

**Date: 18 April 2016**

**Name of consultant**

**and**

**Name of client**

**Consultancy agreement**

# Consultancy agreement

**This Agreement** is made on 18 April 2016 between:

## 1. Definitions

In this Agreement, the following expressions shall, save where the context otherwise requires, have the following meanings:

Agreement:	means this agreement;
Background IPR	means all Intellectual Property Rights (regardless of the form or medium in which they are disclosed or stored) (i) owned by or licensed to a party prior to the commencement of the Agreement or (ii) subsequently generated by a party outside this Agreement and which is provided by such party to the other party for use of or for the provision of the Deliverables under this Agreement (but specifically excluding any New Material);
Confidential Information:	means information of a confidential nature (regardless of the form or medium in which it is disclosed or stored) including, but not limited to, trade secrets or secret or confidential operations and extends to information relating to the Client's (or any of its subsidiaries): business; processes; strategy; operations; specifications; technology; know-how; organisation; business affairs; finances; dealings; transactions; customer, client and supplier lists or other information whether relating to the Client or any customer of or supplier to the Client and any such similar information which the Consultant has come to know, has received, or obtained by reason of or pursuant to this Agreement;
Deliverables:	means any document, piece of equipment, data listing, product, process, system, design, computer program, advice, information or other creation, invention or development required to be delivered to the Client as part of the Objective or the consultancy services to be provided by the Consultant under this Agreement;
Field:	means <b>Specialist skill</b> ;
Force Majeure:	means any event or circumstance beyond the reasonable control of either party by the exercise of all reasonable diligence, which prevents or impedes due performance of the obligations of such party under this Agreement, including (but not limited to) acts of God, civil commotion or restraints by civil authorities including acts of local government and parliamentary authority, extreme weather conditions; and labour disputes of whatever nature including, without prejudice to the generality of the foregoing, work to rule, strikes and lockouts (other than labour disputes by the employees of the party claiming force majeure only), perils of the sea or air, fire, flood, drought, explosion, pandemic, embargo, riot, war, sabotage and terrorism, provided that the mere shortage of labour materials, equipment or supplies shall not constitute an event of force majeure unless caused by events or circumstances which are themselves an event of force majeure;
Intellectual Property Infringement:	means any use by the Client of any New Material and/or any Background IPR which infringes the Intellectual Property Rights or any other rights of a third party;

Intellectual Property Rights: means patents, all rights to inventions, prototypes, products, discoveries, techniques or processes, systems, data, information, copyright and related rights, moral rights, trade marks and service marks, trade names, domain names, brand names, rights to goodwill, rights in design, rights in computer software (including source code and object code), database rights, rights in Confidential Information (including know how and trade secrets) and any other intellectual property rights in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and similar or equivalent rights which subsist or will subsist now or in the future in any part of the world;

means **Key personnel**;

New Material: means any and all Intellectual Property Rights generated by the Consultant arising solely and directly in pursuance of the Objective;

Objective: means **Objective**.

## 2. Interpretation

- 2.1. The headings to clauses are inserted for convenience only and shall not affect the construction of this Agreement.
- 2.2. In this Agreement, references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Agreement) from time to time and shall include references to any provisions of which they are re-enactments (whether with or without modification).
- 2.3. Where any party is more than one person:
  - 2.3.1. that party's obligations in this Agreement shall take effect as joint and several obligations,
  - 2.3.2. anything in this Agreement which applies to that party shall apply to all of those persons collectively and each of them separately, and
  - 2.3.3. the benefits contained in this Agreement in favour of that party shall take effect as conferred in favour of all of those persons collectively and each of them separately.
- 2.4. References to any party shall include, where the context permits, that party's successor in title.
- 2.5. References in this Agreement to anything which any party is required to do shall include, where the context permits, a requirement to comply with and/or observe and perform.
- 2.6. References in this Agreement to anything which any party is required to do or not to do shall include their acts, defaults and omissions, whether:
  - 2.6.1. direct or indirect,
  - 2.6.2. on their own account, or
  - 2.6.3. for or through any other person, andthose which that party permits or suffers to be done or not done by any other person.
- 2.7. The obligations and restrictions imposed by this Agreement are in addition to, and not in substitution for, the obligations and restrictions imposed or implied by law.

## 3. Background

- 3.1. The Consultant has specialist skills and expertise in the Field. The duties and responsibilities of the Consultant are defined in the Objective.

