

## **Consultancy Agreement**

**Dated**

**\*\***

(the Company)

**\*\***

(the Consultant)

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## Agreement

### Dated

### Between:

- (1) \*\* **PLC** /**Limited** (the **Company**) registered in England with number \*\* whose registered office is at \*\* ; and
- (2) \*\* (the **Consultant**) of \*\* .

### Recitals

- A The Consultant is in business in his own right.
- B In the course of his business the Consultant provides training services to clients.
- C The Consultant has particular skills, knowledge, expertise and experience in the training field.
- D The Consultant wishes to provide training consultancy services to the Company
- E The Company wishes to become a client and to receive the services.
- F In deciding to become a client of the Consultant's business, the Company relies upon the Consultant's skills, knowledge, expertise and experience.
- G The Consultant has agreed to provide services to the Company on the terms and conditions set out in the Agreement.

### The Consultant and Company agree to the following terms and conditions:

#### 1 Interpretation

- 1.1 In this Agreement the following words and expressions shall have the following meanings:

**Associate:** A company is an associate of the Company if it falls into one or more of the following categories:

- (a) It is the holding company of the Company;
- (b) It has the same holding company as the Company;
- (c) It is a subsidiary of the Company; or
- (d) It would fall within the definition of associate contained in Section 435 of the Insolvency Act 1986. (In order to decide whether or a company falls into this category, sub-section 435 (10) of the Insolvency Act should be read as if the words "one fifth" were substituted for the words "one third").

A person or body other than a company is an associate of the Company if he/she or it falls into category (d) above.

**Board** means the Board of Directors from time to time of the Company including any committee of the Board duly appointed by it;

**Consultancy** means the appointment of the Consultant pursuant to the terms and conditions of this Agreement.

**Information** means all unpatented designs, drawings, data, specifications and manufacturing, processing or testing procedures and other technical, business and similar information relating to the Services including all readable or computer or other machine readable data, logic, logic diagrams, flow charts, coding source or object codes listing or other material relating to or comprising software which arises out of the provision of the Services;

**Invention** means any invention or discovery conceived or originated or made by the Consultant during the course of or in any way related to the Services;

**IP Rights** means all:

- (a) patent rights;
- (b) copyright;
- (c) design rights;
- (d) trademark rights;
- (e) other intellectual property rights; and
- (f) other rights or interests in or relating to any of the rights listed immediately above (including, in particular, rights to apply for registered protection of any such rights).

Unless the relevant provision in this Agreement specifically provides to the contrary, rights falling into the categories set out immediately above are included in the definition of IP Rights whether or not they are registered, wherever in the world they arise or exist and for the full period of their existence including any period of extension or renewal.

**Services** means the services described in Schedule 1;

**Site** means the Company's registered office address as above or any other site as notified to the Consultant;

**subsidiary company** and **holding company** have the meanings ascribed to them by section 736 of the Companies Act 1985 (as amended);

- 1.2 References in this Agreement to statutes, bye-laws, regulations and delegated legislation shall include any statute, bye-law, regulation or delegated legislation in force at the date hereof modifying, re-enacting, extending or made pursuant to the same or which is modified, re-enacted or extended by the same or pursuant to which the same is made.
- 1.3 Clause headings in this Agreement are for ease of reference only and shall not be taken into account in construing this Agreement.
- 1.4 References in this Agreement to Clauses, sub-clauses, paragraphs and Schedules are references to those contained in this Agreement.

- 1.5 The Schedule is an integral part of this Agreement. Where a reference is made to this Agreement it should be taken to include a reference to the Schedule.
- 1.6 Words referring to one gender should be read as referring to any gender. Similarly, references to individuals should be read as also referring to corporations and vice versa, the use of a singular noun should be taken to including a reference to its plural equivalent and where a word is used to denote a whole it should also be taken to refer to any part of that whole.

## **2 Term**

- 2.1 The Consultancy shall commence on the date of this Agreement and shall continue, subject to the provisions of Clause 10, for an initial term of 6 months and thereafter until terminated by either party giving to the other not less than 3 months' notice expiring at the end of the initial term or at any time thereafter.
- 2.2 The Company may, at its sole and absolute discretion, terminate the Consultancy before the expiry of the initial period and/or with immediate effect provided that it gives the Consultant notice in writing that it is exercising its power under this clause. This power to terminate is in addition to any right to terminate which may arise pursuant to Clause 10.1 of this Agreement.

If the Company exercises its power under this clause to terminate the Consultancy it shall make a payment to the Consultant of an appropriate proportion of [the retainer and][the fee].

