

**THIS AGREEMENT** is dated [DATE]

**Parties**

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Client**).
- (2) **MDB Service Consulting Limited** incorporated and registered in England and Wales with company number 0561273 whose registered office is at 57 Main Road, Long Bennington, Nottingham, NG23 5DJ (**Consultant Company**).

**Whereas**

- A. The Client wishes to obtain and the Consultant Company is willing to supply the Services on the Terms attached.
- B. This Order Form (including any appendices), together with the Terms attached constitute one agreement (**Agreement**) and should be read in conjunction with each other so that the parties understand the terms on which the Services will be provided. In the event of any conflict between this Order Form and the Terms, the provisions of this Order Form shall prevail to the extent of the conflict or inconsistency.
- C. This Agreement will apply to the Consultant Company's provision of the Services, to the exclusion of any other terms that the Client seeks to impose or incorporate or that are implied by trade, customer, practice or course of dealing.

This Agreement has been entered in to and takes effect on the date stated at the beginning of it.

**EXECUTED** by [name of director] )  
duly authorised for and on behalf of )  
[name of Client] )

**EXECUTED** by [name of director] )  
duly authorised for and on behalf of )  
**MDB Service Consulting Limited** )

## 1. Interpretation

1.1 The following definitions and rules of interpretation apply in the Agreement (unless the context requires otherwise).

**Capacity:** as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

**Client Property:** all documents, books, manuals, materials, records, correspondence, papers and information relating to the business or affairs of the Client or its customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant Company or the Individual's use by the Client during the Engagement, and any data or documents produced, maintained or stored by the Consultant Company or the Individual on the computer systems or other electronic equipment of the Client, the Consultant Company or the Individual during the Engagement.

**Commencement Date:** means the date set out in Appendix 1 of the Order Form.

**Confidential Information:** information relating to the business, customers, products, affairs and finances of the Client for the time being confidential to the Client.

**Engagement:** the engagement of the Consultant Company by the Client on the terms of this Agreement.

**Fee:** means the price payable by the Client to the Consultant Company for the provisions of the Services, as set out in Appendix 1 of the Order Form.

**Individual:** Michael Braithwaite.

**Insolvency Event:** means an event where a party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.

**Insurance Policies:** [professional indemnity insurance cover] [[and] public liability insurance cover].

**Intellectual Property Rights:** patents, rights to Inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Invention:** any invention, idea, discovery, development, improvement or innovation made

by the Consultant Company or by the Individual in connection with the provision of the Services.

**Mandatory Policies:** means the Client's policies that must be adhered to by the Individual when performing the Services, as set out in Appendix 1 to the Order Form.

**Order Form:** means the document (including any appendices) attached to these Terms.

**Services:** the services described in Appendix 2 of the Order Form.

**Substitute:** a substitute for the Individual appointed under the terms of clause **Error! Reference source not found..**

**Termination Date:** the date of termination of this agreement, howsoever arising.

**Terms:** means the terms and conditions set out in this document.

**Works:** all records prepared by the Consultant Company or the Individual in connection with the provision of the Services.

1.2 The headings in these Terms are inserted for convenience only and shall not affect its construction.

1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## 2. Term of engagement

2.1 The Client shall engage the Consultant Company and the Consultant Company shall make available to the Client the Individual to provide the Services on the terms of this Agreement.

2.2 The Engagement shall commence on the Commencement Date and shall continue unless and until terminated:

- (a) as provided by the terms of this Agreement; or
- (b) by either party giving to the other not less than 4 weeks' prior written notice.

## 3. Duties and obligations

3.1 During the Engagement the Consultant Company shall, and (where appropriate) shall procure that the Individual shall:

- (a) provide the Services with all due care, skill and ability and use its or his reasonable endeavours to promote the interests of the Client; and
- (b) unless the Individual is prevented by ill health or accident, devote such number of hours or days, as set out in Appendix 2 of the Order Form, in each calendar month, to the carrying out of the Services together with such additional time if any as may be necessary for their proper performance.

3.2 If the Individual is unable to provide the Services due to illness or injury, the Consultant Company shall advise the Client of that fact as soon as reasonably practicable.

3.3 The Consultant Company shall use its reasonable endeavours to ensure that the Individual is available at all times on reasonable notice to provide such assistance or information as the Client may reasonably require.

