

**Consultant
(Agreement for the Engagement
and Provision of Services)
Direct**

The Parties to the Agreement made this day dd/mm/yyyy (the "Effective Date")

Agreement

In consideration of the payment of the Fees by the University to the Consultant, the Consultant shall provide the Services subject to the terms and conditions of the Agreement.

Between

Company: University of Westminster a company incorporated in England and Wales with Reg No: 0977818 at the registered address of 309 Regent Street, London, England, W1B 2HW ("the University")

And

[delete as appropriate]

PSC Consultant **company name** a company incorporated in England and Wales with Reg No: **number** at the registered address of: **address** ("Consultant")

Self-employed Consultant **self-employed name** an individual who is in business on their own account at the address of: **address** ("Consultant")

Whereas:

- A** The university wishes to engage the services of a Consultant from time to time.
- B** The Consultant is a limited company or a self-employed sole trader who is an independent consultant in business on their own account.

Notice

In signing this Agreement, it is deemed that both parties have read and understood the terms and conditions overleaf and agree to be bound by them in their entirety. In the event that the Agreement is not signed by one or either party both parties will be bound by the Agreement if acceptance of it can be inferred by conduct.

Signed for and on behalf of

University of Westminster

Signed for and on behalf of

Consultant's Company Name/Self-employed name

signature **dated**

signature **dated**

Print name **Position**

Print name **Position**

Terms and Conditions

Definitions

For the purposes of this Agreement the following words and phrases shall have the following meanings:

"Agreement"	shall include the Agreement, the Terms and Conditions and the Statement of Works.
"Consultant"	means an individual self-employed sole trader, a limited company, partnership or entity that contracts to provide the Services as named in the Agreement and unless otherwise clear from the context the expression "Consultant" shall also refer to and include any individual or employee, officer or representative who is supplied by the Consultant, where the Consultant is a limited company.
"Effective Date"	means the date the Agreement commences unless the Agreement commences by earlier provision of the Services.
"Fees"	the Fee paid to the Consultant by the University.
"Personal Service Company"	or PSC is a limited company supplying the services of one individual who is both a director and majority shareholder.
"Services"	means any work, goods, services, advice, consultancy to be provided by the Consultant.
"Schedule of Works"	the specific commercial provisions for the Services that are provided as stated in Schedule 1.

1. General

- 1.1 This Agreement constitutes the entire agreement between the parties and supersedes any previous agreement whether verbal, written or by conduct to which this matter refers. The Consultant warrants that, in agreeing to enter into this Agreement, it has not relied on any statement or representations made by the University.
- 1.2 Any variations or alterations to this Agreement in whole or in part will only be valid if they are expressed in writing and agreed and signed by both parties.
- 1.3 Where there is a conflict between these terms and the Schedule of Works ("SOW") the SOW shall take precedence over these terms.
- 1.4 The headings are for information only and shall not constitute any part of this Agreement.

2. The Rights and Obligations of the Consultant

- 2.1 The Consultant:
 - 2.1.1 Shall work in a professional manner and to a standard commensurate with the level of expertise that the Consultant has and the University requires;
 - 2.1.2 Has the suitable qualifications, skills and expertise which are required by the University to satisfy the specifications of the Project which has been undertaken;
 - 2.1.3 Does not discuss the rate of pay or any other remuneration that the Consultant receives from the University as a result of the work undertaken pursuant to this agreement, with any of the University's employees or other individuals who provide services to the University;
 - 2.1.4 Will act in accordance with any rules and regulations which not to do so would be a breach of health and safety legislation and any security measures of the University;
 - 2.1.5 Conducts themselves in a manner which shall not be detrimental to the reputation of the University or which may result in financial loss or damage to the University; and
 - 2.1.6 will provide any necessary equipment at its own expense and ensure that all tools and other equipment which the Consultant utilises in connection with the Assignment are in good working order and that (without limitation) any such computer equipment and associated software are compliant and licensed and contain up-to-date and effective virus protections. Any corruption or loss of data caused by the actions or inactions of the Consultant must be rectified by the Consultant at its own cost; and

