

# CONSULTING AGREEMENT

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This Consulting Agreement (“**Agreement**”) is entered into on \_\_\_\_\_ by and between:

**Consultant:** \_\_\_\_\_ located at \_\_\_\_\_ (the “**Consultant**”), and;

**Client** \_\_\_\_\_ located at \_\_\_\_\_ (the “**Client**”).

**1. Services.** Consultant shall provide the following services to Client (the “**Services**”): [services]. In addition, Consultant shall perform such other duties and tasks, or changes to the **Services**, as may be agreed upon by the Parties.

## **2. Consultant’s Obligations.**

- a. Consultant agrees that any deliverable produced pursuant to the provision of the **Services** will be free from any plagiarism and will be the sole and exclusive authorship of Consultant.
- b. Consultant agrees to engage in the best and commercially reasonable efforts to provide the **Services** to Client in accordance with the terms of this Agreement.
- c. Consultant further agrees to provide the **Services** in a professional and diligent manner consistent with generally recognized industry standards and good commercial practice, using efforts comparable to those customarily used for similar services.
- d. Consultant shall comply with, and give all notices required by, all laws and regulations applicable to the **Services**, including all laws and regulations related to (i) anti-bribery and corruption, and (ii) data protection.
- e. Any services outside of the scope as defined in **Services** will require a new Agreement for other services, agreed to by the Parties.

## **3. Work Completion.**

- a. Consultant hereby understands and acknowledges that time is of the essence with respect to Consultant’s obligations defined in this Agreement and that prompt and timely performance of all such obligations is strictly required.
- b. If it becomes apparent that the **Services** will not be completed in accordance with the milestones agreed upon for good reason, then Client may grant such an extension of the time for completion as it thinks fair and reasonable to take account of the reasons for the delay.

**4. Compensation.** In consideration for the full, prompt, and satisfactory performance of the **Services** to be rendered to Client, Client shall pay Consultant.

On completion of certain milestones Client shall pay Consultant according to the following schedule:

Milestone	Amount	Completion Date

Consultant will be paid after the completion of each milestone/ within \_\_\_\_\_ days after receiving Consultant's invoice. Consultant will submit invoices for payment (Check one)  at the end of every week  on the \_\_\_\_\_ of the month  within \_\_\_\_\_ days after completion of the Services  other: \_\_\_\_\_.

A fixed fee Client shall pay Consultant [amount agreed] after Consultant completes the services/ within \_\_\_\_\_ days after receiving Consultant's invoice. Consultant will submit invoices for payment (Check one)  at the end of every week  on the \_\_\_\_\_ of the month  within \_\_\_\_\_ days after completion of the Services  other: \_\_\_\_\_.

A periodic fee Client shall pay Consultant [amount agreed]  per hour  per week  per month  per year  other: \_\_\_\_\_. Consultant will be paid: (Check one)  Every week. Consultant will be paid on \_\_\_\_\_ [Day of the week] of every week.  Every month. Consultant will be paid on the \_\_\_\_\_ [Day of the month] of every month.  After Consultant sends an invoice. Consultant will be paid within \_\_\_\_\_ days after receiving Consultant's invoice. Consultant will submit invoices for payment (Check one)  at the end of every week  on the \_\_\_\_\_ of every month  within \_\_\_\_\_ days after completion of the Services  other: \_\_\_\_\_.  Other: \_\_\_\_\_.

Commission Client shall pay Consultant \_\_\_\_\_ commission based on \_\_\_\_\_ after Consultant completes the services/ within \_\_\_\_\_ days after receiving Consultant's invoice. Consultant will submit invoices for payment (Check one)  at the end of every week  on the \_\_\_\_\_ of the month  within \_\_\_\_\_ days after completion of the Services  other: \_\_\_\_\_. Client shall notify Consultant in writing of any dispute with an invoice along with any substantiating documentation or a reasonably detailed description of the dispute within \_\_\_\_\_ business days from the date of Client's receipt of such invoice subject to dispute.

**5. Late Fee.** A late fee of  a set late charge of \$ \_\_\_\_\_  \_\_\_\_\_ % of the balance due per month will be added to any invoice not paid on time.

**6. Retainer Fee.** Client is required to pay a retainer of \$ \_\_\_\_\_ to Consultant as an advance on future Services to be provided ("Retainer"). The Retainer is  Refundable  Non-refundable.

