

# Consultancy agreement

Consulting Services Pty Limited

Client Enterprise Limited

6 September 2005

## Contents

Parties .....	1
Background .....	1
<b>1 Interpretation .....</b>	<b>1</b>
<b>2 Services.....</b>	<b>2</b>
2.1 Engagement .....	2
2.2 Performance of services .....	2
2.3 Specified key personnel.....	2
2.4 Relationship of the parties .....	2
2.5 Performance.....	2
<b>3 Fees for Consultant services.....</b>	<b>2</b>
3.1 Agreed fees .....	2
3.2 Time charge fees .....	3
3.3 Payment of invoices .....	3
<b>4 Term and termination .....</b>	<b>3</b>
4.1 Term .....	3
4.2 Termination by either party .....	3
4.3 Serious breach .....	3
4.4 Insolvency event.....	4
4.5 Preservation of rights.....	4
<b>5 Intellectual property .....</b>	<b>4</b>
5.1 Ownership of Consultant's works.....	4
5.2 Rights assigned to Client.....	5

5.3	Licence to Consultant over Client IP works .....	5
5.4	Delivery of Client IP works .....	5
<b>6</b>	<b>Confidentiality .....</b>	<b>5</b>
6.1	Preservation of each party's confidential information.....	5
6.2	Permitted disclosure.....	5
6.3	Continuation of obligations after termination .....	6
<b>7</b>	<b>Assignment.....</b>	<b>6</b>
<b>8</b>	<b>Proper law.....</b>	<b>6</b>
<b>Schedule A</b>	<b>Services and implementation plan.....</b>	<b>7</b>
A.1	The services.....	7
A.2	Implementation plan .....	7
<b>Schedule B</b>	<b>Specified key personnel .....</b>	<b>8</b>
<b>Schedule C</b>	<b>Intellectual property .....</b>	<b>9</b>
C.1	Client IP works (works assigned to Client) .....	9
C.2	Rights assigned to Client.....	9
<b>Schedule D</b>	<b>Fees .....</b>	<b>10</b>
D.1	Agreed fee basis .....	10
D.2	Time and materials fee basis .....	10

# Consultancy agreement

Agreement dated:

200#

## Parties

**Consulting Services Pty Limited** ABN ## of ## *Consultant*

AND

**Client Enterprise Limited** of ## *Client*

## Background

A

B

## Operative provisions

### 1 Interpretation

In this agreement:

*business day* means a day of the week other than a Saturday, Sunday or public holiday in New South Wales.

*Client IP works* means those works described in Schedule C, section C.1.

*confidential information* means information disclosed by or on behalf of a party that:

- (a) by its nature is confidential, or the circumstances in which it is disclosed is confidential; or
- (b) is designated by the disclosing party as confidential or identified in terms indicating its confidentiality, whether by word “confidential”, “secret”, “private” or another word or words of similar effect, but does not include information that is or becomes public knowledge other than by breach of this agreement.

*implementation plan* means the plan described in .

*services* means the services described in Schedule A.

## **2 Services**

### **2.1 Engagement**

Client engages Consultant and Consultant agrees to perform, the services.

### **2.2 Performance of services**

Consultant agrees to provide the services diligently and with the skill and experience of a contractor qualified to provide the services.

### **2.3 Specified key personnel**

If particular personnel are specified in ##, Consultant agrees that it will not assign the roles allocated to them to other personnel without the consent of Client.

### **2.4 Relationship of the parties**

Consultant undertakes the services as an independent contractor. This agreement does not create a partnership, agency or joint venture between the parties.

No person engaged by Consultant to provide the services becomes an employee or contractor of Client.

### **2.5 Performance**

Consultant agrees to provide the services in accordance with the implementation plan or as otherwise agreed between Consultant and Client.

## **3 Fees for Consultant services**

### **3.1 Agreed fees**

Client agrees to pay Consultant the fees for the services as set out in Schedule D, section D.1.

### **3.2 Time charge fees**

If no applicable fee is specified in Schedule D, section D.1 for work provided by Consultant at the request of Client, Client agrees to pay fees to Consultant for that work on a time and materials basis as set out in Schedule D, section D.2.

Consultant agrees to maintain contemporaneous records of all time expended and expenses incurred by its personnel in undertaking tasks on a time and materials basis and to provide Client with a report of those records upon request.

### **3.3 Payment of invoices**

Invoices for Consultant fees will be rendered at the times set out in section D.1 or, if no times are specified, at the end of each month for work carried out during that month.

All invoices must be paid in full within 14 days after the date of delivery of the invoice to Client.

## **4 Term and termination**

### **4.1 Term**

This agreement continues in force until completion of the services or until earlier termination by a party terminating this agreement in accordance with section 4.2.

### **4.2 Termination by either party**

If a party commits a serious breach of this agreement, the party not in breach may terminate this agreement by giving 2 business days written notice of termination to the other party.

