

LIMITED COMPANY CONSULTANCY AGREEMENT (DECEMBER 2015)

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, the following definitions apply:

Assignment means the period for which the Consultancy is supplied by OHUK to perform the Consultancy Services;

Assignment Schedule means the confirmation document sent to the Client and the Consultancy by OHUK on commencement of an Assignment, which shall be incorporated into this Agreement;

AWR means the Agency Workers Regulations 2010;

Client means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) requiring the services of the Consultancy as identified in the Assignment Schedule;

Conduct Regulations means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

Confidential Information shall mean any and all confidential, commercial, financial, marketing, technical or other information of whatever nature relating to the Client or OHUK or their business or affairs (including but not limited to all data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium provided or disclosed to the Consultancy in relation to the Assignment by the Client, by OHUK or by a third party on behalf of the Client whether before or after the date of this Agreement;

Consultancy means the limited company engaged by OHUK to provide Consultancy Services;

Consultancy Fees means the fees payable to the Consultancy which shall, unless otherwise agreed in writing, be deemed to include all expenses incurred by the Consultancy in providing the Consultancy Services;

Consultancy Services means the services to be provided to the Client by the Consultancy as described in the Assignment Schedule;

Consultancy Staff means the Consultancy's employees, workers, officers or representatives provided to perform the Consultancy Services;

Effective Date means the date on the Consultancy signs this Agreement, confirms acceptance of the Agreement on OHUK's website or commences the provision of Consultancy Services, whichever occurs first;

Losses means all losses, liabilities, damages, costs, expenses, fees (including legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands (whether actual or threatened);

OHUK means OHUK Limited (Registered in England & Wales No. 05280148) with its registered office at TMS House, Cray Avenue, Orpington, Kent, BR5 3QB;

Relevant Jurisdiction means the location in which the Consultancy Services are provided; and

Special Conditions means any conditions specific to an Assignment which may be set out in the Assignment Schedule.

1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.

1.3. The headings contained in this Agreement are for convenience only and do not affect their interpretation.

1.4. Any reference, express or implied, to an enactment includes a reference to that enactment as amended from time to time and all subordinate legislation made under it.

2. THE CONTRACT

2.1. OHUK may request that the Consultancy provides Consultancy Services from time to time in accordance with this Agreement.

2.2. This Agreement constitutes the entire agreement between OHUK and the Consultancy for the provision of the Consultancy Services and shall prevail over any alternative terms proffered by the Consultancy.

2.3. No variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between OHUK and the Consultancy and set out in writing and a copy of the varied Agreement is given to the Consultancy stating the date on or after which such varied Agreement shall apply.

2.4. The Assignment Schedule shall specify the Client, the Consultancy Fees payable by OHUK, any notice period and any other information relevant to the Assignment.

2.5. Any Special Conditions shall be specified in the Assignment Schedule and, in the event of any conflict, shall take precedence over this Agreement.

2.6. The Consultancy shall be deemed to have accepted the terms of this Agreement upon signing the agreement or, if earlier, upon providing the Consultancy Services or submitting any Progress Report or invoice to OHUK.

3. RELATIONSHIP BETWEEN THE PARTIES

3.1. OHUK is not obliged to offer Assignments to the Consultancy, the Consultancy is not obliged to accept any Assignment and there is no intention for any mutuality of obligations to exist between OHUK and the Consultancy or the Consultancy Staff at any time.

3.2. The Consultancy is an independent business and acknowledges that the responsibility of complying with all statutory and legal obligations relating to the Consultancy Staff, including the payment of taxation and compliance with the immigration laws in the Relevant Jurisdiction, shall be discharged exclusively by the Consultancy.

