



# CONSULTING SERVICES AGREEMENT & GUIDE

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## 1. Overview

From an accounting perspective, hiring consultants is cheaper than employing an individual full time. In addition to the obvious expenses of salaries, bonuses, and other compensation, employees can cost a company in more subtle ways, requiring further investments in benefits, payroll taxes, insurance premiums, office space, and equipment. Such additional costs aren't required for consultants: companies can use these individuals for specific tasks according to business needs, and can avoid the legal minefields of hiring and firing staff according to the ebb and flow of the market. Organizations can choose experts to perform necessary work when needed, and can avoid the cost and hassle of providing additional education or training to current employees.

There are risks, of course, businesses using consultants, the most dangerous of which is that those individuals will be reclassified as employees. If this happens, the company using those consultants will be required to reimburse the IRS or state tax authority for delinquent employment taxes, interest, and penalties. Although a business cannot insulate itself absolutely from reclassifications or contract audits, written consulting services agreements can offer a certain amount of protection from such charges.

The enclosed document can provide a good starting point for your consulting services arrangement. You and your consultant must continue to discuss the terms of your agreement, settling questions about work parameters, payment, and responsibilities. Once you have agreed on contract terms and have signed the attached form, each party can focus on its area of expertise: the company on the development of its business and the consultant on the services to be performed.

## 2. Dos & Don'ts Checklist

- The enclosed agreement is designed to protect the parties' rights during the contract term. It does not, however, describe what tasks will be performed or the rates applicable to any such work. These issues should be resolved by the parties, drafted, and attached to the enclosed document as Exhibit A.
- Before sitting down to draft Exhibit A, decide what your goals are. It can contain any agreed-on terms but should, at a minimum, include a description of the consultant's tasks, the amount to be paid, the terms of payment, deadlines for completion, and the specific end products expected (if any). Clarify the terms and conditions of your agreement before memorializing them in writing.
- Allow each party to spend time reviewing the agreement and (once drafted) Exhibit A. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any terms or how those might affect the agreement as a whole.
- The enclosed document is drafted in a way that elevates the company's interests over those of the consultant. If you believe this agreement is too imbalanced for your purposes, or too restrictive to allow the consultant to perform his or her duties, revise or restructure the provisions to fit your organizational goals.

- Both parties should review the completed agreement carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly in the document.
- A written agreement is only the first step in establishing an individual's independent contractor status. Once signed, both parties must follow its terms exactly to make sure that status is maintained.
- Review your state's laws governing independent contractors. In recent years, many states have made it difficult for individuals to qualify, imposing absolute requirements about the freedom a consultant must have from company control. Certain provisions in the enclosed agreement may need to be strengthened or adapted to fit your state's rules.
- Sign two copies of the agreement, one for you and one for the other party.
- Keep your copy of the signed agreement for your records. At the end of its term, you and the other party can revisit its provisions and consider whether to renew.
- Depending on the nature of its terms, you may decide to have your agreement witnessed or notarized. This will limit later challenges to the validity of a party's signature.
- If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

### 3. Consulting Services Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your agreement.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to provisions in the form. Please review the entire document before starting your step-by-step process.

- **Introduction.** Identifies the document as an independent contractor agreement. Write in the date on which the agreement will become effective (often the date on which it is signed). Identify the parties and, if applicable, what type of organization(s) they are. Note that each party is given a name (e.g., "Company") that will be used throughout the agreement. As you probably guessed, the hiring party is called the "Company" and the consultant is called the "Consultant."
- **Recitals.** The "whereas" clauses, referred to as recitals, define the world of the agreement and offer key background information about the parties. In this agreement, the recitals include a simple statement of your intent to enter into a consulting services arrangement. Provide a brief description of the Company's business in the blank provided.
- **Section 1: Responsibilities.** Lists each party's responsibilities under the Agreement. Essentially, the Consultant is agreeing to perform the agreed-on services with adequate attention and care, and the Company is agreeing to assist in this performance by providing necessary information and guidance. There are also spaces for you and the other party to insert additional obligations (e.g., on the Consultant's request, the Company will provide regular feedback about the Services being provided)

and information about minimum hours of service that the Consultant will provide to the Company. Delete these subsections if you do not have additional responsibilities you want to allocate and you do not want to establish a minimum time requirement.

- **Section 2: Nature of Relationship.** Explains that the Consultant is not an employee or partner of the Company. This is an important distinction for legal reasons, including requirements of insurance coverage, liability, and taxes. The agreement seeks to emphasize this divide, but both parties should take care not to blur the line between independent contractor and employee in the performance of their duties. Review your state’s laws governing independent contractors to make sure that the enclosed agreement follows local restrictions.
- **Section 3: Confidential Information.** Defines confidential information for purposes of the agreement and explains how the Consultant will treat that information. Note two important details: (1) the Consultant can use the information only for purposes intended by the agreement (e.g., if the information was disclosed to help the Consultant complete its Services, the information can be used only for that purpose); and (2) the Consultant can discuss the information only with certain individuals in the Company itself.
- **Section 4: Representations and Warranties.** Details the parties’ promises under the Agreement. Each party is agreeing to enter into the arrangement based on the conditions listed in this section (e.g., that each is capable of entering the agreement and satisfying its terms).
- **Section 5: Compensation.**
  - (a) Explains that the payment terms are detailed in [Exhibit A](#).
  - (b) Indicate the amount of time the Company has to forward payments to the Consultant. For many businesses, this will be about 60 days. Depending on the Company’s procedures for accounts receivable, you may want to increase or decrease this time.
  - (c) The circumstances under which no payments will be made.
  - (d) Emphasizes that the payments outlined are the Consultant’s only compensation for its services under the Agreement.
  - (e) Notes that the Consultant will pay for its own expenses. This is another reflection of the fact that the Company and the Consultant are functioning as separate entities (i.e., not as employer and employee).
  - (f) Indicates that the Consultant is responsible for paying its own taxes on the money it receives (i.e., it is not receiving a “salary” as an employee of the Company and the Company will not withhold those amounts on its behalf).
- **(Optional) Section 6: Reporting.** An optional provision requiring the Consultant to provide periodic reports on its progress. You can designate a contact person at the Company to receive these reports, indicate how frequently they should be provided, and specify the type of information to be supplied. If you remove this section, correct the section numbers and internal references in the agreement.
- **Section 7: Work for Hire.** Grants ownership of all work performed by the Consultant under the Agreement to the Company, including completed products and material produced during creation. Moreover, if any work is in fact owned by the Consultant, the Consultant promises to assign its interest in any such work to the Company.

