

# CONSULTING AGREEMENT



# Consulting Agreement Overview

**WHAT IT IS:** This is an agreement between you and your Consulting client that outlines the terms of your relationship.

**WHAT IT DOES:** This agreement sets expectations and outlines terms for you and your client. By signing this agreement, you and your client are literally “on the same page” when it comes to working together. Among other things, this agreement:

- Contains details including services you are providing,, payment terms, your responsibilities as consultant, and the client’s responsibilities
- Limits your liabilities (that is, it protects you and your business legally and financially)
- Provides protocols for changing the scope of work, termination of the agreement, and more
- Provides you recourse (e.g., in the event you need to collect payments)
- Ensures that any legal action brought against you will be handled in the state in which you reside so that you’re not required to fly across the country if a client on the other coast sues you and you have to appear in court

**WHY YOU NEED IT:** To help prevent misunderstandings and disagreements with your clients. When you’re both crystal clear about what to expect, there’s less chance of confusion, and if there is a disagreement, you can refer back to the agreement to determine what to do about it. Without a signed agreement like this in place, you may not be able to call collect attorney’s fees or even enforce basic provisions of the deal.

**WHEN TO USE IT:** Every time you sign on a new Consulting client.

# Clause-By-Clause Explanations and Instructions

**Editing Instructions:** The first time you go through the template, customize it to your business according to the instructions below. Sections that should be filled in, altered to suit your needs, or deleted if they're not applicable to you are in **red**. Leave the signature section at the bottom and the **[Client Name]** in the recitals (the part between the title and the sections) blank for now. Then save the document – this will be *your* template going forward. Each time you bring on a new client, use your template and update the recitals with the client's name where it says **[Client Name]**.

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## THE TITLE

On the top of the page, insert your business name in **[Company, LLC or Individual]**. The remainder of the Agreement uses the word “Company” so that you only need to change your business name here and at the signature line.

## THE RECITALS

In the part between the title and the numbered sections, insert your business name in **[Company, LLC or Individual]**. The remainder of the Agreement uses the word “Company” so that you only need to change your business name here and at the signature line. When you bring on a new client, insert the client's name where it says **[Client Name]**. Client Name can be an individual, business name, or LLC. The remainder of the Agreement uses the word “Client” throughout.

## 1. Services

**Purpose:** The scope of project clause defines the scope of work needed to complete a project or set of services. The details of your scope of project will be outlined in Schedule A, Services, at the bottom of the Agreement. If you provide a proposal to clients, we recommend simply including that proposal after Schedule A.

**Instructions:** Specify the services you'll provide and fees you'll charge in Schedule A, Services.

## 2. Fees

**Purpose:** The fees clause expressly states your monetary rate in exchange for services. Explain how much you're charging your client for your services. Are you charging by the hour, week, or by project? Explain it all here, and be specific! There is also a clause here if you will be invoicing and to provide for late fees. This helps give your clients the urgency they sometimes need to go ahead and make the payment.

**Instructions:** Explain how you will charge your clients for your services. Make sure to specify if you are operating hourly, weekly, by project, or by some other method. Explain your invoicing policy in detail. If you don't have an invoicing policy, use the recommended policy and/or edit to your liking. Here, switch out **the first five (5) business days of each month describing the hourly fees incurred** for your desired invoicing system. Switch out the late fee percentage **(10% late fee)** to your company's preference. You can delete the initiation fee if not collecting one as well as change the frequency of the invoice. The important part here is to decide and stick to a routine.

Alternate Language: If the proposed language doesn't fit your business model, review or alternate clauses at the end of the agreement. Whichever structure you do choose, be sure to follow it with each client.

## 3. Termination

**Purpose:** Sometimes, business relationships just don't work out. Termination clauses provide parties with a legal way out of the deal. This clause also allows your client to terminate the agreement with written notice, and it allows you to both terminate immediately if it's mutual.

**Instructions:** Switch out [10 business days] to your company's preferences. Review to ensure it matches your desires. There are no legal limitations other than keeping good faith and fairness in mind. Switch out [10%] for your company's preferences. Review to ensure it matches your desires.

## 4. Confidentiality

**Purpose:** Under this confidentiality provision, your company cannot disclose your client's confidential information. Confidential information is not limited to banking information or launch dates but to any and all information that is not readily available to the public. This clause places the duty to identify confidential information as such on the Client.