- 2.1.7 has the legal right to work in the United Kingdom and shall upon request provide evidence in accordance with the Asylum and Immigration Act 1996. In accordance with this obligation the Supplier shall indemnify the University against a breach of this clause.
- 2.2 Whilst the method of work shall be that of the Consultant, the Consultant shall comply with all reasonable requests by the University to abide by the procedures and quality standards.
- 2.3 At no time will the Consultant be deemed to be an employee or agent of the University. Specifically, this is intended to be a non-employee / employer relationship to the extent permitted by law.
- 2.4 The Consultant will supply its services under a contract for services either as a self-employed sole trader or through their own personal service company ("PSC").
- 2.5 The Consultant shall notify the University within 7 (seven) days in writing of any circumstances affecting the legal status of the Consultant.
- 2.6 In the event of a dispute, the Consultant shall notify the University in writing within 7 (seven) days of the event occurring detailing the manner of the complaint. The University will make all reasonable efforts to settle the dispute in a timely manner.
- 2.7 All defects, deficiencies or under-performance of the Services, which are in the reasonable opinion of the University directly attributable to the Consultant, shall be remedied by the Consultant who shall bear all the costs of such remedy.
- 2.8 The Consultant warrants that it will not at any time:
- 2.8.1 supply its services through a Managed Service Company within the meaning of s.61B Income Tax (Earnings and Pensions) Act 2003 and shall indemnify the University for non-compliance with the relevant legislation;
- 2.8.2 use a tax scheme or the like that is not proven to be legitimate and fully compliant with the requirements of the tax authority of the relevant country where tax is to be paid.
- 2.9 *Off payroll (IR35)*
- 2.9.1 The Consultant warrants that they will comply with the legislation in Chapter 10 Part 2 ITEPA 2003 specifically, section 61U – Information to be provided by the worker.
- 2.9.2 In the event that the information in s.61U is not provided, the Consultant acknowledges and agrees that the University may be obliged to make the deemed direct payment and the appropriate deductions for tax and national insurance.
- 2.9.3 If in making the determination for the Status Determination Statement (SDS) the University requires information from the Consultant, the Consultant warrants that it will provide true and accurate information within 7 days of receiving the request. If the information provided is deemed to be fraudulent, the Consultant will become liable for any deductions as the deemed employer.
- 2.9.4 In the event that the University makes a determination that the legislation in Chapter 10 applies ('inside IR35'), the Consultant acknowledges and agrees that the University is obliged to make the deemed direct payment and the appropriate deductions for tax and national insurance.
- 2.9.5 Where the University has issued an SDS to the Consultant, the Consultant shall immediately or within 48 hours provide a copy of the SDS to the agency, where applicable.
- 2.9.6 Where the off payroll legislation does not apply and/or Chapter 8 ITEPA 2003 (IR35) does apply, the Consultant warrants that they will take reasonable care to assess their employment status and provide a determination with reasoning to the University before the contract begins.
- 2.10 In the event that the Consultant is deemed to be an employee or is an umbrella company worker you agree that by signing this contract you voluntarily agree to opt-out from the relevant provisions of the Working Time Regulations currently in force and thereby agree to work more than the average 48 hours per week maximum where necessary. In the event that you wish to cancel the opt-out at any time, you must give the University 1 (one) months' notice in writing to do so.

3. The Rights and Obligations of the University

- 3.1 The Services shall be provided on a non-exclusive basis and the Consultant shall be free to enter into contracts to provide services to third parties provided that such a contract does not place it in breach of this Agreement.
- 3.2 Where there is an overpayment of Fees or where there is a dispute over the Services provided, the University shall be entitled to withhold such sums from the Fees which might otherwise be due. In respect of this the University shall be entitled to satisfy such sums by way of set-off.

