**Consultancy Agreement with Limited Company**

**(Client to Consultant)**

***\* Add/delete іnfоrmаtіоn in brасkеtѕ as аррrорrіаtе***

**THIS AGREEMENT** (“Agreement”) **is dated** [date] and made between:

[Company name], a company incorporated in Ireland [under registered number [number] and] whose registered office is at [full address] (“the Client”)

and

[Consultant company name], a company incorporated in Ireland [under registered number [number] and whose registered office is at [full address], (“the Consultant”).

Background:

1. The client is of the opinion that the Consultant has the necessary qualifications, experience and abilities to provide services to the Client.
2. The Consultant is agreeable to providing such services to the Client on the terms and conditions set out in this Agreement.

[The Consultant has wide experience in the field of management of cash flow issues, re-modelling of business plan and corporate restructuring and the Client requires expertise in such areas following the acquisition of certain subsidiary companies.]

IN CONSIDERATION OF the matters described above and the mutual benefits and obligations set out in this Agreement, the Client and the Consultant (individually the “party” and collectively the “Parties” to this Agreement) agree as follows:

The terms of this Agreement are:

# Definitions

|  |  |
| --- | --- |
| “Act” | means the Data Protection Act 2018. |
| “Confidential Information” | means all information about the Client, including: |
|  | any information which may give a commercially competitive advantage to any other person. It includes among other things: |
|  | information about staff, their performance and their personal contact information, |
|  | data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer relationships, customer profiles, sales estimates, business plans; |
|  | information about the Intellectual Property and all aspects of the technology of the Client; |
|  | information created or arising from this agreement; |
|  | information owned by a third party and in respect of which the Client has an obligation of non-disclosure. |
|  | information, comment or implication published on any Internet social medium. |
|  | It does not include information that it is reasonably necessary to disclose to a customer or other person in the usual course of business so far as that information is disclosed in those circumstances. |
| “Detailed Specification” | means a specification of work to be done under the Assignment. |
| "Intellectual Property" or “IP” | means intellectual property owned by the Client, of every sort, whether or not registered or registrable in any country, including intellectual property of kinds coming into existence after today; and including, among others, patents, trademarks, unregistered marks, designs, copyrights, software, domain names, discoveries, creations and inventions, together with all rights which are derived from those rights. |
| “New IP” | means any Intellectual Property: |
|  | written, discovered or arising from an Assignment or from the activity of any person of the Client; |
|  | including not only new developments but also improvements to and derivatives of existing intellectual property; |
|  | whether or not created by the Consultant; |
|  | whether after specific consideration or by accident; |
|  | even if created by the Consultant outside of the paid time of it or its staff. |
| “Services” | means the services to be provided by the Consultant |

# Interpretation

In this agreement unless the context otherwise requires:

* 1. a reference to one gender shall include any or all genders and a reference to the singular may be interpreted where appropriate as a reference to the plural and vice versa.
  2. a reference to a person includes reference to that person’s successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that person.
  3. the headings to the paragraphs to this agreement are inserted for convenience only and do not affect the interpretation.
  4. any agreement by any party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
  5. a reference to an act or regulation includes new law of substantially the same intent as the act or regulation referred to.
  6. in any indemnity, a reference to costs or expenses shall be construed as including the estimated cost of management time of the indemnified party, [such cost calculated at €200 per hour].
  7. all money sums mentioned in this agreement are calculated [net / inclusive] of VAT, which will be charged when payment is due.
  8. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

# Services provided

* 1. The client hereby agrees to engage the Consultant to provide the Client with the following services (the “Services”):

[Set out details of services]

* 1. The Services will also include any other tasks which the Parties may agree. The Consultant hereby agrees to provide such Services to the Client.
  2. So far as the Consultant provides one or more further Services to the Client they are deemed to be regulated by this contract unless agreed to the contrary.
  3. By accepting to offer the Services, the Consultant agrees to provide staff of an appropriate level of skill and experience to provide the Services.
  4. The Consultant acknowledges that this agreement imposes no obligation on the Client to provide the Consultant with any additional Services.

# Entire agreement

* 1. The Consultant shall complete the Services for the fees set out in this agreement.
  2. This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties.
  3. Each party acknowledges that, in entering into this agreement, it does not rely on any representation, warranty, information or document or other term not forming part of this agreement.
  4. If the act or omission of any person would be actionable by the Client but for that act or omission having taken place outside the scope of the employment of some one or more people, the Consultant agrees that it shall nevertheless be actionable, and the Consultant shall indemnify the Client against all loss and damage in respect of it.
  5. Conditions, warranties or other terms implied by statute or common law in any country are excluded from this agreement to the fullest extent permitted by law.
  6. This agreement has been drawn with reference to a single Assignment. However, the parties intend, and now agree that all the terms shall apply so far as reasonably possible to any second or further assignment or series of assignments which the parties agree shall be performed under these terms.
  7. If the Client offers and the Consultant agrees to take on new work after today, that work shall be an Assignment, regulated by this agreement unless the parties otherwise agree in writing.

