee's relevant daily pay (or if this is not practical to use, average daily pay will apply) that relates to the time actually worked on the day plus half that amount again;
- AND
- (b) Where the public holiday worked falls on a day that would otherwise be a normal working day for the Employee, the Employee shall be granted a paid Alternative Holiday (a paid day in lieu) at their relevant daily pay (or if this is not practical to use, average daily pay will apply). The Alternative Holiday shall be taken at a time mutually agreed between the parties. Where the Employer and Employee cannot agree, the Employer may require the Employee to take a specified amount of leave with no less than 14 days' notice.

### 3.4 Sick Leave

- 3.4.1 After 6 months' current continuous employment, the Employee shall be entitled to 10 day paid sick leave in the following and each subsequent 12-month period. Sick leave may only be taken in advance if the Employer agrees.
- 3.4.2 The Employee is entitled to carry over, to any subsequent 12-month period of employment, any sick leave that has not been taken by the end of the period to which the sick leave relates, carrying over a maximum of 10 days' sick leave in addition to the current year's entitlement (i.e. the Employee may hold a maximum of 20 days' sick leave in any one year).
- 3.4.3 Sick leave granted in accordance with clause 3.4.1 may be used in the event that:
- (a) The Employee is sick;
  - (b) The spouse or partner of the Employee is sick or injured;
  - (c) A person who depends on the Employee for care is sick or injured.
- 3.4.4 Sick leave shall be paid at the Employee's relevant daily pay or if not practical to use, average daily pay will apply, calculated in accordance with the Holidays Act 2003 and its amendments.
- 3.4.5 The Employee shall notify the Employer of their intention to take sick leave as soon as practicable on or before the first day of absence.
- 3.4.6 The Employer requires the Employee to provide a medical certificate as proof of sickness or injury at the Employee's own expense in the event of absence from work on sick leave for a period of 3 consecutive calendar days or more (unless the Employer waives this requirement). The Employer may require the Employee to produce a medical certificate at any stage (i.e. within 3 calendar days), in which case, the Employer will give the Employee notice as early as possible that they will be required to provide proof of sickness and the Employer shall meet the Employee's reasonable expenses in obtaining such proof.
- 3.4.7 Where the Employee has exhausted their sick leave entitlement, the Employer may consider providing discretionary paid leave in exceptional circumstances. The Employer may require the Employee to produce a medical certificate at the Employee's own expense.

### 3.5 Bereavement Leave

- 3.5.1 After 6 months of current continuous employment, the Employee shall be entitled to bereavement leave in accordance with clause 3.5.2 and 3.5.3
- 3.5.2 The Employee may take up to 3 days' bereavement leave upon the death of the Employee's spouse, parent, child, brother, sister, grandparent, grandchild or spouse's parent or if the employee suffers a
- miscarriage or stillbirth, or another person has a miscarriage or stillbirth and the employee:
  - is the person's partner, or
  - is the person's former partner and would have been a biological parent of a child born as a result of the pregnancy, or
  - had agreed to be the primary carer of a child born as a result of the pregnancy, or
  - is the partner of a person who had agreed to be the primary carer of a child born as a result of the pregnancy.
- 3.5.3 The Employee may take up to 1 day of bereavement leave upon the death of any other person the Employer accepts as having caused bereavement to the Employee. In deciding whether the Employee has suffered a bereavement, the Employer will take into account such factors as the closeness of the association with the deceased, whether the Employee has significant responsibilities for arranging the ceremonies relating to the death and whether the Employee has any cultural responsibilities in relation to the death.
- 3.5.4 Bereavement leave for a day shall be paid at the Employee's relevant daily rate of pay as defined in the Holidays Act 2003 and its amendments. If not practical to use relevant daily rate, average daily pay will apply.
- 3.5.5 The Employee shall notify the Employer of their intention to take bereavement leave as soon as practicable on or before the first day of absence.

### 3.6 Parental Leave

- 3.6.1 Parental leave shall be granted in accordance with the provisions of the Parental Leave and Employment Protection Act 1987 and its amendments. The Employer requires at least 3 months' notice of your intention to take parental leave in order to provide you with information on your entitlements.