4. Payment Terms

- 4.1 The University agrees to make payment to the Consultant for any undisputed invoices in accordance with the Payment Terms as stated in the SOW and the Agreement is not intended to give rise to or constitute a contract of employment.
- 4.2 The Consultant will not be entitled to receive any holiday pay, sick pay, long service or annual leave or any other similar employment related entitlement from the University.
- 4.3 The invoicing terms will be as stated in the SOW.
- 4.4 All invoices shall specify the registration number for HMRC Value Added Tax where applicable or the equivalent where the Consultant is providing Services in a country where the levy of an equivalent charge is legally required before payment of the Fees. This clause shall not apply where a Consultant is providing Services in a country which is not subject to a Value Added Tax charge or its equivalent.
- 4.5 Charges on the invoice are to be shown exclusive of VAT which, if applicable, are to be included as a separate item and charged at the rate prevailing at the time.
- 4.6 Payments will be made by BACS to the Consultant's designated bank account in GB Sterling unless the parties agree otherwise.
- 4.7 The Consultant will not be permitted to claim any expenses from the University of Westminster unless they have been expressly agreed in writing and signed by both parties.

5. Term and Termination

- 5.1 This Agreement shall commence from the Effective Date or if undated or unsigned shall be deemed accepted if the Consultant performs any services for the University.
- 5.2 The Agreement shall continue for so long as the Consultant is providing the Services to the University, as stated in the SOW, unless terminated under the provisions of this clause.
- 5.3 the University may terminate the Agreement by notice with immediate effect in the event that:
- 5.3.1 The Consultant is in breach of its obligations under the Agreement and fails or is unable to remedy such breach at the Consultant's expense within 7 days after having received notice in writing to do so;
- 5.3.2 The Consultant in the opinion of the University does not have the suitable skills or ability to perform the Project, is guilty of incompetence, serious or persistent negligence in provision of the Services or fails or refuses after written instruction to provide the Services in a professional manner;
- 5.3.3 The Services have not been provided to the University in accordance with the Agreement for a period of more than 5 working days other than those days mutually agreed upon; or
- 5.3.4 The Consultant goes into insolvent liquidation or makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.
- 5.4 Other than for cause as stated in Clause 5.3, this Agreement may be terminated without cause by the University by giving the notice period as stated in the SOW.
- 5.5 The Consultant may terminate the Agreement by notice with immediate effect in the event that:
- 5.5.1 the University is in breach of its obligations under the Agreement and fails or is unable to remedy such breach at the expense of the University within 7 days after having received notice in writing to do so;
- 5.5.2 the University fails to accord the Consultant reasonable access to premises, equipment, personnel or any other necessary information required for the Services to be performed; or
- 5.5.3 the University goes into insolvent liquidation or makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

5.6 Any termination shall be without prejudice to any rights or remedies which have accrued up to the date of termination or which shall accrue thereafter.

6. Assignment & Substitution

6.1 Neither party has the right to assign this Agreement without express mutual consent.

6.2 The Consultant may substitute with another provided that the University is reasonably satisfied that the proposed substitute possesses the skills, expertise and knowledge necessary to perform the Services and that the proposed substitute consents in writing to abide by the terms and conditions of this Agreement. For the avoidance of doubt, the substitute will be paid by the Consultant.

6.3 The Consultant may use an assistant to help with project tasks at their discretion.

6.4 The cost of any specific training of the substitute needed in order to perform the Services will be at the expense of the Consultant.

7. Mutuality

7.1 The parties to this Agreement both agree that there is no obligation outside of this Agreement to provide to or accept from the other party any other work in any form. Neither party wishes to create or imply any mutuality of obligation between themselves either in the course of or between any performance of the Services or during any notice period. The University is not obliged to pay the Consultant at any time when no work is available during this agreement.

8. Confidentiality

8.1 The Consultant is aware that in the course of business it will have access to and be entrusted with information in respect of the business and financing of the University and its dealings, transactions and affairs and its clients, temporary and permanent workers and applicants and similar information concerning its client's temporary workers and applicants, all of which information is confidential.

