

**COMPANY X PTY LTD**

and

**[INSERT CONSULTANT COMPANY NAME]**  
ACN [insert]

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**CONSULTING AGREEMENT**

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Consulting Cloud Preview

**AGREEMENT** made on the *[insert date]* day of *[insert month]* *[insert year]*

## **PARTIES**

- 1 **COMPANY X PTY LTD** of *insert address* (**Company**)
- 2 **[CONSULTANT COMPANY NAME]** of **[ADDRESS]** (**Consultant**)

## **RECITAL**

The Company has requested the Consultant to provide the Services and the Consultant has agreed to provide the Services on the terms and conditions of this Agreement.

## **Operative Provisions**

### **1. Definitions and interpretation**

#### **1.1 Definitions**

In this Agreement, unless the context otherwise requires:

**ABN** means Australian Business Number as defined in *A New Tax System (Australian Business Number) Act 1999*;

**Agreement** means this agreement including all recitals and annexures;

**Business** means the business of the Company from time to time;

**Commencement Date** means the date specified in the Project Schedule as the commencement date;

**Company Material** means:

- (a) any Material created, written, or otherwise brought into existence by or on behalf of the Consultant in the course of performing the Services; or
- (b) any Material provided or required to be provided by the Consultant to the Company or any Related Entity of the Company as part of the Services;

**Confidential Information** means:

- (a) the terms of this Agreement and its subject matter, including Information submitted or disclosed by the Company during negotiations, discussions and meetings relating to this Agreement;
- (b) Information that at the time of disclosure by the Company is identified to the Consultant as being confidential;
- (c) the Company Material;
- (d) any designs for products and technical data, marketing information and customer lists, financial information, pricing lists and structures, and business plans;
- (e) any information about arrangements and agreements between the Company and its customers, suppliers, agents, distributors, consultants and the Consultant;
- (f) any password or code that enables access by whatever means to any part of the Company's computer systems and networks;
- (g) trade secrets; and

- (h) all other Information belonging or relating to the Company, any Related Entity of the Company or any customer or client of the Company, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or which the Consultant knows, or ought reasonably to be expected to know, is confidential to the Company or any Related Entity of the Company;

**Consultant's Personnel** means the Consultant's employees, agents, subcontractors, consultants, advisers or any other person who performs the Services for and on behalf of the Consultant as specified in the Project Schedule;

**Deed** means the Deed of Confidentiality, Intellectual Property and Non-Competition attached as Annexure B to this Agreement;

**Fees** means the fees specified in the Project Schedule;

**GST** means the tax imposed under *A New Tax System (Goods and Services Tax) Act 1999* or any other similar tax;

**Information** means any information, whether oral, graphic, electronic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, formulae, technology, inventions, trade secrets, research and development information, know how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, sales and marketing information, names and details of customers, suppliers and agents, employee details, reports, drawings and data;
- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens (if any) disclosed either before or after execution of this Agreement;

**Intellectual Property Rights** means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

- (a) patents, designs, copyright, rights in circuit layouts, database rights, plant breeder's rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of these rights;

**Material** means any material, whether tangible or intangible, and includes:

- (a) documents, records, equipment and any other goods; and
- (b) software (whether in human or machine readable form), data and any other information;

**Pre-existing Material** means any Material which exists at the Commencement Date or which is developed independently of the Services which the Consultant is entitled to incorporate in any Company Material for which the Company gives written approval to that incorporation;

**Project Manager** means the person occupying the position from time to time as project manager as specified in the Project Schedule;

**Project Schedule** means the schedule at Annexure A to this Agreement;

**Related Entity** has the same meaning as ascribed to that term in the *Corporations Act 2001 (Cth)*;

**Services** means the services specified in the Project Schedule; and

**Termination Date** means the date specified in the Project Schedule as the termination date.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced from time to time;
- (c) references to paragraphs, clauses, recitals and schedules are references to paragraphs and clauses of, and recitals and schedules to, this Agreement;
- (d) indexes and headings are for convenience only and will be ignored in construing this Agreement;
- (e) references to law include references to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, subordinate legislation, rule of common law and of equity and judgment;
- (f) references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time and include any order, regulations, instruments or other subordinate legislation made under that law;
- (g) references to any person includes references to any individual, company, body corporate, association, partnership, firm, joint venture, trust and governmental agency;
- (h) references to \$ or dollars are references to the lawful currency of the Commonwealth of Australia for the time being;
- (i) a provision in favor of two or more persons is for the benefit of them jointly and severally;
- (j) a provision binding on two or more persons binds them jointly and severally;
- (k) a reference to a person includes a reference to the person's executors, administrators, legal personal representative, successors and permitted assigns;
- (l) a reference to any one gender includes each other gender (as the case may require);
- (m) a reference to a party means a person who is named as a party to, and is bound to observe the provisions of, this document; and
- (n) "includes" means includes without limitation.

## 2. Term of Agreement

- (a) This Agreement will commence on and from the Commencement Date and, unless earlier terminated under clause 15, will end on the Termination Date.
- (b) The parties may renew this Agreement for a further term by agreement in writing.

## 3. Services

### 3.1 Services to be provided

The Consultant will provide the Services to the Company as set out in the Project Schedule.

### **3.2 Performance of the Services**

The Consultant must provide the Services:

- (a) within the timeframe specified by the Company or in accordance with any other timing requirements as directed by the Company;
- (b) on [**Monday to Friday**] during normal business hours and at such other times as are necessary to fulfill its obligations under this Agreement;
- (c) in accordance with any minimum performance criteria reasonably set by the Company and communicated in writing to the Consultant from time to time;
- (d) in a conscientious, honest, expeditious and workmanlike manner and will exercise a standard of care and perform to a level of skill expected of a person qualified as an expert experienced in the provision of the Services;
- (e) in good faith towards and in a manner which promotes the interests, reputation and profitability of the Company, and not do anything (or omit to do anything) which may damage the interests, reputation or profitability of the Company;
- (f) in accordance with all policies, specifications, requirements, rules, instructions, systems, methods and procedures of the Company in relation to the provision of the Services, including any code of conduct issued from time to time by the Company; and
- (g) in accordance with all applicable laws.

### **3.3 Progress reports**

The Consultant must provide the Company with progress reports in writing as reasonably requested by the Company with respect to the performance of the Services. The Consultant must provide the Company with access to its records as reasonably requested by the Company to enable the Company to monitor the Consultant's performance of the Services.

### **3.4 Quality of Services**

If the Company gives written notice to the Consultant of any deficiency in the performance of the Services, the Consultant must use its best efforts to correct any such deficiency immediately.

### **3.5 Maintenance of records**

The Consultant must maintain records detailing the Services provided pursuant to this Agreement in a form approved by the Company.

## **4. Consultant's Personnel**

### **4.1 Specification of personnel**

- (a) In the performance of the Services, the Consultant will engage the Consultant's Personnel specified in the Project Schedule.
- (b) The Consultant must not engage or allow any person not specified in the Project Schedule to perform the Services or any part of the Services, except with the written consent of the Company.

### **4.2 Qualifications of personnel**

The Consultant will ensure that the Consultant's Personnel who perform the Services are fully qualified and skilled and experienced in their respective professions, trades and callings and exercise due care and skill in the performance of the Services.