# Term of Agreement

# The term of this Agreement (the “Term”) will begin on the date of this Agreement and will remain in full force and effect indefinitely until terminated as provided by this Agreement.

# Warranties for authority

* 1. Each party warrants that it has power to enter into this agreement [and has obtained all necessary approvals to do so].
  2. The Consultant warrants and undertakes that it is not aware of anything within its reasonable control which might or will adversely affect its ability to fulfil its obligations under this agreement.
  3. The Client warrants that it is not insolvent and knows of no circumstance which would entitle any creditor to appoint a receiver or to petition for winding up or to exercise any other rights over or against its assets.

# Conflicts of interest

* 1. The Consultant confirms that:
     1. neither it nor any of its employees, agents or contractors is under any pre-existing obligation to a third party which may be inconsistent with the provisions of this agreement;
     2. it does not now perform or intend to perform, during the term of this agreement, consulting or other services for, or engage in or intend to engage in an employment relationship with, any business which would be competitive with any business of the Client. If the Consultant is or becomes in breach of this provision, the Client may terminate this agreement forthwith.
     3. its performance of the Assignment will not breach any agreement to keep in confidence proprietary information of a third party;
     4. it has the right to disclose and/or use all ideas, processes, techniques and other intellectual property which it now intends to use or will in fact use, in performing the Assignment;
     5. it has not granted and will not grant any right or licence to any intellectual property or technology that would conflict with its obligations under this agreement.
  2. Despite the foregoing confirmation, the Consultant agrees that it will not incorporate into any process, system or software provided to the Client in performance of the Assignment, any physical or intellectual property not owned entirely by the Consultant, without the express, written consent of the Client.

# Consultant's status

* 1. The Consultant is not an agent of the Client and does not have authority to enter into any commitment on behalf of the Client.
  2. The Consultant shall alone be responsible for:
     1. payment of all taxes due on its own compensation except sales taxes, charged and shown on the face of its invoices;
     2. payment of all taxes applicable to payments made to its partners, agents or employees under this agreement;
     3. compliance with all applicable labour and employment requirements with respect to the Consultant's self-employment, sole proprietorship or other form of business organization, and the Consultant's partners, agents and employees. The Consultant’s obligations shall include compliance with any law on immigration and any aspect of work by any person to whom the Consultant gives any instruction in connection with this agreement.
  3. The Consultant agrees to indemnify the Client against any cost or liability, claim or penalty arising from a demand made by any governmental revenue collecting authority with respect to any compensation paid to the Consultant or its agents or employees.

# Representative liaison

* 1. With effect from today, the Consultant and the Client will each nominate a representative who will be authorised to make decisions relating to the Assignment and who will be responsible for:
     1. organising monthly meetings at which they will review the progress of the Assignment;
     2. providing all information and documentation reasonably required by the other of them to enable completion of the Assignment.
  2. Each month the Consultant will prepare a progress report on the progress of the work on the Assignment and will deliver it to the Client’s representative at least [three] days before each meeting.

# Work management procedure

* 1. The Client will provide for the exclusive use of the Consultant, the following facilities in its premises at [address]:

[List facilities, or delete]

* 1. In working on the Assignment and in provision or delivery of any outcome, the Consultant will comply in all respects with:
     1. the Detailed Specification;
     2. all relevant commonly accepted standards, including those of the International Organization for Standardization;
     3. [other compliances and standards . . .]

# Consultant's obligations

* 1. The Consultant agrees to provide staff of an appropriate level of skill and experience to work on the Assignment.
  2. Each Assignment will be completed in accordance with the timetable set down in the Detailed Specification.
  3. The Consultant agrees that whilst engaged in any Assignment on the premises of the Client, it will comply with:
     1. all laws and regulations relating to work;
     2. the specific regulations and policies of the Client.
  4. The Consultant agrees that it will process personal data as required by the Act, as set out in Schedule [1]. The Client agrees to instruct, comply and co-operate with the Consultant so far as reasonably necessary to secure all relevant personal data.