#### 4. Appointment

#### 5. Key Personnel

- 5.1. This Agreement may not be assigned by the Consultant without the express written permission of the Client which will not unreasonably be withheld, delayed or refused.

#### 6. The fee

- 6.1. The Client shall pay the Consultant a fee of **The fee Basis of fee**, which shall accrue on a daily basis.
- 6.2. All sums payable under this Agreement, unless otherwise stated, are exclusive of VAT and other duties or taxes.
- 6.3. The Consultant shall deliver **Invoicing** invoices to the Client supported by detailed timesheets setting out the work done by the Consultant and the time expended during the period covered by the invoice. The Client shall pay such invoices within **Due date** days of receipt.

#### 7. Obligations of the Consultant

- 7.1. The Consultant shall:
  - 7.1.1. act as a consultant to the Client;
  - 7.1.2. use **his/her/its/their** best endeavours to achieve the Objective and deliver any Deliverables and promote, develop, maintain and extend the business of the Client and its reputation;
  - 7.1.3. act honestly and in good faith and not do anything which is harmful to the Client;
  - 7.1.4. act jointly with one or more other persons as the Client may from time to time direct;
  - 7.1.5. do all things in the ordinary course of business which the Client reasonably considers necessary or proper in its interests;
  - 7.1.6. deal in an efficient and prompt manner with all requests that emanate from the Client or one of its duly authorised representatives;
  - 7.1.7. both during the duration of this Agreement and after its termination, keep confidential and not divulge, communicate to any person, or make use of, and use best endeavours to prevent the publication or disclosure of all Confidential Information save that this restriction shall not apply to Confidential Information that is already in the public domain through no fault of the Consultant at the time of the Consultant's disclosure;
  - 7.1.8. do all things reasonably required by the Client to give effect to this Agreement and the Objective;
  - 7.1.9. at all times comply with:
    - 7.1.9.1. all applicable rules of law that affect or may have an effect upon the Client (including, but not limited to, Part V of the Criminal Justice Act 1993, the Data Protection Act 1998 and the Bribery Act 2010);
    - 7.1.9.2. all regulatory obligations of the Client;
    - 7.1.9.3. any fiduciary duties of the Client;
    - 7.1.9.4. any codes of conduct notified by the Client (as amended from time to time);
  - 7.1.10. not act in a way that may result in the Client incurring criminal or civil liability;
  - 7.1.11. promptly disclose to the Client any information that comes into the Consultant's knowledge or possession which adversely affects the Client, which includes reporting any wrongdoing or proposed wrongdoing by the Consultant or any other member of the Client's staff including employees, workers, directors or partners of the Client, as soon as the Consultant is aware of it;

- 7.1.12. do all things reasonably required by the Client to perfect or protect the rights of the Client including, without limitation, giving or obtaining confidentiality undertakings or licences acceptable to the Client in relation to:
  - 7.1.12.1. Sharing any records or information belonging to the Client;
  - 7.1.12.2. The consultancy services or Objectives or the Deliverables;
  - 7.1.12.3. The Client's Intellectual Property Rights and Background IPR;
  - 7.1.12.4. The New Materials.
- 7.1.13. at all times have due regard to the data protection principles and compliance with his/her/its/their duties under the Data Protection Act 1998 or any statutory re-enactment thereof and all regulations deriving therefrom.

