Free consultancy agreement: cover

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Consultancy agreement

DATE

*[Date]*

PARTIES

1. [*[INDIVIDUAL NAME]* of *[address]*] OR [*[COMPANY NAME]*, a company incorporated in *[jurisdiction]* (registration number *[number]*) having its registered office at *[address]*] ("**the Consultant**"); and

2. [*[INDIVIDUAL NAME]* of *[address]*] OR [*[COMPANY NAME]*, a company incorporated in *[jurisdiction]* (registration number *[registration number]*) having its registered office at *[address]*] ("**the Client**").

AGREEMENT

1. Definitions

1.1 In this Agreement[, except to the extent expressly provided otherwise]:

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Charges**" means:

(a) [the charges and other payable amounts specified in Part 5 of Schedule 1 (Services particulars) and elsewhere in this Agreement];

(b) [charges calculated by multiplying [the standard time-based charging rates of the Consultant (as notified by the Consultant to the Client before the date of this Agreement)] by the time spent by the personnel of the Consultant performing [the Services] (rounded [down by the Consultant to the nearest quarter hour])]; and

(c) [such other charges and payable amounts as may be agreed in writing by the parties from time to time];

*[additional list items]*

"**Client Materials**" means [all works and materials supplied by or on behalf of the Client to the Consultant for incorporation into the Deliverables or for some other use in connection with the Services];

"**Deliverables**" means [those *[deliverables]* specified in Part 2 of Schedule 1 (Services particulars) that the Consultant has agreed to deliver to the Client under this Agreement] OR [*[define deliverables]*][, and such other deliverables as the parties may agree in writing from time to time];

"**Effective Date**" means [the date of execution of this Agreement];

"**Intellectual Property Rights**" means [all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs)];

"**Schedule**" means any schedule attached to the main body of this Agreement;

"**Services**" means the consultancy services specified in Part 1 of Schedule 1 (Services particulars);

"**Term**" means [the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2]; and

"**Third Party Materials**" means the works and/or materials comprised in the Deliverables (excluding the Client Materials), the Intellectual Property Rights in which are owned by a third party[, and which are specified in Part 2 of Schedule 1 (Services particulars) or which the parties agree in writing shall be incorporated into the Deliverables].

2. Credit

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3. Term

3.1 This Agreement shall come into force upon the Effective Date.

3.2 This Agreement shall continue in force [indefinitely] OR [until *[date]*, at the beginning of which this Agreement shall terminate automatically] OR [until *[event]*, upon which this Agreement shall terminate automatically], subject to termination in accordance with Clause 11 or any other provision of this Agreement.

4. Services

4.1 The Consultant shall provide the Services to the Client in accordance with this Agreement.

4.2 The Consultant shall provide the Services [with reasonable skill and care] OR [in accordance with the standards of skill and care reasonably expected from a leading service provider in the Consultant's industry] OR [*[specify standard(s)]*].

5. Deliverables

5.1 The Consultant shall deliver the Deliverables to the Client.

5.2 The Client must promptly, following receipt of a written request from the Consultant to do so, provide written feedback to the Consultant concerning the Consultant's proposals, plans, designs and/or preparatory materials relating to the Deliverables and made available to the Client with that written request.

5.3 The Consultant shall [ensure] OR [use its best endeavours to ensure] OR [use reasonable endeavours to ensure] that the Deliverables are delivered to the Client in accordance with the timetable set out in Part 3 of Schedule 1 (Services particulars)[ or agreed by the parties in writing].

5.4 The Consultant warrants to the Client that:

(a) [the Deliverables will conform with the requirements of Part 2 of Schedule 1 (Services particulars)[ as at the date of delivery of the Deliverables]];

(b) [the Deliverables will be free from [material defects]]; and

(c) [[the Deliverables] OR [the Deliverables when used by the Client in accordance with this Agreement] will not infringe the Intellectual Property Rights[ or other legal rights] of any person[, and will not breach [the provisions of any law, statute or regulation],] in [any jurisdiction and under any applicable law]].

