

CONSULTANCY SERVICES AGREEMENT

(Agency – Service Provider)

between

Service Provider

and

The Knowledge Practice Limited

Ref: TKP ref - 001

nnth mmm yyyy

The Agreement & Terms of Business



THE AGREEMENT

This Agreement is made the **nnth mmmm yyyy**.

BETWEEN

- A. The Knowledge Practice Limited**, a company incorporated in England & Wales (registration number 4824881) and whose registered office is at Dickens House, 3-7 Guithavon Street, Witham, Essex, CM8 1BJ (the **Agency**), and
- B. Service Provider Ltd.** a company incorporated in England & Wales (registration number <xxxxxxxx>) of <address> (the **Service Provider**).

AGREEMENT

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

The Charge Rate for this engagement is **<xxx>** per professional day (7-10 hours) plus VAT as applicable, payable within 35 days of monthly invoice.

SIGNING PROVISIONS

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

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

On behalf of **the Service Provider** by **XXXXXX**
(Authorised Signature)

Title: Director..... 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 Service Provider for specific services to be performed for a Client, 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 potential Clients to the Service Provider, with a view to engagements through the Agency for the performance of specified services for them. These Terms of Business also govern engagements for such services. By entering discussions with a potential Client introduced by the Agency, or by commencing services, the Service Provider accepts these Terms of Business.
- 1.9. Any Contract is conditional on the Agency contracting unconditionally with the Client for the Services.

2. SERVICE PROVIDER RESPONSIBILITIES

- 2.1. The Services will be provided for the Client 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 IT, 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, but reserves the right to substitute other personnel of equivalent expertise. The Service Provider acknowledges that the Client has the right, under its contract with the Agency, 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. The Service Provider remains responsible for Services performed on its behalf.

3. CLIENT RESPONSIBILITIES

- 3.1. Neither the Agency nor the Client has 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 and the Agency 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 Service Provider) 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 or from the Client 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 or the client 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. The Service Provider will invoice and the Agency will pay for Services provided in accordance with a Contract, subject (where the Schedule shows Service Reports or Time Sheets are required) to production of Service Reports or Time Sheets authorised in writing (or electronically where such procedures have been agreed) by an authorised representative of both Service Provider and Client (or, if there is no Service Report or Time Sheet, such other evidence as may reasonably be required to confirm the proper performance of the Services).

- 6.2. For the avoidance of doubt the Agency is under no obligation to make payment

6.2.1. in respect of any periods during which Services have not been provided (including days on which the Client has no requirement for the Services), for whatever reason; or

6.2.2. in respect of Services with which the Client has reasonable grounds for dissatisfaction; or

6.2.3. if Client has not paid the Agency in respect of the Services provided,

provided that if the Contract is Employment Business and the Consultant's status is Not Opted Out, then the Agency will not withhold payment in respect of any time actually spent providing Services and which does not exceed the Budgetary Limits.

7. INVOICING

- 7.1. At the end of each month in which Services were performed for the Client the Service Provider shall deliver to the Agency its invoice for the amount due from the Agency to the Service Provider, giving a detailed breakdown showing the work performed and the time spent by the Service Provider. The invoice must be received by the Agency by no later than 11.30am on the 3rd working day following the month to which it relates. The Service Provider's invoice should bear the Service Provider's name, company registration number, VAT number and should state any VAT due on the invoice.

- 7.2. Monthly invoices shall be raised for days worked up to and including the last day of each month on the last day of each month. The invoices should contain any expenses that have been incurred by the Service Provider and that the Client has agreed to pay.

- 7.3. The Service Provider shall obtain the signature of an authorised representative of the Client as verification of execution of the Services. This signature is usually put on a Timesheet or a Service Report that is submitted by the Service Provider, and represents the work completed by the Service Provider. The Service Provider shall also obtain a signature from an authorised representative of the Client as confirmation that any expenses incurred by the Service Provider will be paid for by the Client.

- 7.4. 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.

