



CONSULTANCY AGREEMENT

TERMS & CONDITIONS

1. INTERPRETATION

1.1. In this Agreement, the following definitions apply unless the context makes it clear that a definition is not intended to apply:

“Additional Work” means any work performed for the Client in the provision of Services that grossly exceeds the time allocated to that Service, or that falls outside the scope of Services listed in Item 7 that were agreed upon by the Parties;

“Agreement” means the terms and conditions of this Agreement and includes any attached schedules;

“Consultant” means the entity specified in Item 1 of the Schedule and where the context so requires, includes its employees, agents, and/or subConsultants;

“Commencement Date” has the meaning specified in Item 3 of the Schedule;

“Confidential Information” means all information obtained by a Party in the course of performing this Agreement;

“Client” means the entity specified in Item 2 of the Schedule, and where the context so requires, includes its employees, agents, and/or subConsultants;

“Clients Social Media Accounts” means those accounts identified in Item 7 being included as part of the Services to be provided by the Consultant to the Client;

“Customer” means a person or entity that is a potential customer, an active customer or a past customer.

“Intellectual Property Rights” means all present and future rights in relation to copyright, trademarks, designs, patents, semiconductor and circuit layout rights, trade, business, domain names, confidential and other proprietary rights, and whether in Australia or otherwise;

“Misconduct” includes, but is not limited to:

- (a) material non-compliance with statutory requirements, including relevant occupational health and safety laws;
- (b) material non-compliance with anti-discrimination and harassment laws;
- (c) unauthorised representation which may damage the reputation or business of either of the parties;

“Parties” means the Consultant and the Client;

“Personal Information” means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

“Services” means the services in Item 7 of the Schedule to be provided to the Client;

“Fee for Services” means the amount payable by the Client to the Consultant for the Services performed under this Agreement and unless otherwise specified, is GST inclusive and does not include any Additional Work contemplated by Clause 4 of this Agreement;

“Social Media Follower” means a person or entity who follows, has in the past followed or has indicated a future intention to follow the Client on social media;

“Term” means the period(s) of this Agreement and any extension of time of the Term approved under clause or as otherwise agreed in writing by the Parties;

1.2. If this Agreement expressly or impliedly binds more than one person then it will bind such persons jointly and severally.

1.3. If a word is defined, another part of speech of that word has a corresponding meaning.

2. TERM OF AGREEMENT

2.1. The Commencement Date for the Services to commence being provided is the date specified in Item 3 of the Schedule, or if no Commencement Date is specified, then the date the latter of the Parties executes this Agreement.

2.2. The Consultant will provide the Services for the Term, or where no Term is specified, for an ongoing month-to-month period, unless this Agreement is terminated earlier in accordance with its terms.

3. VARIATIONS

3.1. The provisions of this Agreement will not be varied either in law or in equity except by agreement in writing between the Parties.

4. SERVICES

4.1. The Services to be provided to the Client are contained in Item 7 of the schedule in exchange for the Fee for Services contained in Item 5 of the Schedule.

4.2. The Services will be provided by the Consultant under the direction of the Client.

4.3. Where the Consultant is required to perform Additional Services, the Consultant will charge for this Additional Work at an hourly rate agreed upon between the parties and will provide a breakdown of all Additional Work that was provided to the Client.

4.4. The Consultant will use its best efforts to prospectively notify the Client of any Additional

Work that is reasonably foreseeable by the Consultant in the provision of Services.

5. CLIENT OBLIGATIONS

- 5.1. In addition to any other obligations under this Agreement, the Client will:
 - (a) be responsible for providing clear instructions and information as requested in an expeditious manner;
 - (b) inform the Consultant of any restrictions or industry specific requirements in relation to the Services;
 - (c) pay the Consultant within the Payment Period noted in Item 8 of the Schedule;
 - (d) pay interest on any amounts outstanding at a rate of 10%pa;
 - (e) ensure that any materials provided to the Consultant do not infringe on a third party's intellectual property rights;
 - (f) act courteously to the Consultant and not do anything which would harm the reputation of the Consultant.