**7. Expenses.** From time to time throughout the duration of this Agreement, Consultant may incur certain expenses that are not included as part of the Fee for the Services to this Agreement. Such expenses shall be borne by Consultant and reimbursed by Client if they keep an exact record of any and all expenses acquired while performing the Services. Consultant will submit an invoice itemizing each expense, along with proof of purchase and receipt, with the invoice/ such expenses borne by Consultant shall not be paid for by Client. If any expense is over United States Dollar \_\_\_\_\_, Consultant agrees to obtain Client's written consent before incurring the expense.

**8. Term and Termination.**

- i. Consultant's engagement with Client under this Agreement shall be effective on the date hereof/shall commence on \_\_\_\_\_, 20\_\_\_\_\_.  After all of the Services are completed. The Parties agree and acknowledge that this Agreement and Consultant's engagement with Client under this Agreement shall terminate upon the completion by Consultant of the Services.  After a fixed period of time. The Parties agree and acknowledge that this Agreement and Consultant's engagement with Client under this Agreement shall terminate after \_\_\_\_\_.  On a specific date. The Parties agree and acknowledge that this Agreement and Consultant's engagement with Client under this Agreement shall terminate on \_\_\_\_\_, 20\_\_\_\_\_.  At will. Consultant acknowledges and agrees that the engagement with Client is at will, subject to being terminated at the discretion of Client at any time, (Check one)  without prior notice  upon \_\_\_\_\_ days prior written notice to Consultant. In addition, this Agreement may be terminated by Consultant upon \_\_\_\_\_ days prior written notice to Client.
- ii. In the event of termination, Client shall have no further liability to pay any sums to Consultant for such fair and reasonable sum to compensate for the value of the Services which have been completed at the date of termination.
- iii. In the event of termination, Consultant agrees to immediately:
  - a. Deliver to Client any copies of any drawings or plans prepared or held by Consultant for the purpose of the Services.
  - b. Deliver to Client all work, whether complete or incomplete and all materials, provisions, tools provided for Consultant's use by Client;
  - c. Deliver to Client all documents and materials, and all copies of such documents and materials, containing, incorporating or based on Client's confidential information
  - d. Deliver to Client all documents and materials, and all copies of such documents and materials, containing, incorporating or based on Client's confidential information
  - e. Certify in writing to Client that Consultant has complied with the requirements of this clause.

**9. Warranties & Indemnities.** Consultant shall promptly notify Client of:

- i. any delays or problems from time to time in the provision of the Services of which Consultant becomes aware;
- ii. any circumstances from time to time which may prevent Consultant from providing the Services in accordance with this Agreement together with (where practicable) recommendations as to how such circumstances can be avoided; and

- iii. any complaint (whether written or not) or other matter which comes to its attention and which it reasonably believes may give rise to any loss by or claim against Client or which may result in any adverse publicity for Client.
- iv. Client shall, without limiting any right or remedy of Client, promptly report to Consultant any defects in Consultant's performance of the Services as soon as reasonably practicable after any such defect comes to the attention of Client.
- v. Where any defect in the provision of the Services is reported to Consultant by Client or otherwise comes to the attention of Consultant, Consultant shall, without limiting any other right or remedy of Client, use its reasonable endeavors to provide such further services as are necessary in order to rectify the default as soon as is reasonably practicable.
- vi. The Parties agree that the rights and benefits held and received by Client through Consultant's Service under the Agreement shall only be enforceable by Client through such Service and upon the terms of the Agreement, and any liability in respect of any breach of such rights and benefits shall be determined solely in accordance with the terms of the Agreement.

**10. Non-Exclusivity.** Both Parties to this Agreement acknowledge and agree that this Agreement and the arrangements described herein are intended to be non-exclusive and that each of the Parties is free to enter into similar agreements and arrangements with other entities. Consultant shall be free to continue working for and taking on new clients, without regard to Client. Consultant need not obtain Client approval for any such work. Likewise, Client can hire additional Consultants and does not need Consultant's approval to do so.