*[additional list items]*

6. Licence

6.1 The Consultant hereby grants to the Client [a non-exclusive, worldwide, perpetual and irrevocable] licence to [copy, store, distribute, publish, adapt, edit and otherwise use] the Deliverables[ (excluding [the Third Party Materials and the Client Materials])][ for the following purposes: *[identify purposes]*].

7. Charges

7.1 The Client shall pay the Charges to the Consultant in accordance with this Agreement.

7.2 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated [inclusive of any applicable value added taxes] OR [exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Client to the Consultant].

8. Payments

8.1 The Consultant shall issue invoices for the Charges to the Client [from time to time during the Term] OR [on or after the invoicing dates set out in Part 5 of Schedule 1 (Services particulars)] OR [at any time after the relevant Services have been delivered to the Client] OR [in advance of the delivery of the relevant Services to the Client].

8.2 The Client must pay the Charges to the Consultant within the period of [30 days] following [the issue of an invoice in accordance with this Clause 8] OR [the receipt of an invoice issued in accordance with this Clause 8].

8.3 The Client must pay the Charges by [debit card, credit card, direct debit or bank transfer] (using such payment details as are notified by the Consultant to the Client from time to time).

8.4 If the Client does not pay any amount properly due to the Consultant under this Agreement, the Consultant may:

(a) charge the Client interest on the overdue amount at the rate of [8% per annum above the Bank of England base rate from time to time] (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or

(b) claim interest and statutory compensation from the Client pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

9. Warranties

9.1 The Consultant warrants to the Client that:

(a) [the Consultant has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement];

(b) [the Consultant will comply with all applicable legal and regulatory requirements applying to the exercise of the Consultant's rights and the fulfilment of the Consultant's obligations under this Agreement]; and

(c) [the Consultant has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement].

*[additional list items]*

9.2 The Client warrants to the Consultant that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

9.3 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

10. Limitations and exclusions of liability

10.1 Nothing in this Agreement will:

(a) limit or exclude any liability for death or personal injury resulting from negligence;

(b) limit or exclude any liability for fraud or fraudulent misrepresentation;

(c) limit any liabilities in any way that is not permitted under applicable law; or

(d) exclude any liabilities that may not be excluded under applicable law.

10.2 The limitations and exclusions of liability set out in this Clause 10 and elsewhere in this Agreement:

(a) are subject to Clause 10.1; and

(b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

10.3 [Neither party shall be liable to the other party] OR [The Consultant shall not be liable to the Client] OR [The Client shall not be liable to the Consultant] in respect of any loss of profits or anticipated savings.

10.4 [Neither party shall be liable to the other party] OR [The Consultant shall not be liable to the Client] OR [The Client shall not be liable to the Consultant] in respect of any loss of revenue or income.

10.5 [Neither party shall be liable to the other party] OR [The Consultant shall not be liable to the Client] OR [The Client shall not be liable to the Consultant] in respect of any loss of use or production.

10.6 [Neither party shall be liable to the other party] OR [The Consultant shall not be liable to the Client] OR [The Client shall not be liable to the Consultant] in respect of any loss of business, contracts or opportunities.

10.7 [Neither party shall be liable to the other party] OR [The Consultant shall not be liable to the Client] OR [The Client shall not be liable to the Consultant] in respect of any loss or corruption of any data, database or software.

10.8 [Neither party shall be liable to the other party] OR [The Consultant shall not be liable to the Client] OR [The Client shall not be liable to the Consultant] in respect of any special, indirect or consequential loss or damage.

11. Termination

11.1 Either party may terminate this Agreement by giving to the other party [at least 30 days'] written notice of termination.

11.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.

11.3 Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up[ (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement)]; or

(d) [if that other party is an individual:

(i) that other party becomes incapable of managing his or her own affairs as a result of illness or incapacity; or

(ii) that other party is the subject of a bankruptcy petition or order,

 and if that other party dies then this Agreement shall automatically terminate].