## 4.0 MISCELLANEOUS PROVISIONS

### 4.1 Medical Examination

- 4.1.1 The Employer shall be entitled to require the Employee to undergo a medical examination, at the Employer's cost.
- 4.1.2 Such a requirement should only be used where the Employer has a reason related to workplace health and safety, reasonably suspects the misuse of drugs (both illegal or legal), reasonably suspects misuse of sick leave entitlements, or has informed the Employee they are considering the possible termination of the Employee's employment on medical grounds.

### 4.2 Disciplinary and Dismissal Procedures

- 4.2.1 The Employee should note the provisions of this Agreement, the Employer's Serious Misconduct and Misconduct rules in Schedule Four and Schedule Five of this Agreement, and any other policy statements as provided for from time to time by the Employer.

- 4.2.2 Except in the case of alleged serious misconduct the Employer will first counsel the Employee with respect to any action or non- action which might place their continued employment in jeopardy.
- 4.2.3 Except in the case of alleged serious misconduct or, during the Trial Period or Probation Period, the Employer may then, after following due process:
- (a) Issue a first written warning in the first instance;
  - (b) Issue a final written warning in the second instance;
  - (c) Dismiss the Employee in the third instance.
- 4.2.4 However, nothing in this clause will prevent the Employer from choosing to forgo any of these steps depending on the seriousness of any misconduct. Further, the giving of a warning is not limited to repetition of the same offence.
- 4.2.5 After following due process the Employer may dismiss an Employee without notice (summary dismissal) for serious misconduct (see Schedule Four for examples of what constitutes serious misconduct).
- 4.2.6 The Employee will be notified in advance of the purpose of any disciplinary meeting and will be given the opportunity to have a representative or support person in attendance.
- 4.2.7 Prior to determining its course of action, the Employer will give the Employee an opportunity to provide explanations and submissions and will consider any such comments given.

### 4.3 Suspension

- 4.3.1 In the event the Employer wishes to investigate any alleged serious misconduct, he or she may, after discussing the proposal of suspension with the Employee, and having considered the Employee's views, suspend the Employee on pay for the duration of the investigation. The Employer shall only invoke suspension where no other alternatives to suspension are feasible.
- 4.3.2 In the event that the suspension period lasts more than two weeks due to reasons outside the Employer's control (i.e. a Police investigation) the suspension will continue without pay.
- 4.3.3 Under extreme circumstances, it may become necessary for the Employer to suspend the Employee's employment without pay.

### 4.4 Termination of Employment

- 4.4.1 Notices
- (a) This agreement may be terminated by either party giving the other written notice as specified in the Summary of your Employment Details table. During the Trial and/or Probation Period one weeks' notice will apply.
  - (b) The Employer may at its discretion pay the Employee's salary or wages in lieu of all or part of the notice period.
  - (c) If the Employee gives notice which is longer than required, the Employer shall not be obliged to accept such longer notice period, neither shall the Employer be liable to pay more than two weeks' if the Employer does not require the Employee to work out the notice period.
  - (d) If the Employee fails to work out the notice period by reason of their own choice, the Employee shall not be paid for the non-worked proportion of notice and the Employer shall be entitled to compensation for the Employee's breach of this agreement, calculated at the

pay the Employee would have received during the unworked notice period.