# Consultant's fees and expenses

* 1. The Consultant shall at all times maintain accurate and up-to-date records of the time spent by its staff upon each Assignment, both in respect of work charged by the hour and work charged against a fixed price. Time shall be recorded in 15-minute units rounded to the nearest unit.
  2. The Client will pay the Consultant at the rate of € [000] per day and for the time of other staff at the rate of € [000] per day.
  3. After the end of each month the Consultant will send an invoice to the Client for work done during that month. No money shall be payable until the Consultant has submitted an invoice to the Client.
  4. Each invoice submitted to the Client for time charged by the hour shall contain a breakdown in respect of the time spent by each person.
  5. The invoice shall include whatever reasonable expenses the Consultant has incurred in working on any Assignment [provided such expenses have been approved in advance by the Client] [and are evidenced by receipts or vouchers].

**OR**

* 1. The Consultant will personally bear the cost of all expenses incurred by it in work on an Assignment.
  2. Payment of the sum specified in the invoice will be made by the Client within [14] days of date of sending the invoice.
  3. The Consultant shall be entitled after [28] days notice to the Client and not more than once in every [12] months to increase the rates for work charged by the hour. Such increase shall be no greater than [five] per cent in any year.
  4. Banking charges by the receiving bank on payments to the Consultant will be borne by the Consultant. All other charges relating to payment in a currency other than euro will be borne by the Client.
  5. Any details given by the Client in relation to exchange rates are approximate only and may vary from time to time.

# Use of sub-contractors

If the Consultant wishes to perform any or all of its obligations under this agreement through agents or sub-contractors, the following provisions apply:

* 1. the Consultant must first obtain the written consent of the Client to the name and identity of any sub-contractor;

**OR**

* 1. the Consultant must first obtain the written consent of the Client to the name of the sub-contractor and to the terms of the contract agreement;
  2. the Consultant remains liable for the performance of this contract;
  3. the Consultant agrees to indemnify the Client against any loss or damage suffered by the Client arising from any act or omission of any agent or sub-contractor.

**OR**

* 1. [This contract / the Assignment] shall be performed entirely by [name] personally.

**OR**

* 1. So far as work under this contract is sub-contracted to others, it shall be supervised personally by [name].

**OR**

* 1. The Consultant shall not sub-contract any part of its obligations under this contract to a third party.

# Consultant's other work

The Consultant will not engage in any other work or office or employment where:

* 1. the other work is for a business or organisation competitive with any business of the Client.
  2. the other work is such that the Consultant may for any reason be less capable of dealing efficiently and promptly with any Assignment.

# No competition

* 1. The Consultant agrees that it will not within [two years] of the termination date by any means and neither for itself nor for any other person, directly or indirectly, advise, instruct, do or assist in any activity the effect of which is to promote the sale of any product or service which competes with any product or service offered for sale by the Client within the period of [two years] immediately preceding the termination date.
  2. The Consultant agrees that it will not within [two years] of the termination date neither for itself nor for any other person, directly or indirectly, advise, instruct, do or assist in any activity the effect of which is to encourage any person to breach any contract between that person and the Client.
  3. The Consultant agrees that it will not within [two years] of the termination date by any means and neither for itself nor for any other person, directly or indirectly, employ or provide work to any person who was employed by or who worked as a contractor for the Client within the period of [two years] immediately preceding the termination date.
  4. The Consultant agrees that the provisions of this paragraph are fair and reasonably required for the protection of the Client's business.

# Confidentiality

* 1. The Consultant is aware that in the course of the performance of the Assignment it will have access to and be entrusted with Confidential Information of the Client. Accordingly, it undertakes in respect of that Confidential Information, that both during and after completion of the Assignment, it will:
     1. except as provided in this agreement, not divulge to any person whatever, or otherwise make use of (and will use its best endeavours to prevent the publication or disclosure of) any trade secret or Confidential Information;
     2. not use the Confidential Information in any way for itself or any other person, except in a way that is authorised by this agreement or by the proper authority of the Client;
     3. not store, copy, or use the Confidential Information in any place or in any electronic form which may be accessible to any other person [except . . . .]
     4. keep all records of the Confidential Information in all media separate from other records;
     5. keep all records only at the address as specified above (and in particular not to take records in electronic form to any other place);
     6. use its best endeavours to keep confidential (and to make sure that its employees and agents shall keep confidential) any Confidential Information which he may acquire.
     7. make all relevant employees, agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such steps as from time to time may be necessary to ensure compliance by those people with these provisions.
  2. The Consultant now undertakes to the Client that for the period of [twelve] months following completion of the Assignment it will not directly or indirectly, and whether for itself or for the benefit of any other person, induce or endeavour to induce any officer or employee of the Client to leave its employment.
  3. The Consultant agrees that during its engagement with the Client, it will not use, disclose, or bring onto the Client’s premises, any proprietary information or trade secret of any former or concurrent customer, without the consent in writing of that former customer.
  4. The Consultant now accepts a duty of care and a duty to comply with the terms of any agreement between the Client and any third party which is intended to protect the Confidential Information of that third party. This applies even when the Client has not expressly brought to the attention of the Consultant the level of confidentiality required.
  5. The Consultant agrees that before it permits any employee or contractor or other person to have access to any Confidential Information, it shall enter into an agreement / contract of employment, binding every such person to the matters of confidentiality provided for in this paragraph.

