

# **CONSULTANCY SERVICES AGREEMENT**

**(Agency – Client)**

between

**Client**

and

**The Knowledge Practice Limited**

**Ref: TKP ref - 001**

**Nn mmm yyyy**

**The Agreement & Terms of Business**



This Agreement is made the nn mmm yyyy

**BETWEEN**

- A. The Knowledge Practice Limited**, a company incorporated in England & Wales (registration number 4824881) and whose registered office is at Dickens House, Guithavon Street, Witham, Essex CM8 1BJ (the **Consultancy**), and
- B. Client** a company incorporated in England & Wales (registration number xxxxxxxx) of <address> (the **Client**).

**AGREEMENT**

The Agency agrees to supply and the Client agrees to engage the Services specified in the Schedule referenced TKP xxxx-yyyy-001, to be provided by the Service Provider named therein, and on the basis of the Agency's Terms of Business (Agency-Client) for the supply of Services by a Service Provider (as attached).

The Charge Rate for this engagement is £<xxx> per professional day (7-10 hours) plus VAT as applicable, payable within 30 days of monthly invoice.

**SIGNING PROVISIONS**

On behalf of **the Agency** by **xxxxxx**  
 (Authorised Signature)

Title: ..... Date:.....

On behalf of **the Client** by **xxxxxxx**  
 (Authorised Signature)

Title: ..... Date:.....

### 1. DEFINITIONS AND PRELIMINARY

- 1.1. ~~Agency~~ means The Knowledge Practice Ltd.
- 1.2. ~~Service Provider~~ means the person, firm or company, whose details are set out in the attached Schedule and identified as the provider of the services specified therein.
- 1.3. ~~Client~~ means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 1985 identified in the attached Schedule and requiring the services of the Service Provider. Unless otherwise clear from the context, references to ~~Client~~ (other than where contractual obligations are imposed) include any named End-Client.
- 1.4. ~~Services~~ means the services that are to be supplied to the Client by the Service Provider and that are specified in the attached Schedule.
- 1.5. 'Contract' means a contract between the Agency and the Client for specific services to be performed by a Service Provider, and comprising (in order of priority) The Agreement, a Schedule, any other document expressly referred to therein, and these Terms of Business. A Contract referencing these Terms of Business is governed only by these Terms of Business and by no others, except where both parties expressly agree in writing. All changes must be agreed in writing.
- 1.6. ~~Agreement~~ means The Consultancy Services Agreement, comprising The Agreement, a Schedule and these Terms of Business. The documents that together constitute The Consultancy Services Agreement are the Contract.
- 1.7. ~~EAA~~ means the Employment Agencies Act 1973, and ~~Employment Agency~~ and ~~Employment Business~~ have the meanings defined by the EAA. ~~Conduct Regulations~~ means the Conduct of Employment Agencies and Employment businesses Regulations 2003. ~~Opted Out~~ means agreement made between Service Provider and a person to be engaged on the Services, notified to the Agency, and having the effect that the Conduct Regulations do not apply in relation to an introduction or engagement.
- 1.8. These Terms of Business govern introductions which may be made, by the Agency, of independent professionals to the Client, with a view to engagements through the Agency for the performance of specified services. These Terms of Business also govern engagements for such services. By entering discussions with a person introduced by the Agency, or by allowing the commencement of services, the Client accepts these Terms of Business.
- 1.9. Any Contract is conditional on the Agency contracting unconditionally with the Service Provider for the Services