8.2 The Consultant shall not (except in the proper course of providing the Services) during or at any time after the Agreement term:

8.2.1 divulge to any person whatever or otherwise make use of any trade secret or confidential information concerning the business or finances of the University or its clients, temporary workers or applicants or any like details relating to its clients or potential clients, candidates, temporary workers, Consultants, applicants, any matter or Agreement or tender in the negotiation stage and all confidential information held on the University's database;

8.2.2 make any copy, abstract or summary of the whole or any part of any document or confidential information belonging to the University except where expressly authorised to do so in the proper performance of the Services;

8.2.3 make contact with or communicate with any members of the press or media or anyone so connected on behalf of the University or otherwise publish any information purporting to represent the University without the prior consent of the University. Failure to comply with this clause may constitute a breach of Agreement.

8.3 On termination of the Agreement or at any time during the course of the Agreement at the request of the University, the Consultant is required to deliver to the University all papers, documents (whether written, computer readable or otherwise), keys, the University cars and all property belonging to the University. If so required by the University the Consultant shall certify in writing that all such documentation and materials have been delivered up to the University and/or certify in writing that there are no security devices, passwords or details of the University's computer system, security system, accounting or administrative systems which have not been given to the University.

8.4 The restrictions in this clause 8 above shall not apply in respect of any information which is or has become public domain (otherwise than by a breach by the Consultant of this clause) or which the Consultant is required to disclose by any court or competent authority or which by virtue of the Agreement are part of the Consultant's own skill and knowledge.

8.5 These provisions are considered to be fair and reasonable and necessary for the protection of the University's business but in so far as it is deemed that any part of these provisions are not reasonable or enforceable that part shall be severed from the remaining provisions which shall remain in force.

8.6 The Consultant agrees that they will sign a separate agreement for confidentiality and non-disclosure if requested to do so by the University.

9. Intellectual Property Rights

[Delete either Licence or Transfer where applicable.]

- 9.1 [or] Licence of IP – Any Intellectual Property Rights written, made or discovered by the Consultant in the performance of the Services pursuant to this Agreement shall remain vested in the Consultant who will licence such IP to the University. If the University requires ownership they are advised to have a separate agreement with the Consultant.
- 9.1 Transfer of IP - the Consultant agrees that all Intellectual Property Rights written, made or discovered by it in the performance of the Services pursuant to this Agreement shall be vested in the University and on termination of the Agreement all such intellectual property shall be delivered up to the University.

10. Data Protection (GDPR)

- 10.1 By signing this Agreement, the Consultant understands and consents to the University processing, holding, storing or otherwise using their personal data including special category data (as defined in the Data Protection Act 2018) for recruitment, administration and other operational purposes.
- 10.2 Both Parties agree to comply with the provisions and principles of the Data Protection Act currently in force.
- 10.3 Where the Consultant is found not to have complied with the requirements of the Act, the Consultant will indemnify the University against any loss or claim by a third party.
- 10.4 The Consultant agrees that they will comply with any information security measures of the University and warrant that they have information security measures in place in their own business.

11. Indemnity and Insurance

- 11.1 The Consultant shall be liable for any and all loss, expenses, damages, injuries or costs including reasonable legal costs caused to the University arising directly or indirectly from the acts or omissions whether negligent or otherwise of any of its officers, representatives, employees or sub-Consultants and shall indemnify the University accordingly.
- 11.2 the University shall not be liable to the Consultant, whether in contract, under statute, tort (including negligence) or otherwise, for any loss of use, loss of profits, loss of revenue, loss of contracts or direct or indirect or consequential loss or damage arising which is suffered or incurred by the Consultant and which is directly or indirectly connected with this Agreement.
- 11.3 The Consultant shall be responsible for and keep the University indemnified against any liabilities, fines, penalties or interest:
- 11.3.1 arising from all tax and national insurance contributions and any other taxes or deductions payable in respect of the Services provided under this Agreement; and
- 11.3.2 in respect of any claim made under employment related legislation by the Consultant or an individual providing the Services.
- 11.4 The Consultant shall provide a valid insurance certificate for:
- 11.4.1 Professional Indemnity
- 11.4.2 Public Liability insurance at a commercially acceptable level; and
- 11.4.3 Employer's Liability insurance, where applicable, at a commercially acceptable level;
- 11.4.4 Class 1 Business Use car insurance for each Consultant, where applicable.