# Intellectual Property

The Consultant acknowledges that the Intellectual Property belongs exclusively to the Client and that it will:

* 1. watch out for any infringement of the Intellectual Property rights of the Client and to inform the Client fully about any that it finds or suspects.
  2. take such reasonable action as the Client shall direct at the Client's expense in relation to any infringement which may be found or suspected;
  3. not use any name or mark similar to or capable of being confused with any name or mark belonging to the Client;
  4. on the expiry or termination of this agreement immediately stop using the Intellectual Property except as expressly authorised by the Client in writing;
  5. not use [the Trade Name] or any derivation of it in its own [trading or] corporate name.

The Consultant's obligations set out in this paragraph shall continue after this agreement has been terminated.

# Records, inventions and New IP

* 1. In the course of work under this agreement, the Consultant will conceive or come across New IP.
  2. The Consultant will keep full records in appropriate media, of New IP and all working drawings and casually produced material relating to all work done on an Assignment. These records shall be the property of the Client.
  3. For the sake of good order, the Consultant hereby assigns to the Client all its right in any jurisdiction, to become entitled to any New IP.
  4. The Consultant agrees that all works of authorship arising in any Assignment are "works for hire" and that the Client shall own the copyright in all such works.
  5. The Consultant undertakes to do whatever is necessary from time to time to vest legal ownership of New IP in the Client. This includes reasonable assistance in making applications to and filing documents with governmental agencies. This obligation continues for five years after the completion of any Assignment. The Client shall pay the reasonable expenses of the Consultant, but not for its own time, in complying with this provision.
  6. If the Client requires a signature from the Consultant or action by the Consultant in connection with New IP, and is unable to secure that signature or action, no matter for what reason, then the Consultant now irrevocably designates and appoints the solicitor / attorney / General Counsel of the Client as attorney-in-fact to the Consultant to execute any such document and / or take any action on its behalf which the Consultant is obliged to do by this paragraph.

# Duration and termination

* 1. This agreement shall continue until terminated:
     1. by completion of the Assignment and payment to the Consultant; or
     2. by one party giving [28] days' notice of termination to the other; or
     3. immediately by the Consultant if the Client fails to pay any sum due within [28] days of the date of submission of an invoice having been notified of non-payment by the Consultant; or
     4. immediately by either party if the other commits any material breach of any term of this agreement and which in the case of a breach capable of being remedied is not remedied within [30] days of a written request to remedy it; or
     5. immediately by either party if a trustee / administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration or bankruptcy order (otherwise than for the purpose of an amalgamation or reconstruction);
     6. immediately if the Consultant is or becomes incompetent or negligent in respect of any of its obligations under this agreement or in respect of any Assignment; or
     7. the Consultant refuses to carry out the work reasonably and properly required of it under this agreement.
  2. After termination of this agreement for whatever reason, all the provisions that are intended to operate or have effect after termination or expiration shall continue in full force and effect.
  3. Without regard to the reason why this agreement ends, the Client will pay the Consultant for all work done to the time the notice of termination is received by the Consultant, [calculated to the nearest one hour].

# Assignment of this agreement

* 1. Neither party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the prior written consent of the other party, except that:
  2. a party may assign and transfer all its rights and obligations under this agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other party to be bound by the obligations of the assignor under this agreement.

# Mutual indemnities

* 1. Each party agrees to indemnify the other against all costs, claims and expense arising directly or indirectly from:
     1. its failure to comply with the law of any country;
     2. its breach of this agreement;
     3. any act, neglect or default by any agent, employee, licensee or customer of that party;
     4. a breach of the intellectual property rights of any person by that party.
  2. For the purpose of this paragraph, it is agreed that the cost of management and technical time is properly recoverable and can reasonably be valued at € [200.00] per hour without further proof.

# Uncontrollable events

* 1. If either party cannot perform this agreement for any reason beyond its reasonable control for a continuous period of [three] months then either party may, at its discretion, terminate this agreement by notice in writing at the end of this period.

**AND/OR**

* 1. Neither party shall be liable for any failure or delay in performance of this agreement which is caused by circumstances beyond its reasonable control, [including any labour dispute between a party and its employees].