6. CONSULTANT OBLIGATIONS

- 6.1. In addition to any other obligations under this Agreement, the Consultant will, unless specified otherwise in this Agreement:
 - (a) conduct the Services in a professional manner using due care and skill; and
 - (b) attend to all Services at the scheduled time required to be performed; and
 - (c) comply with all legislative, regulatory and other government requirements for itself and any associated entities, including in relation to GST, workers compensation, payroll tax, income tax, fringe benefits tax, PAYG tax, group tax and superannuation contributions; and
 - (d) use reasonable efforts to ensure conformity to a commensurate level of professional conduct as normally required to perform similar services.
- 6.2. The Consultant will not do anything to harm the reputation of the Client, its Customers, suppliers, agents and products/services, and will immediately inform the Client within a reasonable period of becoming aware of any derogation or potential reputation damage by any other employee, Consultant, supplier, Customer or a Social Media Follower.

7. PAYMENT AND INVOICING

- 7.1. Unless otherwise specified in the Schedule the Consultant will submit to the Client an invoice on a weekly basis in arrears for Services performed and any Additional Work in accordance with Clause 4 of the Agreement.
- 7.2. The Client must make payment of the invoice to the

Bank Account noted in Item 6 within the Payment Period noted in Item 8 of the Schedule, from receipt of the invoice received in accordance with clause 7.1 or such other period specified in the Schedule, upon receipt of a correctly rendered invoice.

8. INTELLECTUAL PROPERTY

- 8.1. Unless otherwise agreed in writing, the Client will own the Intellectual Property Rights in any materials, content and information created, produced and provided by the Consultant in performing the Services for the Client during the Term. Any intellectual property of the Consultant which existed prior to entering into this Agreement with the Client, will remain vested in the Consultant and to the extent it is used in the Client's material, the Consultant provides a restrictive license for it to be used purely for the purpose of operating the business.
- 8.2. Where any license of existing material has been provided by a Party to this Agreement for a limited purpose, and the other Party wishes to use that material for any other purpose, they must obtain the written consent of the licensing Party prior to use for that other reason.

9. CONFIDENTIALITY & PRIVACY

- 9.1. Each Party must not, and must ensure that its officers, employees, agents and sub-Consultants do not, use or disclose any Confidential Information or Personal Information without the other Party's consent, other than for the purposes of performing this Agreement.
- 9.2. The obligations under this clause 9 do not apply to the extent that:
 - (a) any information is publicly available (other than as a result of a Party's breach of this Agreement);
 - (b) any information is lawfully provided to a Party by a third party;
 - (c) a Party is required by law to disclose the information (and prior notice of the disclosure is given to the other Party); or
 - (d) a Party is required by this Agreement to disclose the information to a third party.
- 9.3. During the Term, each Party must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.
- 9.4. The Consultant must comply with the Privacy Act 1988 (Cth) ("Privacy Act") in relation to Personal Information, as if the Client were an organisation bound by the Privacy Act, even it is not.
- 9.5. If the Consultant collects or has access to Personal Information in order to provide the Services, the Consultant must:
 - (a) ensure that Personal Information is protected against loss and against unauthorised access,

- (b) use, modification, disclosure or other misuse; not use Personal Information other than for the purposes of performance of the Services, unless required or authorised by law;
- (c) not disclose Personal Information without the consent of the Client, unless required or authorised by law;
- (d) ensure that only authorised personnel have access to Personal Information;
- (e) immediately notify the Client if the Consultant becomes aware that a disclosure of Personal Information is or may be required or authorised by law;
- (f) make its officers, employees and subConsultants aware of the Consultant's obligations under this clause 9;
- (g) comply with any request or direction of the Client arising from or in connection with the exercise of the functions of the Privacy Commissioner under the Privacy Act, and any guideline or regime on privacy as provided by the Client; and
- (h) comply with such other privacy and security measures as the Client reasonably advises the Consultant in writing from time to time.

9.6. the Consultant must notify the Client upon becoming aware of any breach of this clause 9.