- 3.3. Nothing in this Agreement shall render any member of the Consultancy Staff an employee or worker of either OHUK or the Client and if any person or governmental body should claim or make any finding that any member of Consultancy Staff is an employee or worker of OHUK or the Client, the Consultancy shall indemnify OHUK and the Client in respect of any Losses which they shall incur as a result.
- 3.4. If a member of the Consultancy Staff is unable or unavailable to provide the Consultancy Services, the Consultancy may substitute the member of Consultancy Staff for an alternative member of Consultancy Staff provided that:
- 3.4.1. OHUK and the Client are satisfied that the substitute has the requisite skills and experience to perform the Consultancy Services;
- 3.4.2. there shall be no delay in performance of the Assignment; and
- 3.4.3. the Consultancy shall indemnify OHUK and the Client for any Losses suffered or incurred as a result of such substitution.
- 3.5. Save as otherwise stated in this Agreement, the Consultancy may supply services to any third party provided that this does not affect the provision of Consultancy Services.
- 3.6. The Consultancy shall determine how to provide the Consultancy Services and, subject to complying with the reasonable operational requirements of the Client, will have the flexibility to determine the location, the number of hours required to provide, and the times during which it will provide, the Consultancy Services.

4. WARRANTIES GIVEN BY THE CONSULTANCY

- 4.1. The Consultancy warrants to OHUK that:
- 4.1.1. by entering into and performing its obligations under this Agreement it will not breach any obligation which it owes to any third party;
- 4.1.2. the Consultancy Staff have the necessary skills and qualifications to perform the Consultancy Services;
- 4.1.3. all information provided during the course of the Assignment shall be entirely correct and accurate;
- 4.1.4. the Consultancy Staff are legally entitled to work in the Relevant Jurisdiction;
- 4.1.5. the Consultancy Staff have agreed to opt out of the Conduct Regulations and have signed an agreement to that effect;
- 4.1.6. each member of Consultancy Staff is employed by the Consultancy under a contract of service or is a statutory director and shareholder of the Consultancy;
- 4.1.7. the Consultancy is not a "managed service company" as defined in section 61B of the Income Tax (Earnings and Pensions) Act 2003;
- 4.1.8. the Consultancy is a private limited company, registered in England, Wales or Scotland, and in good standing with Companies House; and
- 4.1.9. no member of the Consultancy Staff is an agency worker as defined in the AWR. The Consultancy shall indemnify and keep indemnified OHUK and the Client against any Losses which OHUK or the Client may suffer or incur as a result of any claim made by or on behalf of any member of the Consultancy Staff under the AWR.
- 4.2. The Consultancy warrants to OHUK that the Consultancy Staff have consented in writing to OHUK, any other intermediary involved in supplying the services of the Consultancy (now or in the future) and to the Client:
- 4.2.1. processing the Consultancy Staff's personal data for purposes connected with the provision of the Consultancy Services and pursuant to this Agreement; and
- 4.2.2. exporting and processing the Consultancy Staff's personal data in jurisdictions outside the European Economic Area for purposes connected with the performance of this Agreement.

5. OBLIGATIONS OF THE CONSULTANCY

- 5.1. The Consultancy shall ensure that the Consultancy and the Consultancy Staff:
- 5.1.1. observe any relevant rules and regulations of the Client's establishment or the premises where the Consultancy Services are being performed, including but not limited to those relating to health and safety, site security and IT usage to the extent that they are applicable to an independent consultancy;
- 5.1.2. take all reasonable steps to safeguard their own safety and the safety of any third party during the Assignment;
- 5.1.3. comply with the Data Protection Act 1998 in respect of any personal data to which the Consultancy is given access during the course of the Assignment;
- 5.1.4. do not at any time divulge to any person, nor use for their own benefit, any Confidential Information relating to OHUK's or the Client's employees, business, or financial performance;
- 5.1.5. do not engage in any conduct detrimental to the interests of OHUK or the Client;
- 5.1.6. do not discriminate against, harass or victimise any member of OHUK's or the Client's staff;
- 5.1.7. do not hold themselves out to be an employee or worker of either OHUK or the Client;
- 5.1.8. do not purport to bind OHUK or the Client contractually without the express written consent of OHUK or the Client as the case may be;