**OR**

* 1. If any uncontrollable event delays or prevents the performance of the obligations of either party for a continuous period of more than [one month], the other party may give notice to terminate this agreement. The notice must specifying a date at least [7] days ahead, when the termination will take effect.
  2. A termination notice is irrevocable unless both parties agree to re-instate this agreement.
  3. If the agreement is terminated, all money due from one party to the other becomes due immediately [. . . . .and other arrangements].
  4. Costs arising from the delay or stoppage will be borne by the party incurring those costs.
  5. The party claiming the uncontrollable event will take all necessary steps to perform this agreement despite the uncontrollable event.

# Publicity / Announcements

* 1. No public or press announcement shall be made about the subject matter of this agreement unless the text has been first approved by all the other party.

**OR**

* 1. Neither party shall:
     1. make any public announcement; or
     2. disclose any information; or
     3. allow expressly or by default, any other person to disclose information;

about this agreement without having first obtained the approval in writing of the other party.

* 1. By way of exception to the last previous sub paragraph, a party may disclose whatever information is necessary to comply with any law or the regulations of a recognised stock exchange.

**OR**

* 1. The parties agree to the issue of a press release substantially in the form contained in Schedule [2], immediately after signing this agreement.

# Miscellaneous matters

* 1. The Consultant undertakes to provide to the Client its current land address, e-mail address and telephone number as often as they are changed.
  2. No amendment or variation to this agreement is valid unless in writing, signed by each of the parties or its authorised representative.
  3. The parties acknowledge and agree that this agreement has been jointly drawn by them and accordingly it should not be construed strictly against either party.
  4. So far as any time, date or period is mentioned in this agreement, time shall be of the essence.
  5. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
  6. The rights and obligations of the parties set out in this agreement shall pass to any permitted successor in title.
  7. Any obligation in this agreement intended to continue to have effect after termination or completion shall so continue.
  8. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
  9. The parties agree that electronic communications satisfy any legal requirement that such communications be in writing.
  10. Any communication to be served on either of the parties by the other shall be delivered by hand or sent by first class post or recorded delivery or by e-mail.

|  |
| --- |
| It shall be deemed to have been delivered: |
| if delivered by hand: on the day of delivery; |
| if sent by post to the correct address: within 72 hours of posting; |
| If sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender. [Take care before agreeing to accept service by e-mail. It may be convenient, but you could miss or accidentally delete the message]. |

* 1. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
  2. So far as the law permits, and unless otherwise stated, this agreement does not give any right to any third party.
  3. In the event of any conflict between any term of this agreement and the provisions of the constitution of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of this agreement shall prevail.
  4. Each party shall bear its own legal and other costs and expenses arising in connection with the negotiation and drafting of this agreement.
  5. This agreement may be executed in counterparts each of which shall be considered an original and either of which constitute one and the same instrument.
  6. The validity, construction and performance of this agreement shall be governed by the laws of Ireland and the parties agree that any dispute arising from it shall be litigated only in that country.

Signed by [personal name] on behalf of [Consultant name], its representative who personally accepts liability for the proper authorisation by [Consultant name] to enter into this agreement.

Signed by [personal name] on behalf of [Client name] its representative who personally accepts liability for the proper authorisation by [Client name] to enter into this agreement.

## Schedule 1: Data Protection Act 2018 Compliance

# Definitions

In this Schedule, the following words shall have the following meanings:

|  |  |
| --- | --- |
| "Associate" | means any corporate or other form of organisation or any individual person with whom the Client has an association which does, or could, entail the transfer of personal data to the Consultant for processing. |
| “Directive” | means Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA. |
| "DPC" | means the Data Protection Commission. |
| “the Data Protection Regulations” | means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation). |
| “the Law” | means all or any of:  (a) the Data Protection Regulations,  (b) the Act,  (c) the Data Protection Act 1988,  (d) the Data Protection Act 2003,  (e) regulations made under the Act,  (f) Directive. |

"data controller", "data processor", "sub-processor", "data subjects", "personal data", "process", "processed" and "processing" shall have the meanings respectively, as defined in the Act.

In this agreement, "personal data", is limited to data which comes into the Consultant’s hands in some way connected to this agreement.

# Data Protection

* 1. The obligations described in this Schedule are in addition to the Consultant's obligations under the Law.
  2. To enable the Consultant to work on Assignment under this agreement, the Client authorises the Consultant to process personal data on behalf of the Client.
  3. The parties agree that the Client and its Associates are data controllers, and the Consultant is data processor in relation to personal data.
  4. Details of the anticipated processing activities are set out at Appendix 1 to this Schedule.