For the avoidance of doubt, if the Consultancy is terminated by:

- (a) the Company before the expiry of the initial period; and
  - (i) the Company is not entitled to terminate the Consultancy pursuant to Clause 10.1 of this Agreement; and
  - (ii) the Company has not given the Consultant notice in writing that it is exercising its power to terminate under this Clause; or
- (b) the Consultant, including circumstances in which the Company is in repudiatory breach of this Agreement;

the Company will be deemed not to have exercised its power to terminate under this clause and the Consultant will not be entitled to the payment provided for above. This provision is without prejudice to any entitlement that the Consultant may have to recover damages, subject to an obligation that he take reasonable steps to mitigate, for loss of any fee or retainer arising from a termination of the Consultancy in breach of this Agreement.

## **3 Fees**

- 3.1 In consideration for the Consultant providing the Services undertaking the obligations and granting the rights provided for under this Agreement the Company shall during the Consultancy pay the Consultant or such person, firm or company as the Consultant may direct:
- (a) [a retainer of £\*\* (exclusive of VAT) per month or pro rata for any shorter period. [The retainer shall be deemed to cover all office establishment expenses (being the cost of all secretarial, correspondence, telephone, fax, electronic

mail, telex, rates and utility costs) and all materials expenses (being the cost of the provision of all materials, aids and supplies used by the Consultant) incurred by the Consultant in providing the Services.]

- (b) a fee at the rate of £\*\* (exclusive of VAT) per hour spent by the Consultant providing the Services.
- 3.2 The Consultant will not be entitled to receive any fee in respect of any day on which or during any period in which he performs no work. For the avoidance of doubt, this includes any day or period during which he is unable, by reason of illness, unforeseen and unavoidable emergency or otherwise, to provide the Services.
- 3.3 The Consultant shall be responsible for all expenses incurred by him in the course of providing the Services.
- 3.4 The Consultant shall render monthly invoices to the Company within seven days of the end of the calendar month to which each invoice relates in respect of the fees [and retainer] and where he is registered for VAT the invoice shall show any VAT separately. The invoice shall state the number of hours spent providing the Services during such calendar month and, if so requested by the Company, shall state on an hourly basis the manner in which such time was spent.
- 3.5 The Company is entitled to deduct from the fee [and the retainer] any sum due from the Consultant to the Company or any Associate.
- 3.6 Any payment made by the Company to the Consultant is without prejudice to any claims or rights which the Company may have against the Consultant. The payment of a fee or a retainer shall not constitute an admission by the Company that the Consultant has:
  - (a) provided the Services, any particular service or any part of any service; or
  - (b) complied with his obligations under this Agreement.
- 3.7 Prior to making any payment the Company shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the Consultant. All payments shall be made by the Company by a cheque or bank transfer to the account of the Consultant at a bank to be nominated in writing by the Consultant.
- 3.8 This Agreement is a contract for the provision of services to a client and not a contract of employment and accordingly the Consultant shall be fully responsible for the payment of income tax and National Insurance contributions due in respect of the payments made to him hereunder. If a claim, assessment or demand is made against the Company for the payment of income tax or National Insurance contributions or other similar contributions due in respect of the payments made to the Consultant hereunder the Consultant shall indemnify the Company against any liability, assessment or claim together with all reasonable costs and expenses and any penalty, fine or interest incurred or payable by the Company in connection with or in consequence of any such liability assessment or claim. The Company may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments to be made by the Company to the Consultant under this Agreement.

#### **4 Obligations of the Consultant**

- 4.1 During the Consultancy the Consultant shall unless prevented by ill health or unforeseen and unavoidable emergency make himself available to provide the Services for up to[ ] hours in each calendar month.
- 4.2 The Company shall give the Consultant reasonable notice of the dates on which he is required to provide his Services to the Company. The dates and times at which the Services are provided to the Company are at the Company's discretion.
- 4.3 The Consultant shall inform the Company of the progress of all matters upon which he is engaged for the Company on a monthly basis and if so requested by the Company shall provide the Company with monthly written reports.
- 4.4 If the Consultant is prevented from fulfilling his obligations under this Agreement on account of ill health or an unforeseen and unavoidable emergency he shall notify the Company immediately of that fact.
- 4.5 The Consultant's services are not be provided to the Company on an exclusive basis and the Consultant is free to provide his services to third parties provided that such provision does not place the Consultant in breach of any of his obligations under this Agreement or interfere with the proper performance of the Services. In the event of a conflict between the Consultant's obligations to the Company hereunder and his obligations to any third party the Consultant's obligations to the Company shall take precedence.
- 4.6 The Consultant shall keep time sheets detailing the time spent by him in providing the Services and shall also keep a detailed written record of the work undertaken by him which he shall provide to the Company if so requested.
- 4.7 The Consultant shall provide the Services at the Site or at such other locations within the United Kingdom as the Company shall require from time to time.
- 4.8 The Consultant shall travel to such places (whether in or outside the United Kingdom) in such manner and on such occasions as the Company may from time to time require in connection with the Services.
- 4.9 The Consultant shall not, without the express prior consent of the Company:
- (a) commit the Company or any of its Associates to any legally binding agreement;
  - (b) hold himself out as being able so to commit the Company or any of its Associates;
  - (c) terminate any legally binding agreement to which the Company or any of its Associates is party;
  - (d) hold himself out as being able to terminate any legally binding agreement to which the Company or any of its Associates is party;
  - (e) hold himself out as an employee or officer of the Company.
- 4.10 The Consultant shall, during the course of providing the Services comply with any material provision of the Company's Equal Opportunities Policy.