- 5.1.9. provide such progress reports to OHUK and the Client as may be requested from time to time; and
- 5.1.10. return in good condition upon termination of an Assignment or at any time upon demand any property or equipment belonging to the Client which is provided to the Consultancy or to the Consultancy Staff during the course of an Assignment.
- 5.2. The Consultancy must:
 - 5.2.1. notify OHUK in writing if it becomes insolvent or if any of the circumstances set out in clauses 9.3.5 to 9.3.7 apply;
 - 5.2.2. notify OHUK in writing if the Client wishes to extend the Assignment or if the Client offers to engage the Consultancy or any Consultancy Staff during the course of the Assignment or within six months of its termination;
 - 5.2.3. account to HMRC or the appropriate tax authorities in the Relevant Jurisdiction for all taxes arising on the business activities of the Consultancy or in respect of any payments made by the Consultancy to the Consultancy Staff;
 - 5.2.4. unless otherwise agreed, provide at its own cost all such equipment and training as is necessary for the proper performance of the Consultancy Services;
 - 5.2.5. at any time on demand return to OHUK or the Client all property of the Client including, but not limited to, all equipment, documents, security passes, electronic storage keys or devices.
- 5.3. If the Consultancy is unable for any reason to provide the Consultancy Services during the course of the Assignment, the Consultancy should inform OHUK as soon as is reasonably practicable but in any event, no later than 1 hour after it becomes aware of any event which renders it unable to provide the Consultancy Services.
- 5.4. If the Consultancy becomes aware of any reason why the Consultancy or the Consultancy Staff may not be suitable for an Assignment, the Consultancy shall notify OHUK without delay.
- 6. OBLIGATIONS OF OHUK**
 - 6.1. OHUK will:
 - 6.1.1. issue an Assignment Schedule to the Consultancy and the Client prior to commencement of an Assignment or as soon as reasonably practicable thereafter; and
 - 6.1.2. advise the Consultancy of any relevant health and safety information relating to the Assignment which OHUK receives from the Client.
- 7. INVOICING**
 - 7.1. At the end of each week of the Assignment or at such interval as may be agreed between the Consultancy and OHUK from time to time, the Consultancy shall deliver to OHUK a Progress Report in a format acceptable to OHUK and to the Client.
 - 7.2. The Consultancy shall obtain the signature of an authorised representative of the Client as verification of the Progress Report and this must be received by OHUK together with a corresponding invoice no later than 4:00pm on the Monday following the week to which it relates.
 - 7.3. The Consultancy acknowledges that failure to deliver and obtain approval by the Client of a Progress Report may delay payment.
 - 7.4. Where OHUK has agreed to pay expenses to the Consultancy in addition to the Consultancy Fees, no such expenses shall be payable by OHUK until the Consultancy has submitted an invoice for such expenses, supported by itemised receipts.
- 8. CONSULTANCY FEES**
 - 8.1. OHUK will pay the Consultancy the Consultancy Fees within 14 days of receiving the Progress Report subject to:
 - 8.1.1. the satisfactory performance of the Consultancy Services; and
 - 8.1.2. any exercise of OHUK' right of set off.
 - 8.2. All payments will be made by OHUK to the Consultancy and not to any third party or member of the Consultancy Staff.
 - 8.3. Unless the Consultancy has opted out of the Conduct Regulations, OHUK undertakes to pay the Consultancy Fees irrespective of whether OHUK expects to receive payment from the Client. Nothing in this clause shall prevent OHUK of deducting or recovering monies owing from the Consultancy to OHUK pursuant to this Agreement.
 - 8.4. OHUK shall not be obliged to pay the Consultancy for any period in which the Consultancy Services are not provided, whether this is due to the Consultancy being unable to provide the Consultancy Services, the Client not requiring the provision of Consultancy Services or the holiday, illness or absence of the Consultancy Staff.
 - 8.5. If OHUK has reason to believe that the Client will not pay OHUK for the Consultancy Services, the Consultancy shall provide OHUK with all such assistance as is reasonably necessary to establish the reasons for non-payment.
 - 8.6. Without prejudice to any other right granted to OHUK under this Agreement, whenever a sum of money is recoverable from or payable by the Consultancy in relation to:
 - 8.6.1. a previous overpayment; or

8.6.2. any liability of the Consultancy under this Agreement

OHUK may deduct that sum from any amount due or which at any later time is due to the Consultancy.