# How the Consultant shall process data

The Consultant shall at all times comply with the provisions and obligations imposed by the Law and, in particular, shall:

* 1. process personal data only to the extent necessary to provide the services and only in accordance with the Client's prior written instructions;
  2. immediately inform the Client if, in its reasonable opinion, the Client's instruction infringes the Law;
  3. ensure that every person processing personal data under this agreement does so strictly on a need-to-know basis, has received training on their obligations relating to handling of personal data and is bound by confidentiality obligations no less stringent than the Consultant’s confidentiality obligations under this agreement;
  4. in order to use commonly accepted international communications and money transfer protocols, it will be necessary to use sub-contractors for certain service provision. The Consultant shall not necessarily be aware of the identity of every organisation involved in the train of communications. When that happens, the Consultant accepts full responsibility for its compliance with the Law.
  5. subject to the exceptions mentioned in the last previous sub-paragraph, the Consultant will not use sub-contractors for personal data processing under this agreement without the Client's prior written consent.
  6. wherever possible, enter into a written contract with each such sub-processor, which includes the same obligations on the sub-processor as those imposed on the Consultant by the Client under this agreement.
  7. subject to the other provisions of this Schedule, not process personal data or permit any third party to process personal data outside of the European Economic Area (EEA) unless:
     1. EU standard contractual clauses approved by the European Commission or the DPC are entered into between the Client or its relevant Associate as data exporter, and the relevant recipient of the personal data as data importer; or
     2. the recipient of the personal data has entered into a data processing agreement with the Consultant; or
     3. the recipient of the personal data is regulated within the United States of America solely by the U.S. Department of Commerce, is certified under the EU/US Privacy Shield framework, and continues to be certified for the period within which it processes the personal data; or
     4. the recipient of the personal data has entered into binding corporate rules, which are valid in respect of the processing of personal data under this agreement and have been approved by the European Commission or the DPC; or
     5. the transfer is to a recipient located within a jurisdiction whose law relating to the processing of personal data has been approved by the European Commission or the DPC (subject to any applicable restrictions).
  8. have in place at all times appropriate technical and organisational measures to ensure a level of security appropriate to the risk presented by processing the personal data, to prevent accidental, unauthorised or unlawful destruction, loss, alteration, or access to personal data, including as a minimum whatever security measures the Client notifies and instruct the Consultant to use. Examples of such measures are:
     1. the pseudonymisation and encryption of personal data;
     2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; and
     3. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of processing;
  9. maintain a written record of all categories of processing activities carried out on the Client's behalf and when it asks, copy it to the Client. The record shall contain:
     1. the Consultant's name and contact details and (where applicable) those of approved sub-processors and details of their respective data protection officers;
     2. the categories of personal data, data subjects and processing activities carried out on behalf of the Client and its Associates;
     3. where applicable, transfers of personal data to a third country (i.e. non-EU Member State) or an international organisation, including identification of that third country and documentation evidencing implementation of suitable safeguards; and
     4. a general description of the technical and organisational security measures the Consultant has installed as referred to in Article 32(1) of the Data Protection Regulations;
  10. when the Client asks, give to it or to the DPC, access to the Consultant's employees, data processing facilities, procedures, and records to inspect and audit compliance with the Law and the terms of this agreement. The Consultant shall (and shall ensure any sub-processor shall) give all reasonable cooperation and assistance.
  11. immediately inform the Client (and in any event within 24 hours) after becoming aware of any actual or suspected unlawful destruction, loss, alteration, disclosure of, or access to, personal data transmitted, stored or otherwise processed by the Consultant or any sub-processor under this agreement;
  12. provide reasonable assistance to the Client in:
      1. responding to data subject's requests to exercise their rights under the Act;
      2. responding to communications received from the DPC relating to the processing of personal data under this agreement, including notifying the Client immediately of any such communication;
      3. taking measures to address data security incidents, including, where appropriate, measures to mitigate their possible adverse effects;
      4. promptly upon the Client's request, transfer personal data to a third party in compliance with a request from a data subject to exercise their right to data portability;
      5. make available to the Client on request all information necessary to demonstrate compliance with the obligations set out in this Schedule; and
      6. at the Client's request (no more than once in every calendar year) complete and return without delay its information security and data protection questionnaires.

# Post termination

* 1. The Consultant and any sub-processor shall, whenever the Client asks:
     1. physically destroy all copies of media upon which any personal data was supplied and any further copies made by the Consultant or sub processor;
     2. return all personal data stored in hard copy to the Client;
     3. delete all personal data stored in soft copy, by some method which prevents future re-activation of that data;
     4. certify within 14 days of such request that the requirements of this paragraph have been complied with.
  2. Where the Consultant or its sub-processor is required to retain personal data in order to comply with applicable law, the Consultant will tell the Client and will retain such personal data only in its capacity as a data processor and shall comply with the Consultant’s obligations as a data processor, as far as applicable law permits.