- (e) Nothing in this clause shall prevent the summary termination of employment (without notice) after due process for serious misconduct as detailed in Schedule Four.
- (f) The Employer may also after due process, summarily terminate employment where the Employee has been convicted of any criminal offence, other than an offence, which in the reasonable opinion of the Employer, does not affect a fulfilment of the Employee's duties and/or terms and conditions of employment.
- (g) Upon the termination of employment, the Employee shall return to the Employer, all property and equipment belonging to the Employer. The Employer may deduct the value of any such property not returned from any final payment owing.
- (h) Where the Employer provides accommodation as a part of this Agreement, notice to terminate the Agreement, by either party, shall be deemed to also be notice to vacate the accommodation. Refer to the Tenancy Agreement.
- (i) Following consultation the Employer is entitled to deduct from the Employee's final wages or salary and holiday pay for overpayment made to the Employee for leave taken in advance or any money owed under clause 2.2.4.
- (j) The Employer reserves the right to require the Employee to undertake reduced or alternative duties consistent with the Employee's abilities or require that the Employee does not attend the workplace during any part of the notice period. In that event the Employee will continue to receive normal for the balance of the notice period, will remain an employee for the duration of the notice period, and will continue to be bound by the terms and conditions of this employment agreement.
- (k) If the Employee fails to work out the notice period by reason of their own choice, the Employee shall not be paid for the non-worked proportion of notice and the Employer shall be entitled to compensation for the Employee's breach of this agreement, calculated at the pay the Employee would have received during the unworked notice period.

## 4.5 Termination on the Basis of Long Term Injury or Illness

- 4.5.1 The Employer may terminate this Agreement upon giving notice outlined in clause 4.4.1 if as a result of mental or physical illness or injury the Employee is rendered incapable of the proper ongoing performance of his or her duties under this Agreement but only after following due process and consultation with the Employee.
- 4.5.2 Before taking any action under this clause, the Employer shall request the Employee to undergo a medical examination by a registered health practitioner nominated by the Employer, and the Employee agrees to comply with such a request. The Employer shall take into account any reports or recommendations made available to the Employer as a result of the examination and any other relevant medical reports or recommendations, which the Employer might receive, or which may be tendered, to the Employer by or on behalf of the Employee. The Employer shall be entitled to draw any reasonable inference as they see fit in the event that the Employee fails or refuses to undergo any medical examination requested under this sub clause.
- 4.5.3 In deciding whether to terminate the employment under foregoing provisions, the Employer may take the following considerations into account:
  - (a) The nature of the illness or injury, including how long it has continued, and the prospects for recovery;
  - (b) The duration of the employment, including the effect of termination on any superannuation rights or other long-service entitlements;
  - (c) The position held by the Employee, with particular regard to the length of time for which such position can reasonably be held open;
  - (d) Whether the employment was likely to last significantly longer in the absence of the illness



or injury (for instance if it was a fixed term Agreement);

- (e) The extent to which the illness or injury is work related and, if work related, whether that fact would justify a lengthier absence from work than otherwise; and
- (f) Any circumstances in addition to the medical reports or recommendations referred to in clause 4.5.2 as the Employee may wish to place before the Employer.

## 4.6 Abandonment of Employment

- 4.6.1 If the Employee is absent from work without notification to, or consent from, the Employer for more than 3 consecutive periods of work, the Employer shall be deemed to have terminated their employment, the Employer shall make reasonable attempts to contact the Employee to confirm that abandonment has occurred and that the Employee is not in a situation in which they have been unable to notify the Employer of their absence.

## 4.7 Force Majeure

- 4.7.1 Neither party shall be liable for any delay in performing or failure to perform its obligations under this Agreement if such delay or failure is caused from force majeure, act of God, fire, explosion, industrial dispute, act of government such as a change in legislation, regulation or order made under legislative authority, or anything beyond the parties' reasonable control and for which it was not responsible.

## 4.8 Redundancy

- 4.8.1 Where the Employee's employment is terminated by reason of redundancy following consultation and feedback between the parties, the Employee shall receive notice as stipulated in the Termination clause 4.4.1(a) of this Agreement.
- 4.8.2 There shall be no redundancy compensation for the loss of the Employee's position.
- 4.8.3 Where the Employer has proposed that the Employee's position may be made redundant, the Employer shall:
  - (a) consult with the Employee, a reasonable time in advance, over the possibility of redundancy (including the operational reasons for considering redundancy and its reasons for selecting the Employee, and redeployment where possible); and
  - (b) receive for their consideration, any views from the Employee of suggestions or alternatives to redundancy, prior to arriving at any final decision.
- 4.8.4 The Employer shall give the Employee such reasonable time off while working out any redundancy notice period, as may be necessary, to enable the Employee to seek alternative employment.
- 4.8.5 There is no right to redundancy compensation where the Employer sells, transfers or leases the business and the Employee's employment continues on substantially the same terms and conditions of employment.
- 4.8.6 Where an Employee is given notice and voluntarily terminates his/her employment before the expiry of the notice period, the Employee shall not be paid for the unworked period of notice.