9. TERM AND TERMINATION

- 9.1. This Agreement shall commence on the Effective Date and shall continue until terminated by other party giving not less than one week's written notice. Any Assignment in progress at the time of termination of this Agreement shall continue until completed or terminated in accordance with clause 9.2 or 9.3.
- 9.2. The Assignment shall commence on the date set out in the Assignment Schedule and, subject to any notice provision within the Assignment Schedule, may be terminated by either party at any time and without liability.
- 9.3. Notwithstanding any notice provision within the Assignment Schedule, OHUK may without notice and without liability terminate the Assignment at any time, where:
- 9.3.1. the Consultancy acts in breach of the Client's rules and regulations, to the extent that they are applicable to an independent consultancy;
 - 9.3.2. the Consultancy commits any serious or persistent breach of any of its obligations under this Agreement;
 - 9.3.3. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality from time to time;
 - 9.3.4. the Client is dissatisfied with the Consultancy Services and has instructed OHUK to terminate the Assignment;
 - 9.3.5. either the Client or the Consultancy is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - 9.3.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client or the Consultancy;
 - 9.3.7. an order is made or a resolution is passed for the winding up of either the Client or the Consultancy;
 - 9.3.8. any member of the Consultancy Staff is suspected of any fraud, dishonesty or serious misconduct;
 - 9.3.9. the Consultancy is unable to perform the Consultancy Services for 2 days or more;
 - 9.3.10. the agreement between the Client and OHUK is terminated for any reason; or
 - 9.3.11. prior to the date on which the Consultancy is due to start on an Assignment, it receives notice from the Client to terminate or not to proceed with the Assignment.

10. INTELLECTUAL PROPERTY

- 10.1. The Consultancy warrants and must ensure that:
- 10.1.1. the Consultancy and the Consultancy Staff assign to the Client without charge all present and future interests of whatever nature in, without limitation, all work-product, copyright, design rights, trademarks, patents, database rights (whether registered or unregistered) and all other confidential information, know-how and intellectual property rights of a similar nature in any part of the world and all applications and rights to apply for the protection of any of the foregoing, produced, prepared or provided by the Consultancy in relation to or arising from the provision of Consultancy Services, and that the aforementioned rights shall vest in and remain the property of the Client throughout the world free from any interest of the Consultancy, the Consultancy Staff or any third party;
 - 10.1.2. the Consultancy will do everything and will procure that the Consultancy Staff will do everything that the Client may reasonably require to vest the rights referred to in clause 10.1 in the Client or such third party as the Client specifies, whether before or after the termination of this Agreement;
 - 10.1.3. the Client retains ownership of all intellectual property rights of whatever nature in the documents, data and other materials provided to or provided by the Consultancy in relation to an Assignment. For the avoidance of doubt, the Client shall not be deemed to have granted the Consultancy any licence to use the documents, data or other materials other than for the purposes of performing the relevant Assignment;
 - 10.1.4. it discloses to the Client without delay any idea, method, invention, discovery, design, concept or other work made or created by the during the course of an Assignment; and
 - 10.1.5. the Consultancy Services do not breach the intellectual property rights of any third party.
- 10.2. The Consultancy shall indemnify the Client and OHUK against all and any actions, claims, costs, expenses, damages, demands and liabilities whatsoever and however incurred resulting or arising out of any claim by any third party that any work or work product performed or delivered by the Consultancy in connection with this Agreement infringes the intellectual property rights of that third party.
- 10.3. The Consultancy irrevocably and unconditionally waives in favour of the Client all moral rights conferred on it by statute for any intellectual property, design or copyright work in which rights are or should be vested in the Client pursuant to this clause 10 and the Consultancy shall procure the same waiver from the Consultancy Staff.

11. CONFIDENTIALITY

- 11.1. In order to protect the confidentiality and trade secrets of the Client and without prejudice to every other duty to keep secret all information given to it or gained in confidence, the Consultancy must:
- 11.1.1. not at any time whether during or after the Assignment (unless expressly authorised by the Client as a necessary part of the performance of the Consultancy Services) disclose to any person or make use of any of the trade secrets or Confidential Information of the Client with the exception of information already in the public domain;
 - 11.1.2. deliver up to the Client or OHUK (as directed) at the end of the Assignment all documents and other materials belonging to the Client which are in its possession including documents and other materials created by the Consultancy during the Assignment;
 - 11.1.3. not at any time make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Client except when required to do so in the course of the Assignment, in which event any such item shall remain the property of the Client.