## **8. Intellectual property rights**

- 8.1. Each party retains ownership of its own Background IPR. The Consultant grants the Client a non-exclusive, royalty free, perpetual, non-terminable licence to its Background IPR to the extent required to allow the Client to enjoy the output of the Objective including the Deliverables. The Client grants the Consultant a non-exclusive, royalty-free (without the right to sublicense), licence to its Background IPR to the extent necessary (if at all) to allow the Consultant to achieve the Objective and deliver the Deliverables.
- 8.2. The Consultant shall consider whether and if so by what means New Material can be invented and/or developed.
- 8.3. The Consultant will indemnify and hold harmless the Client against any loss, injury or damage (including any legal costs and expenses and any compensation costs and disbursements paid by the Client to compromise or settle any claim) suffered by the Client in consequence of any claim made against the Client in respect of any Intellectual Property Infringement provided that the Consultant shall be entitled at its option and strictly at its own expense within a reasonable time (time being of the essence) either to:
  - 8.3.1. procure the right for the Client to continue using the New Material as appropriate;
  - 8.3.2. to make such alterations, modifications or adjustments to New Material so that it becomes non-infringing without incurring a material diminution in performance, value or function; or
  - 8.3.3. replace the New Material with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance, value or function;provided that in the event of a claim of Intellectual Property Infringement:
  - 8.3.4. The Client shall notify the Consultant of any claim in respect of which the Client wishes to be indemnified as soon as reasonably possible upon becoming aware of the same;
  - 8.3.5. The Client shall give the Consultant sole conduct of the defence or settlement of any claim;
  - 8.3.6. The Client shall not at any time admit liability or otherwise settle or compromise any claim except upon the express instructions of the Consultant; and
  - 8.3.7. The Client shall provide such assistance as the Consultant shall reasonably require in respect of the conduct of the defence or settlement of the claim provided that the Consultant shall meet the reasonable costs of the Client incurred in providing such assistance.

## **9. Not a partnership or an agency**

- 9.1. The Consultant is an independent contractor for all purposes of this Agreement.
- 9.2. The Consultant and the Client declare that they are not partners and nothing in this Agreement shall be construed as creating a partnership between them.
- 9.3. Nothing in this Agreement shall be construed as creating the relationship of principal and agent between the Client and the Consultant.

## 10. Expenses

- 10.1. The Consultant may include in an invoice a claim for out-of-pocket expenses reasonably incurred by him/her/it/it in the proper provision of his/her/its/their services hereunder provided that:
  - 10.1.1. on request, the Consultant shall provide the Client with such vouchers or other evidence of actual payment of such expenses as the Client may reasonably require;
  - 10.1.2. before incurring expenses in excess of Expense amount, the Consultant has provided the Client with an adequately detailed written explanation of the reasons for incurring the expenses and an estimate of their cost and the same has been agreed by the Client.

## 11. Termination

- 11.1. Without limitation either party may, by notice in writing, terminate this Agreement if the other party shall be in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the party in breach within 21 days of receipt by the party in breach of a written notice specifying the breach and requiring its remedy;
- 11.2. Either party can terminate this Agreement with immediate effect if
  - 11.2.1. the other gives notice to its creditors or any of them that it has suspended or is about to suspend trading; or
  - 11.2.2. the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or if an order shall be made or resolution passed for the winding up of the other (otherwise than for the purpose of and followed by a solvent reconstruction or amalgamation), or if an administration order shall be made in respect of the other or if the other shall become insolvent or shall make any assignment for the benefit of creditors generally, or has a receiver appointed over all or any part of its assets, or takes or suffers any similar action in consequence of debt.
- 11.3. If the Client does not pay the Consultant the fees set out in clause 6.1 within Non payment days of them becoming due, the Consultant may immediately end this Agreement.
- 11.4. Without limitation, the Client may, by notice in writing, immediately terminate this Agreement if the Consultant:
  - 11.4.1. is incompetent or guilty of serious or persistent negligence in the provision of the Deliverables or the services hereunder;
  - 11.4.2. fails or refuses after written instruction to provide the Deliverables or the services reasonably and properly required from him/her/it/it;
  - 11.4.3. fails to resolve a conflict of interest under clause 13;
  - 11.4.4. conducts himself/herself/itself/themselves in any manner which, in the reasonable opinion of the Client, brings or is likely to bring, the Client into disrepute by association;
  - 11.4.5. materially breaches any of his/her/its/their obligations under paragraph 7;
  - 11.4.6. is, in the reasonable opinion of the Client, guilty of serious misconduct, such as, but not limited to:
    - 11.4.6.1. theft, fraud and deliberate falsification of records such as time-sheets, expense forms and documents or information regarding qualifications and immigration status provided either when applying for a role or after recruitment
    - 11.4.6.2. fighting, assaulting, bullying, harassing, victimising or discriminating against another person
    - 11.4.6.3. deliberate and serious damage to the Client's property
    - 11.4.6.4. being convicted of a criminal offence which the Client reasonably believes will detrimentally affect the Consultant's ability to perform their obligations under this agreement or provide the Deliverables or the services, his/her/its/their relationship with the Client's customers, business partners