## 4.9 Employee Protection Provision

- 4.9.1 The purpose of this provision is to provide protection for the employment of the affected Employee if the Employer's business is restructured.

- 4.9.2 Restructuring
- (a) Restructuring, in relation to the Employer's business means:
    - (i). Entering into a contract or arrangement under which the Employer's business (or part of it) is undertaken for the Employer by another person; or
    - (ii). Selling or transferring the Employer's business (or part of it) to another person
- 4.9.3 In the event of a restructuring that may affect the Employee's future employment, the Employer will undertake the following steps:
- (a) The Employer shall initiate and agree on a negotiation process with the potential new Employer around the extent to which the proposed restructuring relates to affected Employees' positions as soon as practicable.
  - (b) The Employer will negotiate with the potential new Employer the following:
    - (i). Whether or not the Employee's position would transfer to the potential new Employer;
    - (ii). Where the Employee's position would transfer to the new Employer, the terms and conditions of employment that would be offered to the Employee by the potential new Employer; and
    - (iii). The proposed date that the Employee would commence employment with the potential new Employer.
- 4.9.4 In the event that the Employee is not offered employment with the potential new Employer for whatever reason, the Employee's redundancy entitlements will be determined in accordance with the redundancy provision of this employment agreement.
- 4.9.5 Further, there shall be no right to redundancy compensation where the Employer's business is restructured and the Employee is offered employment with the potential new Employer on substantially the same terms and conditions of employment.

## 4.10 Employment Relationship Problems and Personal Grievance

- 4.10.1 Where an employment relationship problem arises, the parties will first attempt to settle the matter themselves.
- 4.10.2 If the parties are unable to settle the matter themselves, they shall submit the problem to mediation. Mediation services are offered by a number of providers. The Ministry of Business Innovation and Employment (MBIE), has established a mediation service for the purposes of mediating employment problems. This service can be accessed by contacting the Employment Relations Service of MBIE on 0800 20 90 20.
- 4.10.3 If the matter is not resolved by mediation, it may be referred to the Employment Relations Authority for an investigation and determination by the Authority. If any party wishes to dispute the determination, the matter may be referred to the Employment Court.
- 4.10.4 If an Employee believes he or she has a personal grievance, it must be raised by the Employee with the Employer. Such a grievance must be raised within 90 days from the date on which the alleged action occurred or the date on which it came to the notice of the Employee.

## 4.11 Employee Representations and Health Disclosure

- 4.11.1 The Employee warrants that all representations, whether oral or in writing, made by the Employee as to their qualifications and experience in applying for the position are true and correct; and



- 4.11.2 The Employee has not deliberately failed to disclose any matter that may have materially influenced the Employer's decision to employ the Employee.
- 4.11.3 The Employee warrants that they are not aware of any disability or health condition that may render them incapable of carrying out the job description to the Employer's satisfaction.
- 4.11.4 The Employee is informed that misrepresentation during the pre-employment process is an example of due cause for termination of this Agreement under clause 4.2.5.