10. LIABILITY

10.1. The Client holds harmless the Contractor where the Client is in breach of this Agreement. The Client indemnifies the Contractor and its officers, employees and agents (those indemnified) from and against any claim, action, demand, damage, loss, liability, cost, charge, expense, outgoing, fine or payment which any of those indemnified pays, suffers, incurs or is liable for arising out of or in connection with the Services provided to the Client, or breach of this Agreement.

10.2. Notwithstanding any other provision of this Agreement, the liability of a Party arising under and/or in connection with this Agreement will exclude any liability for indirect or consequential loss.

10.3. To the maximum extent permitted by Law, the aggregate liability of the Contractor in respect of any causes of action arising under or in connection with this Agreement, whether in contract, tort (including negligence), statute, equity or otherwise, is limited to an amount equal to the cumulative total of the Rates paid or payable by the Client to the Contractor for the first 2 months of this Agreement.

11. NOTICES

11.1. All notices to Parties must be provided to the relevant address as provided for in the Schedule.

12. TERMINATION

12.1. The Consultant may terminate this Agreement by written notice to the Client effective immediately if the Client:

- (a) is in breach of any of its payment obligations and fails to remedy the breach within 10 Business Days after written notice to do so, or such longer period as agreed in writing between the parties; or
- (b) engaged in Misconduct which is not capable of remedy.

12.2. The Client may terminate this Agreement by written notice to the Consultant effective immediately if the Consultant:

- (a) is in breach of any of the requirements of the Approval Process in the Client's sole discretion; or
- (b) is not performing, under-performing or the breaking brand rule guidelines in the sole discretion of the Client; or
- (c) breaches the Morality Expectations; or
- (d) fails to remedy the breach within 10 Business Days after written notice to do so, or such longer period as agreed in writing between the parties, or the breach is incapable of remedy; or
- (e) engaged in Misconduct which is not capable of remedy.

12.3. Both parties may terminate this Agreement upon written notice to the other party to the relevant address in the schedule, for any reason by giving 60 days prior written notice, terminating the Agreement.

12.4. Upon termination of this Agreement, the liability of the Client to the Consultant will be to pay for all work performed by the Consultant in accordance with this Agreement up to the effective date of termination and any Additional Work that has been completed in accordance with Clause 4.

13. CONSUMER LAW MANDATORY STATEMENT

Our Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled to cancel your service contract with us; and to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

14. RESTRAINT OF TRADE

14.1. The Consultant undertakes to the Client that the Consultant will not, and will procure that his or her employees, agents, Consultants or another third party

does not, do the following within the Restraint Period and the Restraint Area:

- (a) engage in a business or activity that is the same or similar to, or competes directly with, the Client's business or any material part of the Client's business;
- (b) employ, solicit or entice away from the Client an officer, supervisor, consultant or employee of the Client or a person who is or was an officer, supervisor, consultant or employee of the Client;
- (c) approach, solicit or entice away from the Client a supplier, prospective supplier, client, prospective client, referrer of the Client or a person who is or was a supplier, prospective supplier, client, prospective client, referrer of the Client; or
- (d) attempt, counsel, procure or otherwise assist a person or entity, directly or indirectly, to do any of the acts referred to in this clause,

except with the prior written consent of the Client who must act reasonably.

14.2. The Consultant understands and agrees that breaching this clause has the likely impact of causing damage to the business or creating confusion in the market and the restraints are reasonable and not excessive in protecting the Client's business and market opportunity.

15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing, in relation to its subject matter.

16. SET-OFF

The Client cannot reduce any fees or other charges or costs payable to the Consultant under this Agreement by any fee, credit, rebate or other amount which is payable to the Client by the Consultant.

17. RELATIONSHIP OF PARTIES

Nothing in this Agreement gives rise to any relationship of agency, partnership, employment or otherwise between the Parties.

18. SEVERABILITY

If any part of this Agreement is void or voidable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of this Agreement.

19. APPLICABLE LAW

The laws of the State of Queensland govern this Agreement and the Parties submit to the non-

exclusive jurisdiction of the courts of that State.

20. SURVIVAL

Clauses 7, 8, 9, 10, 11 and 13 to 19 will remain in full force and effect following the expiry or termination of this Agreement.