**11. Work for Hire - Ownership of Materials.**

- a. All materials and goods delivered to or placed on or adjacent to the site and intended for the Services (excluding supplies, tools and equipment owned or hired by Consultant) shall become the property of Client, who shall thereafter bear the risk of their accidental loss or damage.
- b. The Parties acknowledge that the Work Product shall, to the extent permitted by law, be considered a "**work for hire**" within the definition of Section 101 of the Copyright Act of 1976, as amended, (the "Copyright Act") and that Client is deemed to be the author and is the owner of all copyright and all other rights. All Intellectual Property and related materials, including but not limited to, moral rights, goodwill, trade secrets, applications for registrations or relevant registration, rights to any trademark, trade dress, patent, copyright, trade name, and industrial design ("**Intellectual Property**") that is produced or developed under this Agreement shall become the property of Client. Consultant understands that the aforementioned is shall be the sole property of Client. Client's use of the Intellectual Property shall not be restricted in any manner.
- c. Consultant may not use Client's Intellectual Property for any purpose other than contracted for in this Agreement unless Consultant has written consent from Client. Consultant shall be responsible for any damages resulting from any unauthorized use of Client's Intellectual Property.

**12. Legal Business Requirements.** It is Client's sole and exclusive responsibility to ensure that all legal requirements for Client's business are met. Such legal requirements, the responsibility of Client, include but are not limited to, ensuring that claims on advertising and graphics are true, accurate and may be legally stated, and ensuring all products and product sales are lawful.

**13. Independent Contractor.** The Parties agree and acknowledge that Consultant is an independent contractor and is not, for any purpose, an employee of Client. Consultant does not have any authority to enter into agreements or contracts on behalf of Client, and shall not represent that it possesses any such authority. Consultant shall not be entitled to any of Client's benefits, including, but not limited to, coverage under medical, dental, retirement or other plans. Client shall not be obligated to pay worker's compensation insurance, unemployment compensation, social security tax, withholding tax or other taxes or withholdings for or on behalf of Consultant in connection with the performance of the Services under this Agreement. Nothing contained in this Agreement shall be deemed or construed by the Parties to create the relationship of a partnership, a joint venture or any other fiduciary relationship.

**14. Taxes.** Consultant is liable to pay taxes according to applicable local and international laws. Client may withhold full or partial payment of any invoice to reflect any liability, debt or other obligation that Consultant owes to Client.

**15. Confidential Information.**

No access to Confidential Information Consultant will not be exposed to any Confidential Information.

Access to Confidential Information needed

- a. Each of the Parties shall both during and after the arrangements contemplated by this Agreement have terminated:
  - i. keep confidential the terms of this Agreement and all information, whether in written or any other form, which has been disclosed to it by or on behalf of any other party which by its nature ought to be regarded as confidential (including, without limitation, any business information in respect of any other party which is not directly applicable or relevant to the transactions contemplated by this Agreement); and
  - ii. procure that its officers, employees and representatives and those of its subsidiary companies keep secret and treat as confidential all such documentation and information.
- b. Clause 17.i. does not apply to information:
  - iii. which shall after the date of this Agreement become published or otherwise generally available to the public, except in consequence of a willful or negligent act or omission by the recipient party in contravention of the obligations in clause 17.i.;
  - iv. to the extent made available to the recipient party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to any other party or which has been disclosed under an express statement that it is not confidential;

- v. to the extent required to be disclosed by any applicable law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the party making the disclosure is subject, whether or not having the force of law, provided that the party disclosing the information shall notify the other party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible before such disclosure must be made and shall take all reasonable action to avoid and limit such disclosure;
  - vi. which has been independently developed by the recipient party otherwise than in the course of the exercise of that party's rights under this Agreement or the implementation of this Agreement;
  - vii. which, in order to perform its obligations under or pursuant to this Agreement, any party is required to disclose to a third party;
  - viii. disclosed to any applicable tax authority to the extent reasonably required to assist the settlement of the disclosing party's tax affairs or those of any of its shareholders or any other person under the same control as the disclosing party; or
  - ix. which the recipient party can prove was already known to it before its receipt from the disclosing party.
- c. The provisions of this clause 17 shall survive any termination of this Agreement.

#### **16. Announcements/Publicity.**

- a. Except as required by law or by any stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the Party making the announcement or disclosure is subject, whether or not having the force of law, no announcement or disclosure in connection with the existence or subject matter of this Agreement shall be made or issued by or on behalf of any Party without the prior written approval of the others, such approval not to be unreasonably withheld or delayed.
- b. Where any announcement or disclosure is made in reliance on the exception in clause 18.i, the Party making the announcement or disclosure will use its reasonable endeavors to consult with the other Party in advance as to the form, content and timing of the announcement or disclosure.

