

Date 17 November 2015

Consultancy Agreement

John Smith

and

Jane Doe

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Table of contents

The Parties	1
Background	1
When this Agreement begins and ends	1
The Consultant's obligations	1
Performing the Services	1
Providing information	2
Warranties	2
Engaging other Consultants.....	2
Occupational health and safety	2
Anti-discrimination and harassment.....	2
Can the Consultant engage in other business?	2
The Consultant's Fees	3
The Consultant's expenses.....	3
The Consultant's tax invoices	3
Deduction from Fees	3
GST	3
Confidentiality and privacy	4
The Consultant will preserve the Principal's Confidential Information	4
The Principal may hold and use the Consultant's personal information	5
Liability and insurance.....	5
The Consultant is liable for any loss incurred as a result of providing the Services	5
The Consultant must have Insurance	5
The relationship between the Principal and the Consultant.....	6
The Consultant is an independent contractor	6
The Consultant must not bind the Principal	6
Indemnities	6
The Consultant is liable for any loss incurred as a result of providing the Services	6
The Consultant will indemnify the Principal for income tax, etc.....	7
Terminating this Agreement	7
When the Principal may terminate this Agreement without notice.....	7
Delay does not mean the Principal has waived its rights to terminate.....	7
Return of property	8
General.....	8
Notice	8
Entire agreement and previous contracts	8
Varying this Agreement.....	9
Law and jurisdiction.....	9
Definitions.....	9
Execution	11
Schedule	12

The Parties

John Smith of 565 Bourke Street, Melbourne, VIC 3000

(the Principal)

and

Jane Doe of 565 Bourke Street, Melbourne, VIC 3000 (the Consultant)

Background

- A The Principal conducts the business of e-business.
- B The Principal will engage the Consultant to provide the Services to the Principal.
- C The Services that the Consultant will provide to the Principal are detailed in the Schedule at the end of the document.
- D The terms on which the Consultant will provide the Services to the Principal are set out in this Agreement.
- E This Agreement describes the Consultant's responsibilities when carrying out the Services and the nature of the relationship between the Principal and the Consultant.
- F This Agreement does not create any relationship of employment or partnership between the Principal and the Consultant.

When this Agreement begins and ends

- 1 The Consultant commenced providing the Services on 17 November 2015.
- 2 The Consultant will continue to provide the Services until the engagement of the Consultant is terminated in accordance with the terms of this Agreement.
- 3 If either party wishes to terminate this Agreement then it can do so by giving the other 30 days written notice of termination. The Principal may pay the Consultant a fee equivalent to the Fee payable for any part of the notice period.
- 4 The Principal may also terminate the Agreement without notice in accordance with clause 61.

The Consultant's obligations

Performing the Services

- 5 The Services are to be provided on the terms of this Agreement.
- 6 The Consultant will provide the Services detailed in the Schedule. The Consultant must exercise all due care, skill and ability when she performs the Services.
- 7 The Consultant will carry out the Services in good faith.
- 8 The Consultant will carry out the Services to a high standard and in a manner that is consistent with good commercial practice.
- 9 The Consultant must comply with all relevant requirements of the Principal. In particular, the Principal may require:
 - 9.1 the Consultant to perform the Services at certain times in accordance with the demands or operating hours of the business; and/or

- 9.2 the Consultant to carry out the Services within any reasonable timeframes required by the Principal.
- 10 The Consultant will comply with all relevant requirements of the Principal and work the hours necessary to ensure that the Services are performed in the way, and within the times or timeframes required by the Principal.
- 11 The Consultant will carry out the Services in a way that complies with all legislation or regulatory requirements that apply to the provision of the Services.

Providing information

- 12 At the Principal's request, the Consultant will, within a reasonable period after a request is made:
- 12.1 provide information about the Services, or the Principal's business, in any requested format; and
- 12.2 provide any assistance or information as the Principal may require in connection with the Services including a full and accurate explanation of all transactions.

Warranties

- 13 The Consultant warrants that she:
- 13.1 has the necessary skills, knowledge and experience to carry out the Services; and
- 13.2 is competent to carry out the Services.

Engaging other Consultants

- 14 The Principal may engage other Consultants or individuals to provide the Services from time to time.

Occupational health and safety

- 15 The Consultant must comply with:
- 15.1 any relevant occupational health and safety legislation and regulations, and
- 15.2 with the Principal's occupational health and safety policies and procedures in force at the workplace(s) where the Services are provided.
- 16 The Consultant must report any unsafe working conditions or practices to the Principal as soon as these are detected.

Anti-discrimination and harassment

- 17 The Consultant must comply with the Principal's anti-discrimination and harassment policies and procedures in force at the workplace(s) where the Services are provided.

Can the Consultant engage in other business?