## 4.12 Health and Safety

- 4.12.1 The parties' obligations and duties under the Health and Safety at Work Act 2015 are detailed in the Health and Safety Policy. This includes the reporting of accidents, incidents and near misses.
- 4.12.2 The Employee agrees to take reasonable care precautions for the safety and health of them self and others in the workplace:
- (a) The Employee will take reasonable care to ensure their own safety while at work;
  - (b) The Employee will take reasonable care that no action or inaction by themselves causes harm to any other person in the workplace;
  - (c) The Employee will comply, as far as the Employee is reasonably able, with any reasonable instruction that is given by the Employer to comply with the Health and Safety at Work Act 2015;
  - (d) The Employee will co-operate with any reasonable policy or procedure of the Employer relating to health and safety at the workplace, that has been notified to the worker;
  - (e) Where an Employee becomes aware of damage or faults to equipment or the existence of other hazards/risks that may endanger the health and safety of others, they will immediately report such damage, fault or hazard to management;
  - (f) The Employee agrees that they know and understand the Employer's health and safety rules and procedures. Where an Employee fails to comply with health and safety rules and procedures, disciplinary action may result;
  - (g) The Employee agrees to observe all safety precautions and procedures including, where required, the wearing of protective clothing and equipment;
  - (h) The Employee acknowledges that they have read and understand the Employer's Health and Safety policy;
  - (i) The Employee will report to work in such a condition that enables their duties to be performed properly and safely at all times.

## 4.13 Conduct

- 4.13.1 The Employee agrees to abide by the Code of Agreement and workplace policies introduced by the Employer from time to time and agrees to be bound by any subsequent variations.
- 4.13.2 The Employee shall undertake the tasks and duties associated with their position in a professional manner and to an acceptable standard.

## 4.14 Confidential Information

- 4.14.1 Except in the proper performance of the Employee's duties, or as authorised by the Employee's manager/supervisor, he/she shall not at any time use or divulge to any person, any knowledge or information which he/she may acquire during the course of his/her employment by the Employer concerning the business, operations, affairs, property, customers, clients, suppliers, employees and principals of the Employer.
- 4.14.2 This restriction shall continue to apply after the termination of employment without limit in point of time, but shall cease to apply to knowledge or information, which may become public knowledge or a matter of public record without breach by the Employee of this restriction.

4.14.3 Any breach of this clause or disclosure may be considered as serious misconduct and may lead to the Employee's dismissal.

## 4.15 Drugs and Alcohol

4.15.1 Under the Health and Safety at Work Act 2015, the Employer has a legal duty to ensure the safety of employees while at work. This legal duty requires the Employer to take reasonably practicable steps to provide and maintain a safe working environment.

4.15.2 The Employer may require the Employee to undergo testing for drugs, cannabinoids, other substances and/or alcohol, after accidents or incidents of the following nature after:

- (a) Lost time injury accident;
- (b) Injury requiring medical treatment;
- (c) Reasonable cause testing;
- (d) Post accident/incident;
- (e) Follow up testing;
- (f) Periodic testing for safety sensitive positions, this includes positions that operate agricultural tools and machinery on and/or off the road and positions that operate vehicles;
- (g) Incident with significant potential to cause serious harm or loss;
- (h) Incident where an employee's actions, appearance, behaviour or conduct suggests impairment by drugs or alcohol.

4.15.3 Such testing shall be done during working hours.

4.15.4 If the individual unreasonably refuses to provide consent or undergo the test, the person will be asked to provide a reason for refusing to undertake the test. If in the opinion of the employer the reason is not sufficient the person will be removed from the work location and an investigation will be carried out. Refusal may be deemed as serious misconduct and may result in termination of employment.

4.15.5 A full Drug and Alcohol Policy sets out these requirements in full detail.

## 4.16 Review

4.16.1 On or around the anniversary date of the commencement of the Employee's employment there shall be a review of the terms and conditions of the Agreement.

4.16.2 In no event does this review place the Employer under any obligation to alter or amend the terms and conditions of this Agreement or remuneration.

## 4.17 Conflict of Interest

4.17.1 The Employee agrees that they have disclosed all known or potential conflicts of interest to the Employer at the time this agreement is entered into. The Employee agrees to immediately disclose to the Employer any known or potential conflicts of interest that may arise during the employment relationship.

4.17.2 The Employee shall not, for the term of this agreement, set themselves up, or engage in private business or become involved in any capacity (employment or otherwise) in direct or indirect competition with the Employer, without the Employer's written consent.

4.17.3 Failing to disclose a potential known or potential conflict of interest, or failing to seek such consent or engaging in any conflicting activities without the Employer's consent, may be considered serious

misconduct and lead to the termination of the Employee's employment.