## 2. SERVICE PROVIDER RESPONSIBILITIES

- 2.1. The Services will be provided by the Service Provider as specified in the Schedule, with reasonable skill and care, and so far as is reasonably practicable within any agreed timescale.
- 2.2. The Service Provider is a professional, answerable for the key milestones and key deliverables specified in the Schedule, and responsible for exercising initiative as to the delivery of the Services. A Contract does not give the Client the right or power to direct or control the daily activities of the Service Provider or any person engaged on the Services. The Service Provider is responsible for:
  - 2.2.1. maintaining adequate Professional Indemnity, Employer's Liability, and Public Liability insurance of at least the Required Insurance Cover, and for providing evidence thereof on request
  - 2.2.2. providing its own reference materials, administrative support, and equipment where required (other than where use of the Client's equipment is required for reasons of security, because it is specialised, or because the Client's equipment is itself the object of the Services)
  - 2.2.3. devising appropriate working strategies and providing the Services independently, in a professional manner, with all proper skill and care, and in accordance with accepted professional standards methodologies and guidelines, and with all notified specifications and procedural requirements for the Project
  - 2.2.4. rectifying any defective Services at its own cost, provided they are notified within the Defect Warranty Period
  - 2.2.5. maintaining and providing any necessary qualifications, authorisations, and training
  - 2.2.6. complying with all notified I.T., telecommunications, security, and Health and Safety policies, and with any other relevant legislative requirements
  - 2.2.7. giving the Client reasonable notice of any periods when Services will not be provided
  - 2.2.8. taking and being accountable for all appropriate decisions in relation to all aspects of the performance of the Services.
- 2.3. Where a Schedule names any personnel who are to provide the Services, the Service Provider is responsible for maintaining reasonable continuity, however the Client acknowledges that the Service Provider reserves the right under its contract with the Agency to substitute other personnel of equivalent expertise. The Client has the right to refuse to accept Services from substitute personnel on reasonable grounds related to security, qualifications or expertise. No additional charge will be made for any handover period, and the Service Provider remains responsible for Services performed on its behalf.

### 3. CLIENT RESPONSIBILITIES

- 3.1. The Client has no responsibility for the Service Provider or any person engaged on the Services, other than (a) as specifically provided for under a Contract, and (b) such responsibilities as are generally owed to the public at large.
- 3.2. The Client is responsible for:
- 3.2.1. giving the Service Provider such cooperation and access as are reasonably necessary for the proper performance of the Services
  - 3.2.2. informing the Service Provider if on any day the Services are not required
  - 3.2.3. ensuring that all relevant Health & Safety policies are disclosed to the Service Provider.

### 4. COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

- 4.1. Deliverable means a work produced by the Service Provider in the course of the performance of the specified Services for delivery to the Client. It is the Service Provider's responsibility to clarify with the Client whether, in the interests of saving time and cost, any pre-existing works are to be used in the production of any Deliverable. Where pre-existing works are incorporated in any Deliverable, the Client has non-exclusive irrevocable world-wide royalty free licence to use modify and distribute such pre-existing works, but only as part of the Deliverable; all other rights in the pre-existing works are reserved. Subject thereto, all rights in any Deliverable will pass to the Client, and it is the Service Provider's responsibility to provide a formal assignment thereof on request by the Client.
- 4.2. It is the Service Provider's responsibility to indemnify the Client against liability as a result of alleged infringement of third party rights by a Deliverable, provided the Client notifies the Service Provider of any relevant third party rights promptly on such rights becoming known to or suspected by the Client.

### 5. CONFIDENTIALITY

- 5.1. Neither party (the Agency or the Client) will disclose to any third party without the prior written consent of the other party, any confidential information which is received from the other party which if received in tangible form is marked confidential or if received otherwise is confirmed in writing as being confidential or, if received in tangible form or otherwise, is manifestly confidential. Confidential information includes the Contract and the relationship between the parties under it. Both parties agree that any such confidential information received from the other party may be used by its personnel only for the purposes of providing or receiving Services under this or any other contract between us.
- 5.2. The restrictions defined in clause 5.1 will not apply to any information which: (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this Clause 5; or (ii) is acquired from a third party who owes no obligation of confidence in respect of the information; or (iii) is or has been independently developed by the recipient or was known to it prior to receipt.
- 5.3. Notwithstanding Clauses 5.1 and 5.2 above, either party will be entitled to disclose the confidential information of the other: (i) to its respective insurers or legal advisors where this is reasonably required to conduct its own business; or (ii) to a third party to the extent that this is

required by any court of competent jurisdiction, or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose, provided that, in the case of sub-Clause 5.2 (ii) where reasonably practicable (and without breaching any legal or regulatory requirement), not less than 2 business days notice in writing is first given to the other party.

- 5.4. It is the Service Provider's responsibility to provide any reasonable confidentiality agreement required by the Client.

### 6. CHARGES AND PAYMENT

- 6.1. Where the Schedule shows Service Reports or Timesheets are required, a Client authorised representative must authorise by signing (or electronically authorising, where such procedures have been agreed) the Service Reports or Timesheets for every Invoicing Period.
- 6.2. If the Client has any cause for dissatisfaction with performance of the Services it must note the relevant Service Report or Timesheet accordingly, and promptly provide any requested further details.
- 6.3. A Client authorised representative must also provide a signature to the Service Provider to confirm that any expenses incurred by the Service Provider and allowable under the Contract will be paid for by the Client, when next invoiced by the Agency.
- 6.4. The Agency shall not be obliged to pay any fees to the Service Provider unless an invoice has been properly submitted by the Service Provider and until the Client has verified the satisfactory execution of the Service and the legitimacy of any expenses claim from the Service Provider.
- 6.5. The Agency may suspend provision of Services whilst any payment is overdue, and whilst more than 7 days overdue may also terminate for material breach.