12. Effects of termination

12.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 6, 8.2, 8.4, 10, 12, 13.2 and 15].

12.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.

13. Status of Consultant

13.1 The Consultant is not an employee of the Client, but an independent contractor.

13.2 The termination of this Agreement will not constitute unfair dismissal; nor will the Consultant be entitled to any compensation payments, redundancy payments or similar payments upon the termination of this Agreement.

14. Subcontracting

14.1 The Consultant must not subcontract any of its obligations under this Agreement without the prior written consent of the Client[, providing that the Client must not unreasonably withhold or delay the giving of such consent].

OR

14.1 Subject to any express restrictions elsewhere in this Agreement, the Consultant may subcontract any of its obligations under this Agreement[, providing that the Consultant must give to the Client, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question].

14.2 The Consultant shall remain responsible to the Client for the performance of any subcontracted obligations.

15. General

15.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

15.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

15.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

15.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

15.5 This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

15.6 Subject to Clause 10.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

15.7 This Agreement shall be governed by and construed in accordance with [English law].

15.8 The courts of [England] shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

**SIGNED BY** [*[individual name]* on [...............], the Consultant] OR [*[individual name]* on [...............], duly authorised for and on behalf of the Consultant]:

........................................

**SIGNED BY** [*[individual name]* on [...............], the Client] OR [*[individual name]* on [...............], duly authorised for and on behalf of the Client]:

........................................

SCHEDULE 1 (SERVICES PARTICULARS)

1. Specification of Services

*[Specify Services]*

2. Specification of Deliverables

*[Specify Deliverables]*

3. Timetable

*[Insert timetable]*

4. Client Materials

*[Specify Client Materials]*

5. Financial provisions

*[Insert financial provisions]*

Free consultancy agreement: drafting notes

This is a free consultancy agreement. It includes straightforward provisions regarding the provision of consultancy services and the supply of deliverables resulting from the provision of those services.

The template incorporates a licence to use the deliverables, but does not include any assignment of rights in the deliverables. Accordingly, the consultant retains ownership.

You are welcome to use the document without purchasing a licence, providing that you retain the Docular credit in the document. The document is identical to the consultancy agreement (basic) document, save for the credit.

DATE

* Insert the date of execution of the document.

PARTIES

Subsection 1

* Is the Consultant an individual or a company?
* What is the full name of the individual (including middle names)?
* What is the postal address of the Consultant?
* What is the full company name of the Consultant?
* In which jurisdiction is the Consultant incorporated?
* What is the registration number of the Consultant?
* What is the registered office address of the Consultant?

Subsection 2

* Is the Client an individual or a company?
* What is the full name of the individual (including middle names)?
* What is the postal address of the Client?
* What is the full company name of the Client?
* In which jurisdiction is the Client incorporated?
* What is the registration number of the Client?
* What is the registered office address of the Client?

AGREEMENT

Clause 1: Definitions

Clause 1.1

Definition of Charges

* What charges are payable under this document?
* How should the time-based charging rates be described or specified?
* Will all the services be subject to time-based charging, or only some of the services?
* How are time-based charging units to be rounded?

Definition of Deliverables

* What type of thing are the deliverables (e.g. written reports, software programs, graphical works)?

Definition of Effective Date

* When will the contract come into force?

Definition of Term

* Define "Term", the period during which the contract will subsist.

Definition of Third Party Materials

* Must all third party materials incorporated into the deliverables be specifically identified in the specification of the deliverables or included subject to the parties' agreement?

Clause 2: Credit

Clause: Free documents licensing warning

Optional element. Although you need to retain the credit, you should remove the inline copyright warning from this document before use.

Clause 3: Term

Clause 3.2

* Is the term of the contract indefinite, or will it come to an end upon some agreed date, or upon the occurrence of a defined event?
* Upon what date will the contract terminate?
* Upon the occurrence of what event will the contract terminate?