## 4.18 Non-Solicitation

- 4.18.1 For 3 months after the termination of this agreement for any reason, the Employee agrees not to, either personally or as an employee, consultant or agent for any other entity or employer, solicit in competition with the Employer the custom of any person who has at any time during the period of their employment by the Employer been a customer or client of the Employer or who shall become a customer of the Employer as a result of any tender, negotiations, arrangements or proceedings made or taking place at the date of such termination.
- 4.18.2 For 3 months after the termination of this agreement for any reason, the Employee agrees not to, either personally or as an employee, consultant or agent for any other entity or employer, solicit, engage or employ any employee of the Employer whom the Employee had any dealings with while employed with the Employer.
- 4.18.3 Consideration for this clause is included in the remuneration package provided in Schedule Three of this employment agreement.

## 4.19 Restraint of Trade (Optional – strike out and both parties are to initial if this clause does not apply)

- 4.19.1 In order to protect the Employer's proprietary interests, for 3 month/s after the termination of this agreement for any reason, the Employee shall not, within the geographical area of \_\_\_\_\_  
\_\_\_\_\_ engage to work for or on behalf of an organisation in direct competition with the Employer, or establish their own business in competition with the Employer.
- 4.19.2 Consideration for this restraint is included in the remuneration package provided in the Remuneration clause, Schedule Three of this employment agreement.
- 4.19.3 It is acknowledged that in the Employee's view of their position with the Employer and their direct association with the customers of the Employer during their employment, the restraint provided for in this clause is fair and reasonable and does not inhibit their ability to earn a reasonable living.
- 4.19.4 If the period referred to in this clause causes a restriction held to be unenforceable by a Court of competent jurisdiction, then in respect of that restriction only the restraint period shall be six month/s from the termination date; but if that period causes a restriction held to be unenforceable by a Court of competent jurisdiction, then in respect of that restriction only the restraint period shall be a period of three month/s from the termination date.

## 4.20 Variation to Employment Agreement

- 4.20.1 As part of the annual review, or at any other time, the parties may amend the Agreement by mutual agreement. Where such variations are agreed to they shall be recorded in writing, signed by both parties, and attached to this Agreement and shall become part of it.

## 4.21 Employee Warrants Opportunity Provided to Seek Independent Advice

The Employee acknowledges that prior to entering into this agreement, he/she has been provided with a copy of this intended employment agreement, has been advised that he/she is entitled to seek independent advice upon it, and has been given a reasonable opportunity to do so.

PERMANENT / PART TIME INDIVIDUAL EMPLOYMENT AGREEMENT

The Employee accepts and agrees to comply with and abide by the terms and conditions of employment contained in this agreement, the attached appendices, and Employer's policies, which may be amended from time to time.

The Employee understands that the rights and obligations contained in this agreement shall continue to apply after termination of employment without limit in point of time, but shall cease to apply to knowledge or information which may become public knowledge or a matter of public record.

(a) Signatories

Employee

Employer

Name:

Name:

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Additional Schedules Attached:

- Schedule One: Job Description
- Schedule Two: Hours of Work
- Schedule Three: Remuneration
- Schedule Four: Serious Misconduct
- Schedule Five: Misconduct

***Please read and initial each page.***

## 5.0 SCHEDULES

### 5.1 Schedule One: Job Description

5.1.1 See attached.

## 5.2 Schedule Two: Hours of Work

- 5.2.1 Your ordinary hours of work will be a minimum of ( ) hours per week. The nature of our industry is such that there will be times when additional hours of work will be available, however, the Employer will not require the Employee to work additional hours without agreement.

### **Additional hours**

- 5.2.2 The Employer may offer additional hours, and the Employee can decide whether to accept the offer of additional hours. Once such hours are accepted by the Employee, the Employee is then required to attend work as agreed. Failure to attend any additional agreed hours without good cause may result in disciplinary action.
- 5.2.3 Any additional hours worked in excess of the Employee's ordinary hours will not become ordinary hours and neither party can expect the other to either provide or work ongoing additional hours on the basis that additional hours have been offered or worked previously.