## **5 Confidentiality**

- 5.1 During the Consultancy and at all times thereafter the Consultant shall not, other than in the proper course of providing the Services, use, disclose or publish to any person or negligently cause any unauthorised disclosure of any information of a confidential or secret nature which he may acquire in the course of the Consultancy (including without limitation trade secrets, know-how, inventions, designs, processes, formulae, notations, improvements and financial information) concerning the affairs or business or products of the Company or of any Associate or of any of its or their predecessors in business or of any third party to whom the Company or any Associate is under an obligation of confidence such as suppliers, agents, distributors or customers.
- 5.2 This Clause shall not apply to information or knowledge which might come into the public domain other than in consequence of the Consultant's default.
- 5.3 Without prejudice to the generality of the foregoing, the following are examples of confidential information which must be kept secret:
- (a) Unpublished price-sensitive information relating to securities listed on a Stock Exchange;
  - (b) Lists of customers and details of contracts with customers;
  - (c) Financial reports, budgets, trading statements and pricing strategies;
  - (d) Marketing strategies, sales reports and research results;
  - (e) Lists of suppliers and details of contracts with suppliers;
  - (f) Technical information relating to the processes and operations of the Company and/or its Associates which is not in the public domain including, but not limited to unpublished inventions, designs, formulae and ideas.

## **6 Intellectual Property**

The Consultant hereby assigns to the Company absolutely to the fullest extent permitted by law all IP Rights subsisting in or attaching to anything created by him in the course of providing the Services. The Consultant undertakes at the request and expense of the Company to execute all such further documents and do such other acts as may in the opinion of the Company be necessary or desirable to vest any such IP Rights in the Company absolutely and the Consultant hereby assigns by way of present assignment of future copyright all copyright in any copyright works produced or originated by him in the course of providing the Services.

## **7 Liability**

- 7.1 The Consultant acknowledges that the Company will be relying upon his skill knowledge expertise and experience in the training field and warrants to the Company that:
- (a) he will provide the Services in the manner and to the standard specified by the Company;



- (b) all advice and information given and all representations and statements made and all documents provided by the Consultant will be accurate and appropriate for their purpose; and
- (c) all intellectual property and information provided by the Consultant will be accurate and appropriate for its purpose;

**AND** the Consultant agrees to indemnify the Company against all liability, loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Company or any of its Associates (including such arising in consequence of a claim brought against the Company or any of its Associates by one of its or their employees or a third party) including, but not limited to, any damage to property, economic loss or other loss of turnover, profits, business or goodwill arising in consequence of any breach of these warranties or of the terms of his Agreement or any negligence on the part of the Consultant in connection with the provision of the Services.

- 7.2 The Consultant accepts liability for death or personal injury and/or for damage to property howsoever resulting from his negligence in connection with the provision of the Services or his failure to fulfil his obligations hereunder **AND** the Consultant hereby agrees to indemnify the Company against all and any liability, loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Company or by any of its Associates in respect of any such death, personal injury and/or damage to property including such arising in consequence of a claim brought against the Company or any of its Associates by one of its or their employees or a third party.
- 7.3 The Consultant undertakes and agrees to take out adequate insurance cover with an insurance office of which shall be approved in advance by the Company to cover the liabilities accepted by him in Clause 7 of this Agreement and agrees, whenever requested by the Company, to produce a copy of the insurance policy or policies and relevant renewal receipts for inspection by the Company.
- 7.4 If the Consultant wishes to use the services of a third party to enable him to provide the Services (whether for information or for the supply of goods or services) the Consultant shall (except in matters of a minor nature) first obtain the written consent of the Company.

## **8 Opportunities**

During the Consultancy the Consultant must promptly notify the Company of any commercial opportunity relating to the business of the Company or any of its Associates which comes to his attention and, subject to Clause 4.9 above, he will take all reasonable steps to offer or cause to be offered to the Company any such opportunity as soon as practicable after he becomes aware of it and in any event before the Consultant offers or causes it to be offered to any third party **PROVIDED THAT** nothing in this Clause requires the Consultant to disclose an opportunity to the Company if to do so would result in a breach by the Consultant of any obligation of confidentiality or of any fiduciary or other duty owed by the Consultant to any other person.