- **Section 8: No Conflict of Interest; Other Activities.** The Consultant's promise that it is not currently working with any other company or product that competes with the Company. Note, however, that this section expressly permits the Consultant to contract with other companies to the extent its responsibilities under those contracts don't damage the Company or its interests.
- **Section 9: Term.** Indicates that the agreement will last until termination or until the listed services are completed. The bracketed sentence is optional, and allows the parties to set a deadline by which all services must be finished. Delete this provision if you do not want to set an expiration date for your agreement.
- **Section 10: Termination.** Explains that certain actions or events, including written notice or material breach, will cause the agreement to end out of time (i.e., before the services are completed or the end of the term, if any). Write in the amount of notice a party must give of its intent to terminate or to notify the other of a breach.
- **Section 11: Return of Property.** This is an extremely important provision, and although it may seem obvious to you that property should be returned after the end of the agreement, this paragraph makes that plain. Enter the time period within which the Consultant must return this property after the agreement is terminated. There is an optional bracketed phrase at the end of the paragraph that references Exhibit B, and explains that any items listed in that exhibit are taken to be the Consultant's property. If you do not want to include this, delete the bracketed sentence and Exhibit B.
- **Section 12: Indemnification.** This provision allocates responsibilities between the parties if problems arise in the future and protects each party from the consequences of the other's negligent or intentional conduct.
- **Section 13: Use of Trademarks.** States the Consultant will not use the Company's trademarks inappropriately or acquire a trademark of its own that is similar to the Company's. For example, an independent contractor for XYZ can not apply for a trademark on Sam's XYZ Products. This section also provides that the Consultant may not continue to use the Company's trademarks after the agreement terminates.
- **Section 14: Modification.** Indicates that any changes to the document are ineffective unless they are made in writing and signed by both parties.
- **Section 15: Assignment.** Explains that each party must obtain the other's written permission before assigning its obligations and interests.
- **Section 16: Successors and Assigns.** States that the parties' rights and obligations will be passed on to heirs or, in the case of companies, successor organizations or organizations to which rights and obligations have been permissibly assigned.
- **Section 17: Force Majeure.** Releases a party from its obligations if its performance is made impossible by an event beyond its control (e.g., flood, earthquake, etc.). This release is effective only as long as circumstances continue to prevent that party's completion of its tasks.
- **Section 18: No Implied Waiver.** Explains that if either party allows the other to ignore or break an obligation under the agreement, it does not mean that party waives any future rights to require the other to fulfill those (or any other) obligations.
- **Section 19: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Company and the Consultant.

- **Section 20: Governing Law.** Allows the parties to choose the state laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write in the applicable state law in the blanks provided.
- **Section 21: Counterparts/Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the parties sign the agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.
- **Section 22: Severability.** Protects the terms of the agreement as a whole, even if one part is later invalidated. For example, if a state law is passed prohibiting choice-of-law clauses, it will not undo the entire document. Instead, only the section dealing with choice of law would be invalidated, leaving the remainder of the agreement enforceable.
- **Section 23: Entire Agreement.** The parties' agreement that the document they're signing is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 24: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the note.
- **Exhibit A: Duties, Specifications, and Compensation.** The form of [Exhibit A](#) provided is meant as an example only. You and the other party should restructure and revise this exhibit to fit your situation and individual needs. There are two types of compensation arrangements outlined in the form. You can choose either, or come up with a third structure better suited to your agreement.
- **(Optional) Exhibit B: List of Consultant's Property.** An optional provision that allows the Consultant to designate certain property as its own. This property will not need to be returned to the Company at the termination of the agreement. Delete this exhibit if the Consultant does not want to list any property, or if it doesn't suit your arrangement.

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**CONSULTING SERVICES AGREEMENT**

This Consulting Services Agreement (the "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between \_\_\_\_\_, a \_\_\_\_\_ [individual/corporation/partnership/etc.] (the "Consultant"), and \_\_\_\_\_, a \_\_\_\_\_ [corporation/partnership/etc.] (the "Company," and together with the Consultant, the "Parties").

**RECITALS**

**WHEREAS**, the Company is engaged in the business of \_\_\_\_\_;  
and

**WHEREAS**, the Company wishes to engage the Consultant as an independent contractor for the Company for the purpose of providing the professional services set forth in Exhibit A attached hereto and made a part hereof (the "Services") on the terms and conditions set forth below; and

**WHEREAS**, the Consultant wishes to provide the Services in accordance with the terms of this Agreement; and

**WHEREAS**, each Party is duly authorized and capable of entering in this Agreement.

**NOW THEREFORE**, in consideration of the promises and benefits contained