- 18 This Agreement does not prevent the Consultant from being engaged in any other business activities during the term of this Agreement unless they conflict with the interests of the Principal or will affect the ability of the Consultant to provide the Services.

- 19 If there is a risk of a conflict of interest occurring, then the Consultant must immediately give the Principal the details of the conflict and ask for written permission to continue the activity. If the Principal does not give written permission, then the Consultant must stop engaging in the activity until the Agreement ends.

The Consultant's Fees

- 20 The Consultant's Fees for providing the Services are \$100 per hour.

The Consultant's expenses

- 21 The Consultant must pay its own expenses. It may not charge them to, or claim them from, the Principal.

The Consultant's tax invoices

- 22 The Consultant will invoice the Principal at the end of the contract.
- 23 The invoice will be a tax invoice (as defined in GST Law) and will detail:
- 23.1 the Consultant's Australian Business Number (if any);
 - 23.2 the hours the Consultant has worked;
 - 23.3 the services the Consultant has provided; and
 - 23.4 the amount payable by the Principal after allowing for GST requirements under clauses 26 to 29.
- 24 The Principal will pay the invoice within 7 days of receiving the invoice.

Deduction from Fees

- 25 The Principal is, to the extent the law allows, entitled to deduct from any Consultant's fees:
- 25.1 any money that the Consultant owes the Principal; and
 - 25.2 any amounts required to satisfy the indemnities the Consultant gives in clauses 57 and 59.

GST

- 26 All money payable under this Agreement in relation to any supply is exclusive of GST.
- 27 If GST is payable in relation to any supply made by a supplier under this Agreement, then the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply.
- 28 The recipient will pay the GST at the same time and in the same manner as the consideration for the supply as to be provided under this Agreement.
- 29 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST under clause 28.
- 30 If a party is required to reimburse an expense or outgoing of another party, then the amount to be paid or reimbursed will be the sum of:
- 30.1 the amount of the expenses or outgoing less any input tax credits to which the other party is entitled in respect of the expense or outgoing; and

- 30.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.
- 31 If an adjustment event occurs in relation to a taxable supply, then:
- 31.1 the supplier must provide an adjustment note to the recipient of the supply within 7 days of becoming aware of the adjustment; and
- 31.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date on which the adjustment note is received.
- 32 For the purposes of clauses 26 to 31, words and expressions that are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in GST Law.

Confidentiality and privacy

The Consultant will preserve the Principal's Confidential Information

- 33 The Consultant will have access to, and be trusted with, Confidential Information. The Consultant must treat all Confidential Information as secret and confidential and as the sole property of the Principal. The Consultant therefore agrees to the restrictions in clauses 36 to 38.
- 34 The Consultant must comply with all relevant privacy principles, privacy policies, privacy codes of practice or privacy authorisations of the Principal. The Consultant will comply with those principles, policies, codes of practice and authorisations.
- 35 To the extent permitted by law, the Consultant is bound by any applicable privacy principles, privacy code of practice or privacy authorisation in respect of any act done or practice the Consultant engages in under this Agreement in the same way, and to the same extent, as the Principal would have been bound in respect of the act or practice or authorisation had it been directly done or engaged in by the Principal.
- 36 Except in the proper course of her providing the Services, the Consultant must not use, divulge or communicate to any person, firm or company any Confidential Information at any time, either during the term of this Agreement or after it ends.
- 37 The Consultant must also take all steps necessary to securely store the Confidential Information, and prevent the disclosure and publication of Confidential Information both during the term of this Agreement and after it ends.
- 38 The Consultant must not make improper use of:
- 38.1 any information or trade secrets of the Principal, including the Confidential Information;
- 38.2 the position of the Principal on any confidential matter; or
- 38.3 any other information which may harm the interests of the Principal or of any other person who has given it to the Principal on a confidential basis.
- 39 The Consultant must immediately tell the Principal in writing if she suspects that Confidential Information is or is likely to be disclosed contrary to the restrictions in clauses 36 to 38.
- 40 The restrictions on the Consultant contained in clauses 36 to 38 do not apply:
- 40.1 to information or knowledge which is, or which becomes, available to the public — unless this is as a result of the Consultant's unauthorised disclosure;

- 40.2 if the Principal authorises the use or disclosure in writing; or
- 40.3 if the use or disclosure is required by law – so long as the Consultant warns the Principal to allow the Principal to lawfully challenge the disclosure.
- 41 The end of the Agreement does not affect the obligations of the Consultant under this clause.

The Principal may hold and use the Consultant's personal information

- 42 The Consultant warrants that, to the extent permitted by law, she will provide all relevant information, including health information and any Criminal/Disciplinary Information, to the Principal so that the Principal can do any one or more of the following:
- 42.1 assess the Consultant's ability to perform the Services;
- 42.2 monitor the health and safety of the Consultant, but only to the extent to which the Principal has control over the health and safety of the Consultant;
- 42.3 comply with legal requirements and with obligations to third parties.