**Instructions:** None.

## 5. Subcontractors

**Purpose:** Sometimes you need a little extra help on a project. This clause allows you to utilize subcontractors on Company projects if needed without having to get client approval.

**Instructions:** None.

## 6. Decision-Making and Limitation of Liability

**Purpose:** The limit of liability clause ensures that your Client will not bring any claims against your company related to your company's participation in contracted services. This clause is extremely friendly to the protection of your company and serves as a release from liability against your Client.

**Instructions:** None.

## 7. Indemnification

**Purpose:** An indemnification clause assures that your clients will defend your company against all claims brought against you related to the services performed for your client. To indemnify means to "defend" or "hold harmless," so here, the client agrees to cover your losses if they do something that causes you harm or causes a third party to sue you. Think of this clause as your safety net against claims brought against your company.

**Instructions:** None.

## 8. Results Not Guaranteed

**Purpose:** This clause is a catch all to make clear that the Company does not guarantee results whether it's for income, revenue, quotas, new clients, or anything else.

**Instructions:** None.

## 9. Cybersecurity

**Purpose:** In the 21st century, hackers are everywhere. This clause protects the Company from liability if a third party hacks the client's account or steals the client's information. It is not your duty to provide optimal security but to reasonably safeguard the Client's account information.

**Instructions:** None.

## 10. Capacity as Independent Contractor

**Purpose:** This clause expressly states that your company serves as an independent contractor of the client. This is needed to clarify that you are not working as an employee of the client.

**Instructions:** None.

## 11. Compliance with GDPR and Other Laws

**Purpose:** You are not an attorney, and this clause should serve as a reminder to the client that it is your role to provide consulting services – NOT legal advice. Ultimately, it is the Client's duty to be in compliance with any applicable laws, including GDPR (General Data Protection Regulation, an important law in the EU).

**Instructions:** None.

## 12. Failure to Perform

**Purpose:** As a business owner, you can potentially run into situations where you're not able to fulfill your end of the deal with your Client. As listed in the contract, sometimes illness or acts of God (earthquake, flooding, pandemic, etc.) make your obligations impossible to be completed. Under this provision, your Company must seek out a viable replacement, i.e. another consultant, to satisfy your duties you contracted to complete.

**Instructions:** None.

## 13. Deliverables

**Purpose:** As the clause states, it is your goal and duty to deliver all deliverables to the Client laid out in Schedule A. If your deliverables do not conform to the specifications laid out in Schedule A, the Client has the right within (15) days of delivery to notify you. This can also be helpful for you if a Client comes back several weeks or months complaining about a work product since there was only a 15 day window to make such a request.

**Instructions:** This clause is optional so you can remove if deliverables are not part of your agreement.

## 14. Change in Specifications

**Purpose:** This provision explains how to handle situations when clients change their scope of services. This is to ensure you and your Client remain on the same page as to expectations of each other.

**Instructions:** None. Whenever you run into this situation, make sure to obtain all requests for changes in specifications from clients in writing.

## 15. Nonsolicitation Agreement

**Purpose:** Put simply, this nonsolicitation clause ensures that your client will not solicit your employees or subcontractors to go work for your client. This clause ensures integrity between your company and your client that your client will not steal employees out from under you within a one-year period of termination of the contract.

**Instructions:** None.

## 16. Nondisparagement

**Purpose:** This clause is designed to protect you from your clients disparaging you, your employees, and/or your company whether it be to other potential clients directly or online.

**Instructions:** None.

## 17. Severability

**Purpose:** The severability clause allows the main part of the contract to remain in effect even if certain clauses are illegal or unenforceable. On the off chance that a clause is unenforceable, this provision guarantees that one bad clause does not break or “sever” the deal completely. This is one of those “boilerplate” clauses that’s really important.

**Instructions:** None.

## 18. Waiver

**Purpose:** In the case that your company or your client desires to waive or modify a section within this contract, you may do so, but it must be in writing and signed by both parties. It is imperative that these waivers and modifications are written and signed by both parties to protect your company if the waiver was ever challenged by your client. This is another boilerplate clause that's very important to include in a Client Agreement.

**Instructions:** None. Whenever you run into this situation, make sure to obtain all requests for waivers or modification from clients in writing.

## 19. Prevailing Party

**Purpose:** This clause explains if your company or the client is responsible for attorneys' fees. If there is a dispute that requires retaining attorneys, whomever prevails from the dispute will be reimbursed for their attorneys' fees. This clause is incredibly important should you need to retain an attorney as it makes it more cost effective because now your Client may have to reimburse you for legal fees.