### **4.3 Serious breach**

A party commits a serious breach of this agreement if:

- (a) an insolvency event occurs in relation to that party; or
- (b) the party commits a breach of a material obligation under this agreement, including a failure to pay money within 5 business days after the due date for payment, which:

- (i) if capable of remedy, is not remedied by the party within 10 business days of receiving a notice from the other party requiring it to be remedied; or
- (ii) if not capable of remedy, 5 business days notice of that fact is given to the other party.

#### 4.4 Insolvency event

An insolvency event means:

- (a) if a party becomes insolvent or unable to pay its debts in the ordinary course of its business;
- (b) an order is made or a resolution is passed for the administration of the party or for the appointment of liquidator, provisional liquidator, administrator, receiver or similar official to the party;
- (c) a party suspends or threatens to suspend payment of its debts;
- (d) a party ceases to carry on business in Australia; or
- (e) a security holder enforces a security against the whole or material part of the party's property.

#### 4.5 Preservation of rights

Except as otherwise provided in this agreement, termination or expiration of this agreement does not affect:

- (a) a party pursuing the other rights and remedies that may be available to it under this agreement, at law or in equity as a result of the breach of this agreement by the other party which have accrued up to and including the date of termination or expiration; and
- (b) the provisions of this agreement which expressly, or by nature, survive termination or expiration.

### 5 Intellectual property

#### 5.1 Ownership of Consultant's works

Except as otherwise expressly stated in this agreement, all intellectual property rights, including copyright, in all inventions, computer programs and other works or deliverables created by Consultant in the course of providing the services to Client remain, at all times, the property of Consultant.

## 5.2 Rights assigned to Client

Consultant agrees that intellectual property rights in the Client IP works are granted to or assigned to Client to the extent described in Schedule C, section C.2.

## 5.3 Licence to Consultant over Client IP works

Client assigns to Consultant an exclusive (subject to the rights of the client), transferable, world wide, perpetual, royalty free licence to exploit, copy, adapt and use for its own purposes and for the purpose of others, the Client IP works.

## 5.4 Delivery of Client IP works

On completion of the services, termination of the consultancy or within a reasonable time after request from Client, Consultant will deliver to Client copies of all documents in both print and electronic form which are listed as Client IP works.

# 6 Confidentiality

## 6.1 Preservation of each party's confidential information

Consultant and Client each agree that they must:

- (a) keep secret and confidential all confidential information of the other and not disclose confidential information of the other to a third party without the written consent of the other party;
- (b) take all reasonable and necessary precautions to maintain secrecy and prevent the disclosure of the other party's confidential information; and
- (c) not use confidential information of the other for its own benefit or the benefit of any other person or entity.

## 6.2 Permitted disclosure

A party to whom confidential information is disclosed may disclose that confidential information to:

- (a) its employees, sub-contractors or other persons necessarily involved in the project who:
  - (i) are aware and agree that the confidential information must be kept confidential; and

- (ii) either have a need to know or are specifically approved by the disclosing party; or
- (b) as required by law.

### 6.3 Continuation of obligations after termination

The obligations of confidentiality under this agreement continue indefinitely after completion of the services or the termination or expiration of this agreement.

## 7 Assignment

A party must not assign its rights under this agreement without the written approval of the other party.

## 8 Proper law

This agreement is governed by the laws of New South Wales, Australia.

Executed as an agreement.

Signed on behalf of **Consultant Pty Limited**  
by ##, its managing director:

##Name

Signed on behalf of ##  
by ##:

##

## Schedule A Services and implementation plan

### **A.1 The services**

**Template guide**

Describe the services to be provided, all deliverables and acceptance criteria.

### **A.2 Implementation plan**

**Template guide**

Set out the implementation approach and timetable or annex a project plan.

# Schedule B Specified key personnel

**Template guide**

List any key personnel and the roles that they are required to perform unless the client approves a change.

Personnel	Assigned role

## Schedule C Intellectual property

### **C.1 Client IP works (works assigned to Client)**

**Template guide**

List all works (documents, software etc) over which rights are assigned to the client.

### **C.2 Rights assigned to Client**

**Template guide**

Define the actual intellectual property rights assigned to the client, eg, ownership of copyright or a licence right.

## Schedule D Fees

### D.1 Agreed fee basis

#### D.1.1 Calculation of fees

**Template guide**

Define the way fees are determined, eg, a fixed or agreed fee for specific work described in the services.

#### D.1.2 Fee installments

**Template guide**

List all fee installments by reference to dates or deliverables described in the services.

### D.2 Time and materials fee basis

#### D.2.1 Method of calculation

Where Consultant's fees are calculated on a time and materials basis, those fees are the sum of:

- (a) the GST exclusive charges for the time properly incurred by Consultant personnel for all work connected with provision of the services or other service requested by Client;
- (b) the GST exclusive cost of materials and out of pocket expenses, including travel and accommodation costs, properly expended by Consultant in providing the services or other service requested by Client; and
- (c) GST at the rate applied by law from time to time.

#### D.2.2 Hourly rates

Charges for time incurred in providing the services are based on the hourly rates set out in the table, calculated to the nearest 6 minute unit. These rates are exclusive of GST.

##