12. COMPUTER EQUIPMENT

- 12.1. The Consultancy must
- 12.1.1. ensure that any computer equipment and software belonging to the Consultancy which is used during the course of providing the Consultancy Services is protected by up-to-date anti-virus protection;
 - 12.1.2. not install any software onto any Client computer equipment or network without the consent of the Client; and
 - 12.1.3. not download, install or introduce any computer virus, spyware or similar malware into any computer equipment or network belonging to OHUK or the Client.

13. RESTRICTION

The Consultancy shall not and shall procure that the Consultancy Staff do not without the consent of OHUK, for a period of 6 months following the termination of an Assignment, supply services directly or indirectly, to any Client for whom the Consultancy has carried out an Assignment.

14. INSURANCE

- 14.1. The Consultancy must, unless otherwise agreed with OHUK in writing, maintain in force throughout the course of an Assignment:
- 14.1.1. Employers' Liability Insurance with cover of not less than £5,000,000, unless the Consultancy is exempt under the Employers' Liability (Compulsory Insurance) Act 1969;
 - 14.1.2. Public Liability Insurance with cover of not less than £2,000,000 per claim; and
 - 14.1.3. Professional Indemnity Insurance with cover of not less than £1,000,000 per claim.
- 14.2. The Consultancy must ensure that the Professional Indemnity Insurance policy referred to in clause 14.1.3 is maintained for a period of not less than six years following termination of this Agreement.
- 14.3. The Consultancy shall provide to OHUK and the Client on request copies of the insurance policy schedule and the receipt for payment of the annual premium.

15. LIABILITY & INDEMNITY

- 15.1. The Consultancy shall be liable for and shall indemnify both OHUK and the Client for any Losses suffered or incurred as a result of:
- 15.1.1. any breach of this Agreement, tortious act or breach of statutory duty;
 - 15.1.2. any defect in the Consultancy Services and shall, where practicable, remedy such defect as may be capable of remedy forthwith following notification by OHUK or the Client;
 - 15.1.3. any member of the Consultancy Staff bringing or threatening to bring a claim against OHUK or the Client in the Employment Tribunal; and
 - 15.1.4. any claim, demand or assessment made by HMRC (or an equivalent body) for income tax or National Insurance Contributions relating to payments made by OHUK to the Consultancy or by the Consultancy to the Consultancy Staff.
- 15.2. Save to the extent that liability may not be limited or excluded by law, the liability of OHUK to the Consultancy in respect of any claim arising out of or in connection with this Agreement and whether arising in contract, tort (including negligence) or otherwise shall be limited to the Consultancy Fees payable pursuant to clause 8.1.
- 15.3. OHUK gives no warranty as to whether this Agreement shall place the Consultancy inside or outside of the IR35 Intermediaries Legislation and OHUK shall not be liable to the Consultancy for any losses, costs, claims, fees or expenses arising out of or in connection with any investigation, audit or tribunal finding in respect of the Consultancy's tax affairs.

16. GENERAL

- 16.1. If any provision of this Agreement shall be determined to be unenforceable, such provision shall, to the extent that it is unenforceable, be severed from the remaining terms, which shall continue to be valid to the extent permitted by law.

A: TMS House, Cray Avenue,
Orpington, Kent, BR5 3QB
T: 01689 851 241
F: 01959 580 960



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- 16.2. This Agreement shall not be enforceable by any third party other than the Client who, as a beneficiary of this Agreement, shall have an irrevocable right to directly enforce clauses 3.3, 4.1.9, 5.1, 10, 11 and 15.1, notwithstanding that the Client is not a party to this Agreement.
- 16.3. This Agreement shall be interpreted in accordance with English law and each party irrevocably agrees, for the sole benefit of OHUK that, subject as provided below, the courts of England & Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation. Nothing in this clause shall prevent OHUK from bringing proceedings in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.