### **Seasonal fluctuations**

- 5.2.4 The Employee accepted that due to the nature of the work there may be seasonal fluctuations in the hours to be worked and days of work. The Employer does not expect fluctuations to be significant or for hours of work to drop below the minimum number of hours specified above unless it was agreed otherwise.

### **Annual Closedown Period**

- 5.2.5 The Employer may closedown all or part of their operations and may require the Employee to take all or some of their annual holiday entitlement during the period of the closedown, even where this requires them to take holidays for which they are not fully reimbursed. The Employer shall provide the Employee with at least 14 days' advance notice of the closedown. Unless mutually agreed otherwise, the Employer will have only one closedown period in every 12 months of the Employee's employment.

## 5.3 Schedule Three: Remuneration

5.3.1 The Employee will be paid:

5.3.2 Agreement of Starting Remuneration Rate

Date: \_\_\_\_\_ at a rate of \$ \_\_\_\_\_ (gross) per

(a) Signatories

Employee:

Employer:

Name:

Name:

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

### KiwiSaver

5.3.3 All new employees who are not current members of KiwiSaver will be automatically enrolled by the Employer, and KiwiSaver deductions will begin from your first payment of \_\_\_\_\_. However, the employee may choose to opt out at any time on or after day 14, and any day before day 56, of starting employment with the Employer. If the Employee elects to remain a member of KiwiSaver, they will receive their gross \_\_\_\_\_, less PAYE and their KiwiSaver contributions (calculated on gross earnings). Contributions will be paid directly to Inland Revenue in accordance with the KiwiSaver Act 2006 and its amendments. The Employer will also contribute in accordance with the requirements of the KiwiSaver Act and any amendments.

5.3.4 If the Employee elects not to join KiwiSaver, they will receive their gross \_\_\_\_\_, less PAYE.

5.3.5 "KiwiSaver" means a KiwiSaver scheme under the KiwiSaver Act 2006 or any superannuation scheme that replaces it in the future.

## 5.4 Schedule Four: Serious Misconduct

- 5.4.1 The following are examples of offences which may constitute serious misconduct and which may give rise to summary dismissal under clause 4.2.5. Every instance of misconduct must be assessed on its facts and a “full and fair” investigation into the alleged conduct must take place prior to a decision to terminate:
- (a). Unauthorised use, possession or movement of Employer, customer, supplier, other Employee’s or other Employee’s family’s property or any other property belonging to or under the control of the Employer. This includes but is not limited to, vehicles, money, information, intellectual property, scrap, waste or damaged items;
  - (b). Refusal to undertake the duties of the Employee’s position, or to carry out any proper and lawful instruction given by the Employer or any other person acting with the authority of the Employer;
  - (c). Verbal or physical abuse/violence or threats of physical violence or threatening behaviour and/or language used against any person. This also extends to non-work hours where the incident has the potential to have a damaging effect on the employment relationship;
  - (d). Racial, sexual, or other improper harassment of any other person, occurring at the workplace, at company functions, or at a client’s premises. This also extends to non-work hours where the incident has the potential to have a detrimental effect on the working relationship;
  - (e). Bullying of any other person;
  - (f). Possession of weapon/s on Employer premises without proper authorisation at any time;
  - (g). Without permission from the Employer, bringing to the workplace or be under the influence of drugs including synthetics (other than prescription), and including misuse of prescription medication, cannabinoids, mind altering substances or alcohol during working hours or in company vehicles.
  - (h). Not reporting missing safety equipment, interfering with or removing safety equipment.
  - (i). Failure to follow instructions or otherwise acting in a manner that threatens safety, health, or hygiene in the workplace or in a manner that hinders the safe and proper performance of the duties of other Employees;
  - (j). Falsification or being party to falsification of time sheets, attendance records, other special payment records or any other Employer, customer, supplier or employee documents or records, or any other actions which could result in a payment to which an Employee is not entitled;
  - (k). Using any vehicle whilst at work or using any vehicle provided by the Employer at any time in such a way that it contravenes any legislation (such as speeding, driving while under the influence of alcohol or drugs, breach of mobile phone use legislation, driving while unlicensed or in breach of any restrictions on the Employees licence), or driving in an unsafe manner;
  - (l). Negligence, or deliberate act, or irresponsible use of fire protection or safety equipment or protective clothing, which may affect the safety of the Employee or other workers, or results in a serious safety or damage situation;
  - (m). Failure to comply with the Employer’s Health and Safety policy or procedures;
  - (n). Unauthorised use of Employer/customer/supplier equipment or vehicles
  - (o). Allowing any unauthorised person(s) to use vehicles provided by the Employer;
  - (p). Performing a deliberate action or inaction that leads or could lead to stock or profit loss for the Employer. Examples include but are not limited to, failure to close gates leading on to