# Warranty and acceptance of liability

* 1. The Consultant represents and warrant that the information provided in any response to any request by the Client shall be complete, true and accurate, and will not misrepresent Consultant's business or practices in respect of its ability to comply with the Law and its obligations under this agreement.
  2. If any act or omission of the Consultant or its sub-processors results in data transmitted or processed under this agreement being lost or degraded so as to be unusable, then the Consultant shall be liable to the Client for the cost of reconstituting the data and/or the Client or its Associate's costs in recreating such data.

Appendix 1 to Schedule 1

Data Processing Activities

**What the Consultant may process in each category**

1. **The Consultant shall process this basic personal data**
   1. Name.
   2. Address.
   3. Email address.
   4. Telephone number
   5. Technical information relating to electronic communication, which is personal information only when associated with the name or identity of the data subject.
   6. [list all other depending on whether data passes].
2. The Consultant shall process the data of these data subjects.

The Client, and so far as the Client instructs the Consultant, the Client's staff and any other people whose data is submitted to the Consultant by the Client or which the Consultant must seek out in order to satisfy the Client's instructions and comply with this contract.

1. **This is why and how the Consultant shall process personal data**
   1. The Consultant's processing of personal data will be limited to such activity as is reasonably required to satisfy its obligations under this contract.
   2. The Consultant shall not make contact with any data subject nor seek additional data from any other source.
2. **Retention period**
   1. It is possible that the Consultant shall retain personal data, along with much other data, for six years, for these reasons:
      1. for accounting and taxation purposes;
      2. to provide evidence if required in connection with a legal claim;
      3. for any other reason where the law provides a six years limitation period;
   2. If any event occurs which requires the Consultant lawfully to continue to retain data beyond that period, then it may do so

## Schedule 2: Press release

[Press announcement]

Guidance Notes:

**Consultancy contract: client version**

Paragraph specific notes

Notes following the numbered paragraphs

1. **Definitions**

The defined terms we have provided may not be the most suitable for your business. You may refer differently to your detailed specification, or indeed, there may be none.

It is difficult to protect your secrets when you suddenly allow a number of outsiders’ free rein over all your business. We do not know how “secret” are your affairs. We have therefore provided an extremely comprehensive definition of what should be protected. You will see below that it is matched by the strength of the actual provisions. It is fine to edit the definition if you think you take no risk in doing so.

You should first decide on the contents of the document, then return to check whether the definitions really fit the text you have left in place.

1. **Interpretation**

Leave these items in place unless there is a good reason to edit or remove. These items are not “lawyer’s blurb”. Every item has been carefully considered in the context of this agreement and has been included for a purpose. Many of them strengthen the framework within which the agreement operates.

1. **Services**

This paragraph details the services to be provided by the Consultant

1. **Entire agreement**

This paragraph prevents a party from later saying he was relying on some other document or web site or what was said. If other documents are to be relied on, let them be listed here, so that both parties know the basis of the deal. It also sets the rules for the application of the agreement to further assignments.

The cunning provision at 3.4 makes the consultant liable for actions of his staff outside their employment, for example if they do something unlawful, or use a social network to tell the world how ruthless you are.

1. **Term of Agreement**

This paragraph sets out the term of the agreement and should be drafted to clearly set out the length of term of the contract

1. **Warranties for authority**

If you are dealing with a company and do not know who has authority to do what, leave this paragraph in place. If you are dealing with an individual, you may be better protected by making sure he has a sound indemnity insurance policy in place.

1. **Conflicts of interest**

Good protection for you. Leave in place. It is drawn primarily to protect you from a claim by a third party that you are unknowingly in breach or their copyright or patent, or whatever. It will also draw out of your consultant anything he is doing or would like to do, in advance of signing. If there is something which might cause him to breach this paragraph, he will need your permission first.

1. **Consultant's status**

Sets up the self-employed status of an individual and covers you against unforeseen tax liabilities or contravention of employment law. Edit or delete if not required.

If the consultant's staff works in your premises they must avoid creating problems by transgressing your rules and policies. Note that one of the tests of employment or self-employment applied by the Revenue is as to the place of work. Lengthy provisions about the workplace may therefore strengthen the proposition that the relationship is one of employment.

1. **Representative liaison**

Consultancy contracts are notoriously difficult to specify in a way that facilitates measurement of results. The usual way of minimising conflict is to maintain close contact between the consultant and the company. That requires just one person from each side to accept responsibility for knowing the thinking of the other side. That is what we have provided for. Whether or not you need this paragraph depends entirely on your business. Some service provision requires contact and other does not. Edit to suit your business.