8. TERMINATION, BREACH OF CONTRACT AND INDEMNITY

- 8.1. If the Service Provider is in breach of contract the Agency may withhold the whole or part of any monies which are or become due to the Service Provider in full or partial compensation for the losses incurred by the Agency resulting from the breach, provided that the Agency may not withhold more than would be reasonable compensation for any losses resulting from such breach.
- 8.2. The Service Provider will fully indemnify and keep indemnified the Agency against all and any actions, claims, losses, expenses, damages, costs (including the Agency's own costs on the indemnity basis) and liabilities whatsoever and howsoever incurred resulting or arising directly or indirectly in connection with:
- 8.2.1. any and every negligent or wrongful act by the Service Provider
 - 8.2.2. default or omission by the Service Provider
 - 8.2.3. any and every breach by the Service Provider.
- 8.3. It is the Service Provider's responsibility to arrange such insurance in respect of Employer's and Public Liability, Professional Indemnity, and other risks as it sees fit in order to indemnify the Agency as described in section 8.2 of these Terms of Business.
- 8.4. A Contract may be terminated:
- 8.4.1. by either party giving the other written notice of the Notice Period specified in the Schedule.
 - 8.4.2. by the Agency by Immediate Notice, if the Service Provider fails to provide the Services in accordance with the Agreement.
 - 8.4.3. 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).
 - 8.4.4. by the Agency by Immediate Notice, if the contract under which the Agency provides the Service Provider's services to the Client terminates (for whatever reason), or if in the Agency's reasonable opinion it is under a legal obligation to terminate.
- 8.5. Immediate Notice means notice to terminate with immediate effect, and shall be effective however communicated, provided confirmed in writing as soon as reasonably practicable.
- 8.6. Any rights or obligations of a continuing nature shall survive termination.

9. LIABILITY

- 9.1. The Service Provider is engaged to perform the Services as specified in the Schedule as an independent professional, and neither the Service Provider nor any person engaged on the provision of services are under the control of the Agency or the Client; and therefore the Service Provider accepts responsibility for any acts defaults or omissions of itself and of any such person whilst performing the Services.
- 9.2. 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.
- 9.3. Liability is neither limited nor excluded for death or personal injury, or otherwise where it would be unlawful to do so. Subject thereto,
- 9.3.1. liability is excluded for consequential loss or damage of any kind or for loss of profit, business, revenue, goodwill or anticipated savings
- 9.3.2. 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
- 9.3.3. 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 Service Provider will keep the Agency and 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.
- 10.3. The terms of the Agency's contract with the Client expressly provide for the Client (but not an End-Client) to have the benefit of the Service Provider's commitments herein 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. Unless an introduction or engagement is Employment Business and not Opted Out
- 11.1.1. The Service Provider will not (other than under a contract with the Agency) provide services to the Client, either during a Contract, or within six months following the later of (i) introduction, and (ii) the end of the most recent Contract
- 11.1.2. The Service Provider will inform the Agency immediately it becomes aware if, within 6 months following the later of (i) introduction by the Agency to the Client, and (ii) the end of the most recent Contract, the Client (other than through the Agency) makes an offer of employment or engagement direct to any person introduced or who has provided Services on the Service Provider's behalf.
- 11.2. An introduction is deemed made on the Agency providing the Service Provider with sufficient information for the Service Provider to identify the Client introduced, unless the Service Provider already has a connection with the Client and so informs the Agency within 7 days, and (if requested) provides documentary evidence.
- 11.3. Subject to the above, a Contract is not exclusive, and Service Provider is at liberty to also provide services to third parties. It is the Service Provider's responsibility to ensure that no conflict of interest arises.

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 9.3, 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.

13. UNDERTAKING OF THE SERVICE PROVIDER

- 13.1. The Service Provider hereby declares and warrants that prior to signing this Agreement it has been informed of the requirements of the Client and that the Service Provider has the skills, qualifications and expertise necessary to carry out such work in an efficient and competent manner.
- 13.2. The Service Provider warrants that by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation which it owes to any third party.
- 13.3. The Service Provider agrees not to engage in any conduct detrimental to the interests of the Agency or the Client which includes any conduct tending to bring the Agency or the Client into disrepute or which results in the loss of custom or business.
- 13.4. The Service Provider will notify the Agency forthwith in writing if it should become insolvent, dissolved or subject to a winding up petition.

14. DISCLAIMER

- 14.1. The Agency makes no representation nor does it accept any responsibility for ensuring that the terms of this Contract are an accurate reflection of the relationship between the Client and the Service Provider. Furthermore the Agency accepts no liability to indemnify the Service Provider for any losses, expenses or liabilities incurred by the Service Provider whether by reason of tax or other statutory or contractual liability to any third party arising from the Service Provider performing its obligations under this Contract.

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.