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roads, failure to report sick or injured animals, failure to notify the Employer of a breach of any known consents issued by a Council; under the Resource Management Act or causing (or attempting to cause) grading or non-acceptance of milk by a dairy company;

- (q). Deliberate action that leads or could lead to damage to Employer, customer, supplier or other Employee's property;
  - (r). Disclosure of confidential information;
  - (s). Dishonesty, theft and/or fraud;
  - (t). Any act of sabotage;
  - (u). Committing or allowing illegal activities to occur on the workplace or in the accommodation;
  - (v). Animal negligence or abuse leading to injury or death of stock (as a direct or indirect result of the abuse);
  - (w). Abuse of sick leave or bereavement leave;
  - (x). Sleeping on the job;
  - (y). Sending, saying or displaying any offensive, insulting or harassing messages to another person;
  - (z). Misrepresentation during the pre-employment stage;
  - (aa). Any action undertaken by the Employee, either at or away from the workplace, that brings or has the potential to bring the Employer into disrepute;
- (aa) Such other matters as the Employer may advise from time to time; or
- (bb) Any other act or omission which, while not specifically covered by the foregoing classes of serious misconduct, is of a similar nature or in the reasonable opinion of the Employer constitutes serious misconduct.

## 5.5 Schedule Five: Misconduct

- 5.5.1 The following are examples of acts or omissions, which may, after the appropriate warnings in accordance with clause 4.2 of this agreement, lead to dismissal:
- (a). Persistent failure to achieve performance standards;
  - (b). Careless or indifferent performance of duties;
  - (c). The use of abusive, obscene, or threatening language which may cause offence to another person;
  - (d). Unauthorized gambling on the Employer's premises;
  - (e). Disrupting the workplace by acts of undesirable behaviour or horseplay and disrupting any other Employee from carrying out that Employee's duties;
  - (f). Persistent lateness, absenteeism, failure to report inability to attend work or leaving early without the permission of management;
  - (g). Unauthorized absence from duty;
  - (h). Failure to comply with the Employer's policy on smoking in the workplace;
  - (i). Failure to observe safety rules or wear Personal Protective Equipment;
  - (j). Failure to report and document any accident or personal injury occurring at work, no matter how minor the incident;
  - (k). Reporting to work in such a condition that duties are unable to be performed properly and safely;
  - (l). Allowing the Employees family and visitors to act in a manner that threatens the safety, health standards, or hygiene in the workplace, that threatens the family members or visitor's own safety or allowing any action by the family member or visitor that hinders the safe and proper performance of the duties of other employees;
  - (m). Any act or omission which, while not being serious misconduct, has a significant effect on the Employee's ability to carry out the duties of the Employee's position;
  - (n). Any act which is likely to diminish the good reputation of the Employer in the business community;
  - (o). Mistreatment of stock leading to potential distress, illness or injury;
  - (p). Bringing alcohol into the workplace without permission;
  - (q). Inappropriate use of company computers, including internet and email usage and messages contained within;
  - (r). Being discourteous to the Employer, other employees, customers or suppliers;
  - (s). Aggressive/argumentative behavior;
  - (t). Such other matters as the Employer may advise from time to time; or
  - (u). Any other act or omission which, while not specifically covered by the foregoing classes of misconduct, is of a similar nature or in the reasonable opinion of the Employer constitutes misconduct.