- or staff; or the business relationship the Client has with its customers, suppliers or business partners;
  - 11.4.6.5. a breach of the Client's health and safety policy which caused injury to others or put others at risk of injury;
  - 11.4.6.6. making an offensive, false or defamatory comment about any individual or organisation, whether orally or in writing (such as through use of social networking websites or internet blogs);
  - 11.4.6.7. being concerned or interested in action which is damaging to or in competition with the Client's business
  - 11.4.6.8. serious incapability through alcohol or being under the influence or in possession of illegal drugs.
- 11.5. Notwithstanding the foregoing, the Client may not terminate this Agreement solely by reason of the absence through illness or injury of the Key Personnel unless such illness or injury prevents same from providing any services to the Client for a consecutive period of **Length of continuous illness** weeks or for an aggregate period of **Length of continuous illness**.
- 11.6. Upon termination of this Agreement for any reason, the Consultant shall, at the request of the Client, deliver up to the Client all records in any medium including documents, drawings, notes, working papers, computer disks and tapes or other material and copies provided to or prepared by the Consultant pursuant to this Agreement and all other property belonging to the Client in its possession or control including, without limitation, the Confidential Information, Client Background IPR and a copy of any New Material not already delivered to the Client.

## **12. Effect and consequence of termination**

- 12.1. The Consultant's engagement shall not continue at any time after it has been terminated by the Client notwithstanding that the termination is without prior notice or by shorter notice than provided for in this Agreement.
- 12.2. The expiration or earlier termination of this Agreement shall not affect:
- 12.2.1. such of its provisions as are expressed to operate or have effect afterwards, or
  - 12.2.2. any right of action already accrued to either party in respect of any breach of this Agreement by the other party.

## **13. Conflict of interest**

The Consultant warrants that, to the best of **his/her/its/their** knowledge, there is no conflict of interest nor is there likely to be any conflict of interest affecting **his/her/its/their** performance of this Agreement. If a conflict or risk of a conflict of interest arises, the Consultant will immediately give notice of the conflict of interest, or the risk of it, to the Client and will demonstrate measures to ensure the situation is managed to avoid any adverse effect. If the Client notifies the Consultant that the conflict of interest is unacceptable (whether at the time the conflict is first notified or subsequently) and the Consultant does not resolve the matter forthwith (time being of the essence) to the satisfaction of the Client, then the Client shall be entitled to terminate this Agreement with immediate effect under clause 11.

## **14. Proper law and jurisdiction**

- 14.1. The parties shall comply with all applicable laws, rules, regulations and codes of practice in respect of all activities conducted under this Agreement.

## **15. Entire agreement**

- 15.1. The Client and the Consultant acknowledge that this Agreement contains the whole agreement and understanding between them and neither has relied upon any oral or written representations made by the other.
- 15.2. Both the Client and the Consultant have entered into this Agreement as a result of their own independent investigations into all matters relevant to this Agreement.

- 15.3. This Agreement supersedes any previous agreements between the Client and the Consultant whether written or oral.
- 15.4. Any previous agreement that there has been is cancelled from 18 April 2016 but without prejudice to any rights that have already accrued.

#### **16. Severance and invalidity**

- 16.1. In the event that any provision of this Agreement shall be found by a court to be unreasonable or unenforceable or void, that part shall be severed and the remainder of this Agreement shall be enforceable with such deletion or modification as may be necessary to make it effective. If any period is held to be unreasonable or unenforceable or void, that period shall be reduced and the remainder of this Agreement shall be enforceable with such period as is found to be reasonable and valid in substitution for any period or periods contained in this Agreement.

#### **17. Force majeure**

- 17.1. Neither party shall be in breach of this Agreement, nor liable for any failure or delay in performance of its obligations under this Agreement if such breach or failure is due to an event of Force Majeure. Where either party is prevented or delayed in the performance of any of its obligations under this Agreement by an event of Force Majeure it shall promptly give written notice to the other party giving details of such event of Force Majeure and the extent and likely duration whereupon such obligations shall be suspended due to the event of Force Majeure.
- 17.2. A party affected by an event of Force Majeure shall make every reasonable effort to minimise the effects thereof and shall promptly resume performance as soon as reasonably possible after termination of the event of Force Majeure.
- 17.3. Where the period of non-performance in relation to any event of Force Majeure exceeds 60 Days from the date of notice of such event of Force Majeure, either party may by serving written notice on the other terminate this Agreement with immediate effect.

#### **18. Notice**