- 3.4 Unless it or he has been specifically authorised to do so by the Client in writing:
- (a) neither the Consultant Company nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the Client; and
  - (b) the Consultant Company shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind the Client.
- 3.5 The Consultant Company shall, and shall procure that the Individual shall, comply with all reasonable standards of safety and comply with the Client's health and safety procedures (as notified to the Consultant Company, in writing, in advance) from time to time in force at the premises where the Services are provided and report to the Client any unsafe working conditions or practices.
- 3.6 The Consultant Company shall procure that the Individual shall comply with the Client's Mandatory Policies.
- 3.7 The Consultant Company may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:
- (a) the Client will not be liable to bear the cost of such functions; and
  - (b) at the Client's reasonable request the third party shall be required to enter into direct undertakings with the Client, including with regard to confidentiality.
- 3.8 The Consultant Company shall, and shall procure that the Individual shall:
- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - (c) have and shall maintain in place throughout the term of the Agreement its own policies and procedures, to ensure compliance with the Relevant Requirements and clause 3.8(b), and will enforce them where appropriate;
  - (d) report to the Client any request or demand for any undue financial or other advantage of any kind received by the Consultant Company or the Individual in connection with the performance of this agreement;
  - (e) notify the Client if a foreign public official becomes an officer or employee of the Consultant Company or acquires a direct or indirect interest in the Consultant Company (and the Consultant Company warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement); and
  - (f) ensure that all persons associated with the Consultant Company or other persons who are performing services in connection with this agreement comply with this clause 3.8.

#### **4. Substitution**

- 4.1 During the Assignment, the Consultant Company may substitute the initially provided Representative for a replacement Representative, subject to the following conditions being met:
- (a) that any substitute Representative has at least the equivalent levels of skill, qualifications, experience and training as the initial Representative, in order for the required standards of the Services to be met;
  - (b) any substitute Representative has the legal right to work in the UK or such other jurisdiction where the Services are carried out.
  - (c) the initial Representative conducts a handover of not less than one week, during which time he shall work alongside the substitute Representative to ensure that the substitute Representative is familiar with the Client's project requirements, the working environment and any timetable or deadlines under which the Services must be completed; and
  - (d) the Consultant Company must not make any additional charge for the extra Representative during such handover period set out in clause 4.4 above.
- 4.2 No substitute Representative may assume the performance of the Services unless and until the above conditions set out in Clause 4 have been met, and until such time the Consultant Company shall be obliged to ensure that the Services continue to be performed by the initially named Representative.

#### **5. Fees and expenses**

- 5.1 The Client shall pay the Consultant Company the Fee in accordance with the payment terms set out in Appendix 1 of the Order Form.
- 5.2 In consideration of the provision of the Services, the Client shall pay each invoice submitted by the Consultant Company within 30 days of receipt.
- 5.3 The Client shall reimburse all reasonable expenses properly and necessarily incurred by the Consultant Company or the Individual in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment.
- 5.4 If the Individual is required to travel abroad in the course of the Engagement, the Consultant Company shall be responsible for any necessary insurances, inoculations and immigration requirements.

#### **6. Other activities**

Nothing in this agreement shall prevent the Consultant Company or the Individual from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement.

#### **7. Confidential information and Client property**

- 7.1 The Consultant Company acknowledges that in the course of the Engagement it and the Individual will have access to Confidential Information. The Consultant Company has

therefore agreed to accept the restrictions in this clause 7.

- 7.2 The Consultant Company shall not and shall procure that the Individual shall not (except in the proper course of its or his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use its reasonable endeavours to prevent the publication and disclosure of) any Confidential Information. This restriction does not apply to:

- (a) any use or disclosure authorised by the Client or required by law; or
- (b) any information which is already in, or comes into, the public domain otherwise than through the Consultant Company's or the Individual's unauthorised disclosure.

## 8. Data protection

- 8.1 The Consultant Company shall procure that the Individual consents to the Client holding and processing data relating to him for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Individual.

- 8.2 The Consultant Company shall comply, and shall procure that the Individual shall comply, with the Client's data protection policy (as provided to the Consultant Company in writing) and relevant obligations under the Data Protection Act 1998 and associated codes of practice when processing personal data relating to any employee, worker, customer, client, supplier or agent of the Client.