### 7. INVOICING

- 7.1. Unless otherwise stated in the Schedule, invoices shall be raised monthly for days worked by the Service Provider up to and including the last day of each month. The invoices will contain any expenses that have been incurred by the Service Provider and that the Client has agreed to pay.
- 7.2. The Agency may invoice on the basis of authorised Service Reports or Timesheets. Where the use of either Timesheets or Service Reports has not been specified in the Schedule, the Agency will invoice the Client on receiving the Service Provider's Invoice for Services delivered to the Client.

### 8. TERMINATION AND BREACH OF CONTRACT

- 8.1. A Contract may be terminated:
- 8.1.1. by either party giving the other written notice of the Notice Period specified in the Schedule.
- 8.1.2. by the Client by Immediate Notice, if the Service Provider fails to provide the Services in accordance with these terms, provided the Client gives full written details and such further cooperation as the Agency reasonably requires; the Client acknowledges that such right to terminate is the Client's sole remedy against the

Agency for any such failure, without prejudice to any rights it may have against the Service Provider.

- 8.1.3. by either party by Immediate Notice, if the other is in material breach of contract, or is in breach of contract and fails to remedy the breach within fourteen days of being required in writing to do so, or if the other becomes insolvent or ceases to carry on business, or if any preliminary step is taken towards the other's liquidation winding up receivership or administration (other than for bona fide reconstruction or amalgamation).
- 8.1.4. by the Agency by Immediate Notice, if the contract under which the Agency has engaged the Service Provider's services terminates (for whatever reason), or if in the Agency's reasonable opinion it is under a legal obligation to terminate.
- 8.2. Immediate Notice means notice to terminate with immediate effect, and shall be effective however communicated, provided confirmed in writing as soon as reasonably practicable.
- 8.3. Any rights or obligations of a continuing nature shall survive termination.

## 9. LIABILITY

- 9.1. The Agency will take reasonable care in selection for any particular engagement, and the Agency has no reason to believe any information presented to the Client to be untrue. The parties agree that the Client's own knowledge of its requirements is greater, and that it is therefore the Client's sole responsibility to satisfy itself as to skills and suitability of the Service Provider. By allowing the commencement of services the Client acknowledges that it has satisfied itself as to such skills and suitability.
- 9.2. The Client acknowledges and agrees that the Service Provider is engaged to perform the Services as specified in the Schedule as an independent professional, and that neither the Service Provider nor any person engaged on the provision of services are under the control of the Agency; and therefore that the Agency is not itself liable for any acts defaults or omissions of the Service Provider or any such person whilst performing the Services.
- 9.3. Neither party enters a Contract on the basis of or relying on any representation, warranty or other provision except as expressly provided in writing, and all other terms implied by statute or common law are excluded so far as legally permitted. Liability or remedy for innocent or negligent misrepresentation is excluded.
- 9.4. Liability is neither limited nor excluded for death or personal injury, or otherwise where it would be unlawful to do so. Subject thereto,
  - 9.4.1. liability is excluded for consequential loss or damage of any kind or for loss of profit, business, revenue, goodwill or anticipated savings
  - 9.4.2. the total liability of the Service Provider and any person providing Services on its behalf in respect of a risk required by a Contract to be insured is limited to the amount of the Required Insurance Cover in respect of that risk
  - 9.4.3. these limitation and exclusion provisions shall operate for the benefit of all potentially liable persons.