**Instructions:** None.

## 20. Governing Law

**Purpose:** This clause clarifies what laws will govern this contract. Contract laws vary state-to-state, so the contract must clarify what state laws govern this particular agreement.

**Instructions:** Replace **[CHOOSE STATE]** with your state and county of your company's primary location.

## 21. Entire Agreement

**Purpose:** The purpose of this clause is to ensure that all of the terms and conditions of your agreement with your client is set out in a single contractual document. An entire agreement clause promotes certainty of obligations and prevents either party from relying on conversations or preconceived notions outside this contract.

**Instructions:** None.

## 22. Dispute Resolution

**Purpose:** This sets out a detailed protocol if there is a dispute. This scheme is designed to start with mediation (a voluntary negotiation process) and then end in arbitration (where an arbiter is used to make the final determination instead of a jury using the normal court system). This can save you lots of money on legal fees.

**Instructions:** Replace [County, State] with your state and county of your company's primary location. This is where your mediation or arbitration will take place.

## 23. Electronic Signature and Counterparts

**Purpose:** To allow you and your client to sign this agreement with the same power and authority as signing in person.

**Instructions:** None.

## SIGNATURE BLOCK

**Purpose:** To clarify who is obligating themselves to these terms and also to actually take the final step in reaching agreement. All of your hard work does little good when you go to collect on an unpaid invoice if you do not have a signed copy of this agreement, so be sure to get it signed and keep a copy.

**Instructions:** Lastly, insert your business name, name of owner/president, and name of client in the signature block. It is important to always sign your name as a representative of the LLC and not just individually. This maintains the liability protection you are getting with your LLC. For example, sign: "Wesley Henderson, Member" (or otherwise designate you are signing on behalf of the LLC and not as an individual. Finally, have the contractor sign and date.

## Schedule A: Services

**Purpose:** This is where you detail the exact expectations of your agreement. The rest of the agreement can be treated as the same terms over and over. Here is where you will do the most customization for each specific agreement.

**Instructions:** Be as detailed as possible in typing in all of the duties and expectations of the contractor.

# Alternate Language

*Alternate Policy - For Project Based Billing*

## 1. Fees

Client agrees to pay Company at a rate of Client agrees to pay [50%] upfront nonrefundable fee at the commencement of the project (“Initial Fee”). The final fee shall be paid upon completion of the Services. Failure to make payment within 15 days of the completion of the Services shall result in a 10% late fee that shall recur every 30 days thereafter.

# Optional Clauses

## 1. Content and Social Media

Company is not liable for any content posted on behalf of Client. It is the Client's sole responsibility to ensure compliance with applicable laws. Additionally, Company is not liable for any content posted by third parties on a platform created or monitored by Company or in response to content posted by Company.

**Purpose:** Social media is powerful. This clause states that the Company is not liable for content posted on behalf of your clients. Clients may (and probably will) ask for prior approval of all content, and this clause provides them with that right. Additionally, if you subcontract a project out, you are not liable for any content posted by the subcontractor or in connection to them.

**Instructions:** None.

## 2. Portfolio

Client agrees to allow Company to use Client's name as part of Company's portfolio online or in any other medium at Company's discretion. Client hereby grants an irrevocable license to Company to use Client for purposes of advertising except that Company agrees not to disclose otherwise confidential information of Client.

**Purpose:** Intellectual property is defined as intangible creations such as trade secrets, industrial design, and rights associated with a patent or trademark. Here, this clause gives the ownership of intellectual property to the Client for all work arising out of the work the Company was hired to perform.

**Instructions:** If there are aspects of your work that you wish to retain ownership of, these need to be specified by stating "except..."

## 3. Invoicing Automatic Charge

Client agrees to be automatically charged for monthly or annual fees unless notified 7 days in advance.



## 4. Expenses

“Expenses. Company may incur additional costs and expenses in the delivery of Services such as account fees, subcontractor costs, and other expenses. Client agrees to pay reasonable and necessary expenses incurred by Company in connection with providing Services as agreed upon by the Parties or stated in Schedule A.”

**Purpose:** The Expenses clause explains that you will not out-of-pocket fees that you incur while delivering Services to Client. This could be any sort of fee such as an account fee or

**Instructions:** List out the specific foreseeable, additional costs to you wish for your client to pay for. *This will likely change client-to-client, so tailor this provision appropriately for each new client.*