## **9 Obligations of the Company**

- 9.1 During the Consultancy the Company will afford the Consultant such access to the Site and the Company's information records and other materials as may be reasonably necessary to

enable the Consultant to provide the Services PROVIDED ALWAYS that the Company is obliged to afford such access only during its normal business hours. The Company shall:

- (a) advise the Consultant of the rules and regulations which are then in force for the conduct of personnel at the Site;
- (b) make available such working space and facilities at the Site as the Company deems necessary for the Consultant to provide the Services;
- (c) confer with the Consultant to schedule work to the best convenience of both parties and the Company shall give as much advance notice as reasonably possible of specific projects which it wishes the Consultant to undertake and of their likely duration.

9.2 The Company will supply the Consultant free of charge with such materials, instruments or equipment as the Company considers necessary for the Consultant to provide the Services.

## **10 Termination**

10.1 The Company may by notifying the Consultant terminate this Agreement with immediate effect if the Consultant:

- (a) is unavailable, without the prior written consent of the Company, to discharge his obligations under this Agreement for any reason other than an unforeseen and unavoidable emergency or illness; or
- (b) is unavailable to discharge his obligations hereunder due to illness for a continuous period in excess of 30 days or an aggregate of 90 days in any period of 6 months; or
- (c) fails to provide the Services to the standard and in the manner required or expected by the Company; or
- (d) commits any act of dishonesty relating to the Company, any of its Associates, any of its or their employees or consultants or otherwise; or
- (e) commits any serious or persistent breach of any of his obligations to the Company or any of its Associates (whether under this Agreement or otherwise).

10.2 The Consultant may by notifying the Company terminate this Agreement with immediate effect if the Company commits any serious or persistent breach of its obligations to the Consultant (whether under this Agreement or otherwise).

10.3 Upon the termination of this Agreement for whatever reason the Consultant must immediately deliver to the Company all documents (including copies), and all books, materials and other property belonging to the Company or any of its Associates (including without limitation all documents prepared by him or which may have come into his possession in the course of his providing the Services then in his possession or control.

10.4 The termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination and in particular, but not limited to, the right to recover damages against the other party and all provisions which are expressed to survive this Agreement shall remain in full force and effect.

- 10.5 The Consultant shall not, following the termination of this Agreement, for any reason represent himself as being in any way connected with the Company or any Associate.

## **11 Force majeure**

The Consultant and the Company shall be excused from performance of their obligations under this Agreement if and to the extent that such performance is hindered or prevented (directly or indirectly) by reason of any strike, lockout, labour disturbance, government action, riot, armed conflict, accident, unavailability or breakdown of normal means of transport, act of God or any other matter whatsoever beyond the reasonable control of the Consultant or the Company.

## **12 Illegality**

If any provision or term of this Agreement or any part thereof shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, including (but without limitation) by reason of the provisions of any legislation or other provisions having the force of law or by reason of any decision of any Court or other body or authority having jurisdiction over the parties or this Agreement including the European Commission and the European Court of Justice, such provision or term shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement in the jurisdiction in question provided always that if any such deletion substantially affects or alters the commercial basis of this Agreement the parties shall negotiate in good faith to amend and modify the provisions and terms of this Agreement as may be necessary or desirable in the circumstances.

## **13 Assignment**

- 13.1 Subject to the provisions of Clause 13.2 below neither party shall assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld.
- 13.2 The Company shall be entitled without the prior written consent of the Consultant to assign, transfer or in any manner make over the benefit and/or burden of this Agreement to an Associate or to any 50/50 joint venture company where the Company is the beneficial owner of 50 per cent of the issued share capital thereof or to any company with which the Company may merge or to any company to which the Company may transfer its assets and undertaking provided that such Associate or other company undertakes and agrees in writing to assume, observe and perform the rights and powers and/or duties and obligations of the Company under the provisions of this Agreement being assigned transferred or otherwise made over.

## **14 Notice**

- 14.1 Any notice or other communication given or made under this Agreement shall be in writing and may be delivered to the relevant party or sent by first class prepaid letter telex fax or electronic mail to the address of that party specified in this Agreement or to that party's telex or fax number electronic mail address or such other address or number in England as may be notified by that party from time to time for this purpose, and shall be effectual notwithstanding any change of address or number not so notified.



**Executed** as a Deed by                    )  
\*\*    )  
in the presence of                        )  
\*\*    )

Name:                                       \*\*

Address:                                   \*\*

Occupation:                              \*\*

## **Schedule 1 - The Services**