#### **17. Amendment.**

- a. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by both of the Parties.
- b. Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement that have already accrued up to the date of variation, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied.

## **18. Assignment.**

- CLIENT needs permission to assign to a third party. Client may not assign any of its rights under this Agreement or delegate any performance under this Agreement, except with the prior written consent of Consultant. Any purported assignment of rights or delegation of performance in violation of this section is void.
- CONSULTANT needs permission to assign to a third party. Consultant may not assign any of its rights under this Agreement or delegate any performance under this Agreement, except with the prior written consent of Client. Any purported assignment of rights or delegation of performance in violation of this section is void.
- BOTH Client and Consultant need permission to assign to a third party. Either Party may not assign any of its rights under this Agreement or delegate any performance under this Agreement, except with the prior written consent of the other Party. Any purported assignment of rights or delegation of performance in violation of this section is void.
- Either Party does NOT need permission to assign its rights to a third party.

**19. Severability.** If and to the extent that any provision of this Agreement is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement. The Parties shall meet to negotiate in good faith to agree on a valid, binding and enforceable substitute provision or provisions, (if necessary with a reconsideration of other terms of this Agreement not so affected) so as to re-establish an appropriate balance of the commercial interests of the Parties.

**20. Further Assurance.** At the request of one Party, the other Party shall execute and deliver such other documents and take such other actions as may be reasonably necessary to effect the terms of this Agreement.

**21. Warranty of Capacity and Power.** Each Party represents and warrants to the other Parties that:

- i. it has full authority, power and capacity to enter into and carry out its obligations under this Agreement;
- ii. all necessary acts and things have been taken or done to enable it lawfully to enter into and carry out its obligations under this Agreement; and
- iii. when executed, this Agreement will create obligations that are valid and binding on it and enforceable in accordance with their terms.

**22. Force Majeure.** None of the Parties shall be liable for any failure or delay in performing any of its obligations under or pursuant to this Agreement if such failure or delay is due to any cause whatsoever outside their reasonable control, and they shall be entitled to a reasonable extension of the time for performing such obligations as a result of such cause.

**23. No Third-Party Rights.** A person who is not a Party to this Agreement shall have no right under any law to enforce any of its terms.

**24. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of \_\_\_\_\_.

**25. Dispute Resolution.** Any dispute arising from this Agreement shall be resolved through:

Court litigation. The dispute shall be resolved in the courts of the State of \_\_\_\_\_. If either Party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other Party its expenses (including reasonable attorneys' fees and costs) incurred in connection with the action and any appeal.

Arbitration The dispute shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

Mediation The dispute shall be resolved through mediation.

Mediation then Arbitration The dispute shall be resolved through mediation. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

**26. Notices and Services.**

- a. Any notice so served by hand, e-mail or post shall be deemed to have been duly given:
  - i. in the case of delivery by hand, when delivered;
  - ii. in the case of fax or electronic mail on a business day prior to 5.00 pm, at the time of receipt ;
  - iii. in the case of prepaid recorded delivery, special delivery or registered post, at 10 am on the second business day following the date of posting; provided that in each case where delivery by hand or by e-mail occurs after 5 pm on a business day or on a day which is not a business day, service shall be deemed to occur at 9 am on the next following business day. References to time in this clause are to local time in the country of the addressee.
  
- b. The addresses of the Parties for the purpose of clause 28.i. are as follows:



**A. Consultant:**

\_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_ [Address]

\_\_\_\_\_ [Email]

**B. Client:**

\_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_ [Address]

\_\_\_\_\_ [Email]

**27. Counterparts.** This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

\_\_\_\_\_  
**Client Signature**

\_\_\_\_\_  
**Client Name**

\_\_\_\_\_  
**Client Name**

\_\_\_\_\_  
**Client Representative  
Signature**

\_\_\_\_\_  
**Client Representative  
Name & Title**

\_\_\_\_\_  
**Consultant Signature**

\_\_\_\_\_  
**Consultant Name**

\_\_\_\_\_  
**Consultant Name**

\_\_\_\_\_  
**Consultant Representative  
Signature**

\_\_\_\_\_  
**Consultant Representative  
Name & Title**