Clause 4: Services

Clause 4.2

Optional element. Must the services meet any specified standard(s)?

* What standard(s) must the services meet?

Clause 5: Deliverables

Optional element.

Clause 5.2

Optional element.

Clause 5.3

Optional element.

* Is the obligation to supply deliverables in accordance with the agreed timetable: (i) absolute; or (ii) an obligation to use best endeavours; or (iii) an obligation to use reasonable endeavours?

Clause 5.4

Optional element.

* What warranties will the Consultant give to the Client in relation to the deliverables?
* Should the warranty of conformity only apply at the date of delivery of the deliverables?
* What sort of defects does the Consultant warrant the deliverables will be free from?
* Do the warranties relating to legality apply to the deliverables generally, or just to uses permitted by this document?
* Will this warranty extend to legal rights other than intellectual property rights?
* Should a warranty of legality be included?
* What (if any) jurisdictional limitations and applicable law limitations should apply to these warranties?

Clause 6: Licence

Optional element.

Clause 6.1

* What type of licence will the Consultant grant to the Client?
* What exactly may the Client do with the deliverables?
* Do any rights in the deliverables need to be carved out from the licence (e.g. rights in third party materials)?
* Will the licence be limited by reference to the purposes for which the deliverables may be used?
* The rights in which elements of the deliverables should be carved out from the licence?
* For what purposes may the deliverables be used?

Clause 7: Charges

Clause 7.2

Optional element.

* Are payment amounts stated inclusive or exclusive of VAT?

Clause 8: Payments

Clause 8.1

* When should invoices be issued?

Clause 8.2

* What is the period for payment of invoices?
* When does the period for payment of an invoice begin to run?

Clause 8.3

Optional element.

* Using what methods should payments be made?

Clause 8.4

Optional element.

* What contractual interest rate should apply to late payments?
* *Late Payment of Commercial Debts (Interest) Act 1998 - https://www.legislation.gov.uk/ukpga/1998/20*

Clause 9: Warranties

Optional element.

Clause 9.1

Optional element.

* What general warranties will the Consultant give to the Client?

Clause 9.2

Optional element.

Clause 10: Limitations and exclusions of liability

Contractual limitations and exclusions of liability are regulated and controlled by law, and the courts may rule that particular limitations and exclusions of liability in contracts are unenforceable.

The courts are particularly likely to intervene where a party is seeking to rely on a limitation or exclusion of liability in its standard terms and conditions, but will also sometimes intervene where a term has been individually negotiated. The courts may be more likely to rule that provisions excluding liability, as opposed to those merely limiting liability, are unenforceable. If there is a risk that any particular limitation or exclusion of liability will be found to be unenforceable by the courts, that provision should be drafted as an independent term, and be numbered separately from the other provisions. It may improve the chances of a limitation or exclusion of liability being found to be enforceable if the party seeking to rely upon it specifically drew it to the attention of the other party before the contract was entered into.

Exclusions and limitations of liability in UK contracts are primarily regulated by the Unfair Contract Terms Act 1977 ("UCTA"). Contracts regulated by UCTA cannot exclude or restrict a party's liability for death or personal injury resulting from negligence (Section 2(1), UCTA). Except insofar as the relevant term satisfies the requirements of reasonableness, such contracts cannot exclude or restrict liability: (i) for negligence (which includes a breach of an express or implied contractual obligation to take reasonable care or exercise reasonable skill) (Section 2(2), UCTA); or (ii) for misrepresentation (Section 3, Misrepresentation Act 1967).

In addition, if a contract is regulated by UCTA, and one of the parties is dealing on the other's written standard terms of business, then except insofar as the relevant contractual term satisfies the requirements of reasonableness the other party cannot: (i) exclude or restrict its liability in respect of a breach of contract; or (ii) claim to be entitled to render a contractual performance substantially different from that which was reasonably expected of it; or (iii) claim to be entitled, in respect of the whole or any part of its contractual obligation, to render no contractual performance at all (see Section 3, UCTA).