Liability and insurance

The Consultant is liable for any loss incurred as a result of providing the Services

- 43 The Consultant is responsible for any loss, damage, liability, cost (including legal costs) and other expenses the Principal incurs in connection with providing the Services.

The Consultant must have Insurance

- 44 The Consultant must have all insurances to cover herself in the performance of Services including, but not limited to, personal injury insurance, professional indemnity insurance, public liability insurance and workers' compensation insurance.
- 45 The Consultant must provide the Principal with copies of the Insurance Policies and evidence that the premiums have been paid.
- 46 The Consultant will:
- 46.1 comply with all the terms and conditions of the Insurance Policies at all times; and
- 46.2 notify the Principal as soon as she becomes aware that any Insurance Policy required by this Agreement:
- lapses; or
 - is not renewed; or
 - has a material change to its terms.
- 47 The Consultant must notify the insurers of the Principal's interest and must ask the insurers to:
- 47.1 note the Principal's interest on the Insurance Policies; and
- 47.2 include a provision in the Insurance Policies providing for the Principal to be indemnified directly if any claim covered by the terms of an Insurance Policy is made.

- 48 If a claim is made against the Principal arising from the Services, and the insurer will not agree to indemnify the Principal directly, then the Consultant agrees to use all the insurance money she receives to indemnify the Principal.
- 49 The Consultant agrees to make good any shortfall between the insurance money and the amount of the loss the Principal incurs.
- 50 The Principal may, to the extent the law allows, deduct the amount of any insurance payments needed to cover a shortfall from the Fee or any amounts owing to the Consultant.
- 51 The Consultant acknowledges and agrees that she alone is responsible for making any payments in respect of income tax, superannuation, workers' compensation insurance, payroll or any other taxes or similar payments in relation to the Consultant. If the Principal is required by law to make any such payments, then the Principal may deduct the amount of those payments from the Fee or any amounts owing to the Consultant.

The relationship between the Principal and the Consultant

The Consultant is an independent contractor

- 52 This Agreement is a contract for providing services.
- 53 The parties agree that:
- 53.1 The Consultant is not an employee, worker, agent or partner of the Principal; and
- 53.2 The Consultant operates as an independent contractor.
- 54 The Consultant agrees not to hold herself out as an employee, worker, agent or partner of the Principal.

The Consultant must not bind the Principal

- 55 The Consultant must not unless the Principal has agreed otherwise in writing:
- 55.1 bind the Principal; or
- 55.2 do anything which might create the impression that the Consultant has the authority to bind the Principal.
- 56 In particular, the Consultant cannot incur any expenses in the name of or on behalf of the Principal — unless the Principal has agreed in writing.

Indemnities

The Consultant is liable for any loss incurred as a result of providing the Services

- 57 The Consultant agrees to indemnify the Principal for any loss, damage, liability, costs (including legal costs) and other expenses caused in connection with the provision of the Services by the Consultant or any other entity which the Consultant engages to perform the services.
- 58 The Consultant will not be required to indemnify the Principal for the claims in clause 57 if such claim is brought against the Principal as a result of the Principal's act or omission.

The Consultant will indemnify the Principal for income tax, etc

- 59 The Consultant is responsible for, and will indemnify the Principal for and in respect of:
- 59.1 any income or other tax and social security contributions arising from or made in connection with the provision of the Services;
 - 59.2 any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services; and
 - 59.3 all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Principal in connection with or in consequence of any such liability, deduction contribution, assessment or claim in connection with the performance of the Services.
- 60 The Consultant will not be required to indemnify the Principal for the claims etc in clause 59 if:
- 60.1 such claim is brought against the Principal as a result of the Principal's act or omission; or
 - 60.2 the Principal is prohibited from recovering the amount in question by law.

Terminating this Agreement

When the Principal may terminate this Agreement without notice

- 61 The Principal can terminate this Agreement at any time and without notice or payment in lieu of notice if the Consultant:
- 61.1 is negligent or seriously incompetent in the performance of the Services;
 - 61.2 is unable for any reason to perform the Services for a period of 14 consecutive days;
 - 61.3 acts in any manner which is materially adverse to the Principal's interests;
 - 61.4 breaches any term of this Agreement including by not providing the Services to the standard required under clause 8 and failing to rectify the breach within 7 days of being given notice in writing of the nature of the breach;
 - 61.5 is convicted of a criminal offence that in the reasonable opinion of the Principal, either:
 - affects the Consultant's ability to perform the Services; or
 - damages the reputation of the Principal;
 - 61.6 is guilty of any fraud or dishonesty; or
 - 61.7 is declared insolvent or bankrupt.
- 62 The Principal will not have any liability to make any further payments to the Consultant if it terminates this Agreement under clause 61 (except for amounts accrued before the Agreement was terminated).