### 10. EMPLOYMENT OBLIGATIONS AND THIRD PARTY RIGHTS

- 10.1. The relationship governed by a Contract is neither that of agent-principal, nor that of employer-employee; no person providing Services will be the employee of the Client.
- 10.2. The Agency will keep the Client indemnified (a) in respect of any legitimate claim or demand made by the proper authorities for all taxes, national insurance or social security contributions, in respect of payments made for the services performed by the Service Provider, and (b) against any claims that may be made by any person providing Services under employment-related legislation, unless the Client has sought to exercise the rights of an employer towards such person.
- 10.3. The terms of the Agency's contract with the Service Provider expressly provide for the Client (but not an End-Client) to have the benefit of the Service Provider's commitments therein and (where appropriate) to take legal action directly against the Service Provider. Any agreement between the Agency and the Service Provider to rescind or vary a Contract in a way which affects the Client's rights is therefore conditional on the Client's consent.
- 10.4. Neither the Agency nor the Client is under any obligation to offer any work to any personnel who are to provide the Services and if offered the personnel are under no obligation to accept any work that may be offered. No party wishes to create or imply any mutuality of obligation between themselves either in the course of or between any performance of the Services including any notice period. The Agency is not obliged to pay the Service Provider at any time when no work is available during this Agreement.

### 11. PROTECTION OF AGENCY'S BUSINESS

- 11.1. Where an introduction or engagement is Employment Business and not ~~Opted Out~~
  - 11.1.1. if the Service Provider agrees, the Client may, before the end of the Relevant Period (a) engage from the Agency on the terms offered the services of a Service Provider who has not yet provided Services; and (b) re-engage from the Agency on the same terms as hitherto a Service Provider who has provided Services
  - 11.1.2. the Client will not during the Relevant Period engage (a) a Service Provider (or any person who has provided Services on its behalf), or (b) any person who has been introduced by the Agency, other than under a contract with the Agency
  - 11.1.3. ~~Relevant Period~~ means 14 weeks following introduction, where there has been no engagement; otherwise, the longer of (a) the period until 14 weeks after the First Date, and (b) the period until 8 weeks after the Last Date (~~First~~ and ~~Last~~ meaning the dates services were first and last provided by the Service Provider under a Contract but, in the case of the First Date, disregarding any period before any interruption of more than 42 days in the provision of Services).
- 11.2. Otherwise, the Client will not, during a Contract or within six months following the later of introduction or the end of the most recent Contract engage a Service Provider (or any person introduced or who has provided Services on its behalf), other than under a contract with the Agency.
- 11.3. An introduction is deemed made on the Agency providing the Client with sufficient information for the Client to identify the person introduced, unless the Client already has a connection with such person and so informs the Agency within 7 days, and (if requested) provides documentary evidence.

### 12. GENERAL

- 12.1. Law: These terms are governed by the laws of England & Wales, whose courts shall have sole jurisdiction in relation to all matters arising.
- 12.2. Force majeure: If a party is obstructed in performing any of its obligations by an event outside its reasonable control, then performance to the extent obstructed is suspended for so long as the obstruction continues. Whilst performance has been suspended for more than 7 days, either party may terminate the Contract by immediate written notice.
- 12.3. Waiver: Failure to enforce any of these terms is not a waiver of a party's rights and shall not prejudice its rights to take action in respect of the same or any later breach.
- 12.4. Severability: Any part of a Term which is wholly or partially void, invalid, or unenforceable shall be severed from the remainder (which remains enforceable).
- 12.5. Notices: Notices must be in writing and either served personally, sent by prepaid registered post or faxed to the address of the other party given in this Contract or to any other address as the relevant party may have notified to the other during the period of this Contract. Any notice sent by post will be deemed to have been delivered 48 hours after sending. Any notice sent by fax will be deemed to have been delivered on the first working day following its dispatch.
- 12.6. Rights of Third Parties: Save in respect of the rights of Beneficiaries which are expressly provided in Clause 10.3 a person or entity which is not a party to the Contract has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 12.7. Electronic Communications: During the engagement the Agency, Client and/or Service Provider may wish to communicate electronically with each other. However, the electronic transmission of information cannot be guaranteed to be secure or virus or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. We both recognise that systems and procedures cannot be a guarantee that transmissions will be unaffected by such hazards, and we confirm that we each accept the risks of, and authorise, electronic communications between us. We both agree to use commercially reasonable procedures to check for the then most commonly known viruses before sending information electronically. Each of us will be responsible for protecting our own systems and interests in relation to electronic communications and, save to the extent provided in Clauses 9.1 to 9.4, neither of us (in each case including its respective partners, directors, employees or agents) shall have any liability to the other on any basis, whether in contract, tort (including negligence) or otherwise, in respect of any error, damage, loss or omission arising from or in connection with the electronic communication of information between us and our respective reliance on such information.

### Acknowledgement

This document has been written with the intention of reflecting consultancy and agency contract best practice. Some of the text in this document has been sourced from The Professional Contractors Group Ltd.