UCTA includes various other restrictions, particularly in the case of contracts for the sale of goods and contracts under which possession or ownership of goods passes.

Somewhat different rules apply to limitations of liability in contracts with consumers, and these provisions should not be used in relation to such contracts.

These guidance notes provide a very incomplete and basic overview of a complex subject. Accordingly, you should take legal advice if you may wish to rely upon a limitation or exclusion of liability.

* *Unfair Contract Terms Act 1977 - https://www.legislation.gov.uk/ukpga/1977/50*

Clause 10.1

Do not delete this provision (except upon legal advice). Without this provision, the specific limitations and exclusions of liability in the document are more likely to be unenforceable.

Clause 10.3

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 10.4

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 10.5

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 10.6

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 10.7

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 10.8

Optional element.

* Which of the parties will be the beneficiary of this limitation of liability?

Clause 11: Termination

Clause 11.1

* What notice period will apply to termination without cause by either party?

Clause 11.3

Depending upon the status of the parties, the circumstances of the termination and the applicable law, some of the rights to terminate set out here may be unenforceable.

* Will the winding up of a party as part of a solvent company reorganisation give rise to a right of termination for the other party?

Clause 13: Status of Consultant

Optional element.

Clause 13.2

Optional element.

Clause 14: Subcontracting

Optional element.

Clause 14.1

* Will the Client only be permitted to withhold consent to subcontracting where it is reasonable to do so?

Clause 14.1

* Will the Consultant be obliged to notify the Client of any subcontracting arrangements?

Clause 15: General

Clause 15.1

Optional element.

Clause 15.2

Optional element.

Clause 15.3

Optional element.

This is intended to prevent, for example, one party wrongfully claiming that a term of the contract was changed in a telephone call.

Clause 15.4

Optional element.

Clause 15.5

Optional element.

This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

* *Contracts (Rights of Third Parties) Act 1999 - https://www.legislation.gov.uk/ukpga/1999/31*

Clause 15.6

Optional element.

Clause 15.7

This template has been drafted to work in the English law context. If you plan to change the governing law, you should have the document reviewed by someone with expertise in the law of the relevant jurisdiction.

* Which law will govern the document?

Clause 15.8

Optional element.

As a practical matter, it makes sense for the courts with expertise in the relevant law to have the right to adjudicate disputes. Where one of the parties is outside England (or at least the UK), you may want to grant the courts of their home jurisdiction the right to adjudicate disputes, as this could ease enforcement in some circumstances.

* The courts of which jurisdiction will have the exclusive right to adjudicate disputes relating to the document (subject to applicable law)?

EXECUTION

Subsection: Execution of contract by First Party (individual or company)

* Will the contract be signed by a contracting individual, or an individual on behalf of a contracting company?
* What is the full name of the Consultant signatory?
* On what date is the Consultant signing the contract?
* Add the full name of the person who will sign the document on behalf of the Consultant.
* On what date is the contract being signed on behalf of the Consultant?

Subsection: Execution of contract by Second Party (individual or company)

* Will the contract be signed by a contracting individual, or an individual on behalf of a contracting company?
* What is the full name of the Client signatory?
* On what date is the Client signing the contract?
* Add the full name of the person who will sign the document on behalf of the Client.
* On what date is the contract being signed on behalf of the Client?

SCHEDULE 1 (SERVICES PARTICULARS)

Part 1: Specification of Services

* Insert the specification for the services.

Part 2: Specification of Deliverables

Optional element.

* Insert the specification for the deliverables.

Part 3: Timetable

Optional element.

* Insert the timetable for the performance of the parties' obligations.

Part 4: Client Materials

Optional element.

* Specify the client materials to be supplied by the Client to the Consultant.

Part 5: Financial provisions

* Insert financial provisions.