Delay does not mean the Principal has waived its rights to terminate

- 63 Any delay by the Principal in exercising its rights to terminate this Agreement in accordance with clause 61 will not constitute a waiver of its right to do so.

Return of property

- 64 At the end of this Agreement, or earlier if demanded by the Principal, the Consultant must immediately:
- 64.1 return to the Principal all original, copy and abstracts of papers and documents, records and models, books, materials, correspondence and information (on whatever media and wherever located) relating to the Principal's business;
 - 64.2 return to the Principal any keys or any other property belonging to the Principal; and
 - 64.3 irretrievably delete all information about the Principal's business stored on any magnetic or optical disk or memory.
- 65 The Consultant will ensure that any subcontractors of the Consultant comply with the obligations in clause 64.

General

Notice

- 66 Any notice given under this Agreement must be:
- 66.1 in writing;
 - 66.2 signed by or on behalf of the party giving it; and
 - 66.3 served by delivering it personally or sending it by pre-paid post or by registered post to the relevant party at their latest known address.
- 67 Notice is to be treated as having been received:
- 67.1 if the notice is delivered personally, at the time of delivery; or
 - 67.2 in the case of pre-paid post or registered post, on the fourth working day from the date of posting.

Entire agreement and previous contracts

- 68 Each party acknowledges and agrees that:
- 68.1 this Agreement (including the Background) and any documents referred to in it forms the entire agreement and understanding between the parties about its subject matter;
 - 68.2 the Schedule to this Agreement forms part of it;
 - 68.3 this Agreement replaces all previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting the subject matter of this Agreement. Any such previous agreements are to be treated as having been terminated by mutual consent;
 - 68.4 in entering into this Agreement, neither party has relied on any Pre-Contractual Statement; and
 - 68.5 the only remedy available to either party for the breach of this Agreement is one for breach of contract under its terms, and that they have no right of action against each other in respect of any Pre-Contractual Statement.

69 Nothing in this Agreement will operate to limit or exclude any liability either party has where a party has committed a fraud.

Varying this Agreement

70 This Agreement, including the Schedule, can only be varied if the change is agreed in writing and signed by the Principal and the Consultant.

71 This Agreement, including the Schedule, may only be replaced by an agreement signed and approved by the Principal and the Consultant.

Law and jurisdiction

72 This Agreement is governed by the laws of Victoria and subject to the jurisdiction of the courts in Victoria.

Definitions

73 In this agreement:

Confidential Information includes the following:

- the Principal's trade secrets and secret manufacturing processes;
- details of the Principal's business and finances;
- details of the Principal's financial arrangements with third parties;
- the contents of and set up of the IT systems the Principal operates — including all databases;
- all information about the Principal's clients, customers and suppliers;
- all information about the Principal's employees, directors and consultants;
- details of any tenders the Principal has submitted or plans to submit;
- the prices at which any suppliers supply goods or services (or both) to the Principal;
- details of any negotiations taking place with the Principal's existing or potential clients, customers or suppliers;
- any general information about the Principal's business (whether or not this information is recorded in writing or on computer disk or tape); and
- any information which the Consultant is advised is confidential, or is marked as confidential.

This information may be stored in any form — for example: as a document; on magnetic or optical disk.

For the purpose of the definition of 'Confidential Information', 'Principal' includes related bodies corporate of the Principal as defined in the Corporations Act 2001 (Cth).

Copyright Act means the Copyright Act 1968 (Cth).

Criminal/Disciplinary Information means the Consultant's criminal record, including any convictions or findings of guilt or pending criminal charges, and includes any matters before a professional disciplinary body where charges have been laid, the matter is part-heard, or findings have been made against the Consultant.

Fee means the Consultant's Fees as set out in clause 20.

GST Law has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended from time to time.

Insurance Policies are insurance policies for:

- personal injury insurance;
- professional indemnity insurance;
- public liability insurance;
- workers' compensation insurance;

A Pre-Contractual Statement is any person's or entity's undertaking, promise, assurance, statement, representation, warranty or understanding that is not contained in this Agreement. A Pre-Contractual Statement may be in writing or may have been made verbally. It includes the statements and understandings of people and entities who are not parties to this Agreement.

Services are the services that the Consultant has agreed to provide to the Principal under the terms of this Agreement and as described in the Schedule.

Works are all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including in hard copy and electronic formats, the Consultant prepares while providing the Services.

Execution

Dated: _____

Signed by
John Smith:

Signature of individual

Signed by
Jane Doe:

Signature of individual

SAMPLE

Schedule

The Services the Consultant will provide to the Principal are as follows:

The purpose of this document is to provide you with a sample of how the document will be generated

SAMPLE