## 9. Intellectual property

- 9.1 The Consultant Company assigns to the Client all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Consultant Company holds legal title in these rights and inventions on trust for the Client.

- 9.2 The Consultant Company undertakes to the Client:

- (a) to keep confidential the details of all Inventions;
- (b) whenever reasonably requested to do so by the Client and in any event on the termination of the Engagement, to deliver to the Client all correspondence, documents, papers and records on all media, relating to any part of the Works and the process of their creation which are in its or the Individual's possession, custody or power;
- (c) not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Client; and
- (d) to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Client.

- 9.3 The Consultant Company warrants that:

- (a) it has not given and will not give permission to any third party to use any of the Works or

the Inventions, nor any of the Intellectual Property Rights in the Works;

- (b) it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- (c) the use of the Works or the Intellectual Property Rights in the Works by the Client will not, as so far as the Consultant Company is aware, infringe the rights of any third party.

## 10. Insurance and liability

- 10.1 The Consultant Company shall maintain in force during the Engagement full and comprehensive Insurance Policies and, shall ensure that the Insurance Policies are taken out with reputable insurers.

- 10.2 The Consultant Company shall on reasonable request supply to the Client copies of the Insurance Policies and evidence that the relevant premiums have been paid.

- 10.3 The Consultant Company shall comply (and shall procure that the Individual complies) with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultant Company is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant Company shall notify the Client.

## 11. Termination

- 11.1 Notwithstanding the provisions of clause 2.2, either party may terminate the Engagement with immediate effect upon notice to the other party, if at any time the other:

- (a) is subject to an Insolvency Event;
- (b) commits any serious or repeated breach or non-observance of any of the provisions of this Agreement; or
- (c) fails to pay any amount due under the Agreement (including the Fees) by the due date for payment.

- 11.2 The rights of the parties under clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement. Any delay by a party in exercising its rights to terminate shall not constitute a waiver of these rights.

## 12. Obligations on termination

- 12.1 On the Termination Date the Consultant Company shall, and shall procure that the Individual shall:

- (a) deliver to the Client all Client Property and original Confidential Information which is in its or his possession or under its or his control; and
- (b) so far as it is reasonably possible to do so, delete any information relating to the business of the Client stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its or his possession or under its or his control outside the premises of the Client.

## 13. Status

- 13.1 The relationship of the Consultant Company (and the Individual) to the Client will be that of independent contractor and nothing in this Agreement shall render it (nor the Individual) an employee, worker, agent or partner of the Client

and the Consultant Company shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.

- 13.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant Company shall be fully responsible for and in respect of:

- (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Individual in respect of the Services, where such recovery is not prohibited by law; and
- (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual or any Substitute against the Client arising out of or in connection with the provision of the Services.

#### 14. Notices

- 14.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by fax to its main fax number.
- 14.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
  - (c) if sent by fax, at 9.00 am on the next Business Day after transmission.
- 14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### 15. General

- 15.1 This Agreement constitutes the entire agreement between the parties and supersedes

and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 15.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 15.4 Nothing in this clause shall limit or exclude any liability for fraud.
- 15.5 No variation of this Agreement or of any of the documents referred to in it shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 15.6 This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 15.7 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 15.8 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.
- 15.9 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 15.10 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## **Appendix 1: Agreed Terms**

- 1. Commencement Date:** [insert date of commencement of the Services]
- 2. Mandatory Policies:** [insert list of Client's mandatory policies, e.g. bribery policy; social media policy].
- 3. Fee:** [insert fee for the Services].
- 4. Payment terms:** [insert terms for payment].

## **Appendix 2: Services and Service Levels**

THIS SHOULD INCLUDE THE FOLLOWING MATTERS:

- DETAILS OF THE WORK TO BE CARRIED OUT;
- DETAILS OF THE NUMBER OF HORUS / DAYS THAT THE CONSULTANT SHOULD DEVOTE TO CARRYING OUT THE SERVICES IN EACH CALENDAR MONTH;
- THE LOCATION(S) WHERE THE SERVICES ARE TO BE PERFORMED;
- REPORTING PROCEDURE;
- ANY MILESTONES FOR COMPLETION OF PARTICULAR PROJECTS; AND
- WHETHER THE SERVICES WILL NEED TO BE PROVIDED TO ANY OTHER