1. **Work management procedure**

Simple, basic provisions. Edit as you decide.

1. **Consultant's obligations**

If some aspects of your contract or of the detailed specification are particularly important, you could enter them here instead of in the detailed specification, where they would carry less weight. This may apply to times, dates, numbers of staff, technical standards, and so on.

1. **Consultant's fees and expenses**

This paragraph is flexible and should be completed with the specific terms agreed. This might be a daily rate, or a price per assignment, or a combination of both.

You should consider carefully the provisions relating to completion and payment. It is important that the agreement identifies a precise procedure and point in time when a final invoice may be sent. It may be necessary for the company’s last-minute modifications to be treated as post-completion modifications, so as to enable the main contract to be complete and payment made.

We have provided for payment for work done to date of cancellation, if cancelled.

1. **Use of sub-contractors**

Choices for you to edit as you decide.

1. **Consultant's other work**

Entirely a matter for your choice. Edit as you require. However, it is helpful if both sides are aware of an agreed position. Certainly, it is reasonable for the consultant to be restricted to work which is not competitive with yours.

1. **No competition**

Basic provisions to prevent competition (similar to what you might find in a director’s service contract). Leave the last sub paragraph in place. It prevents a claim by the consultant that the provision is contrary to the national interest.

1. **Confidentiality**

This paragraph is very strong indeed. The weight of responsibility on the consultant is great.

We have included this paragraph because a business has so many secrets which could easily be stolen that some safeguard is sensible. Each paragraph stands alone. You may delete any which are excessive to your business need.

1. **Intellectual Property**

It is unlikely that you will have dispute about existing IP rights. Problems arise when some value is added to an existing copyright or work, or something entirely new is created. We suggest no change to this paragraph.

This concept is inconvenient for you when you pay someone specifically to write code, draft maps or produce ideas. Different countries have taken different approaches to the subject. In the USA, I can enforce my right to what I have created far more easily than in Ireland. “Work made for hire” is the name given in the United States Copyright Act 1976, for work to be treated as owned by the person who paid for it to be done, and not the originator. If an agreement specifies that the work done is done “for hire” the payer can claim it as his. The expression is becoming used widely in other countries too. This paragraph simply enforces your rights to keep what you have paid for.

1. **Records, inventions and New IP**

New IP is a defined term. The definition is comprehensive so as to avoid complicating this paragraph. Edit it if you wish. The law on who owns newly created intellectual property is complicate and muddled. It also varies from one jurisdiction to another. We have therefore provided a very clear and comprehensive path through the maze. After editing the defined term at paragraph 1, we suggest you leave in place as it is.

1. **Duration and termination**

We have provided alternatives. Edit as you require. Most consultancy agreement is for a fixed term or a fixed task, so termination is rarely a problem.

It is after termination that conflicts tend to arise. Edit as you think best. You may decide to add provisions that relate to your industry or to leaving a clean workplace or servicing plant, or something else.

1. **Assignment of this agreement**

Consider carefully and edit as you require.

1. **Mutual indemnity**

Although we describe this as “mutual”, it does in fact strongly favour you, the client. Edit as you require.

1. **Uncontrollable events**

Used to be referred to as “force majeure”. We advise that you should look at this list carefully and delete what you do not need.

1. **Publicity / Announcements**

This may not be important to you. Delete if not required.

1. **Miscellaneous matters**

A number of special points. We have identified each of these as important to protect you. Some are relevant to particular paragraphs in the document, some apply more generally. Some are included to strengthen your position generally. Do not delete unless you are quite positive of the legal effect of doing so.

**Schedule: Data Protection Act 2018 Compliance**

These paragraphs have been drawn with the greatest of care to provide a fully compliant exposition of what each party must do. They apply, as drawn, only to a situation where the consultant is not passing new personal data back to you.

If the contractual arrangement (unusually) is such that the consultant is accepting data from you to process on behalf of the consultant, then the arrangement requires mutual controller-processor obligations. If in your situation the obligations overlap then by all means edit text to make these obligations mutual.

It should not be necessary to incorporate provision for the client to provide comparable terms simply in respect of the consultant’s own personal data. We take it that is covered in confidential information and accordingly in paragraph 14.

No provisions in this section should be edited unless it refers to a fact which is untrue. However, every requirement must be met. You must not delete what appears to be an obligation – but change your procedures so as to comply.

The final section is a series of lists of facts. These must be edited so as to be true and complete, so you must edit and extend the list as necessary to reflect your business.

End of notes