12. Severability

- 12.1 If any term or condition of this agreement should be held by a court to be wholly or partially invalid, void or unenforceable for any reason that part of the agreement shall not serve to affect any other provisions in the agreement and all provisions not affected shall remain effective and in full force.

13. Waiver

- 13.1 The failure to exercise or enforce any right conferred by this agreement does not constitute a waiver of that right nor does it operate to bar the exercise or enforcement of that right at a future date.

14. Frustration of the Agreement

14.1 Each party shall be released from their respective obligations and shall not be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing or any failure to perform any of their obligations under the Agreement if the delay was due to the occurrence of an event beyond the relevant parties reasonable control, including without limitation labour disputes involving that party. The party affected by such circumstances shall promptly notify the other party in writing as soon as is reasonably practicable detailing the cause of such failure or delay and specifying the date of commencement and likely cessation, if known, of the same.

15. Rights of Third Parties

15.1 Both parties agree that these terms shall not be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999 and this Agreement can be rescinded or varied by agreement between the parties without the consent of any such third party. For the purposes of this clause a third party means any person who is not party to this Agreement.

16. Notices

16.1 Any notice which is required to be given under this Agreement shall be given by pre-paid first class post or email to the contact details specified in the Agreement or as otherwise notified from time to time to the sender by the recipient for the purposes of this Agreement or to an address that is regularly used to communicate with the other Party.

16.2 Notices shall be deemed to have been given and served:

16.2.1 If sent by e-mail, at the time of despatch if despatched on a business day before 5.00 p.m. or in any other case at 10.00 a.m. on the next business day after the day of despatch, unless the transmission report indicates a faulty or incomplete transmission or, within the relevant business day, the recipient informs the sender that the e-mail message was received in an incomplete or illegible form; or

16.2.2 If sent by prepaid first class post, 48 hours from the time of posting.

17. Jurisdiction

17.1 This agreement is governed by English Law and the parties hereto submit to the exclusive jurisdiction of the English Courts.

SCHEDULE 1 Statement of Works

In the event of a conflict between the Terms and Conditions of the Agreement and the Statement of Works, the terms of the Statement of Works shall prevail.

Assignment Details	
Contract No.	[Enter Contract No.]
Main Location	[Specify Main Location]
Other Location	[Specify another location where the Consultant is required to provide the Services]
Description of Services	[Insert details of the Services]
Specific Skills	<p>The skills that are specifically required from the Consultant by the University are agreed as but not exclusive to:</p> <ul style="list-style-type: none"> • Knowledge and expertise of • Knowledge and expertise of • Knowledge and expertise of
Mandatory Qualifications, experience, training etc.	[Default: None specified by the University]
Notice Period from the University to Consultant	[Default: None]
Notice Period from Consultant to the University	[Default: None]
Work Records and Invoicing	
	MONTHLY [Delete as appropriate]
Invoicing Frequency	[Default: Monthly]
Payment Term	30 days from the date stated on the invoice.
Work Records and Invoice	Must be submitted within 4 (four) working days of the end of the month that the Services are provided.
	WEEKLY [Delete as appropriate]
Invoicing Frequency	[Default: Weekly]
Payment Term	30 days from the date stated on the invoice.
Work Records and Invoice	Must be submitted within 2 (two) working days of the end of the week that the Services are provided.
Fee Rate and Expenses	
Fee Rate	£ rate per Hour / Day plus VAT where applicable. (the "Fees")
Expenses	Travel, and subsistence (Clause 4.7)
Assignment Term	
Assignment Start Date	
Assignment End Date	

Status Assessment	
Status tool	CEST
Has a Status Determination Statement been supplied to the worker?	[Yes/No] [You must provide an SDS to a PSC by law but, it is good practice to supply one to a self-employed individual.]
Additional and Miscellaneous Terms	
Additional Terms and Conditions applicable	
Specific Insurance Requirements	
Professional Indemnity:	Cover confirmed: [Yes / No] Minimum cover: £1 million GBP

SCHEDULE 2

TO THE OWNER/DIRECTOR PROVIDING THE SERVICES

Name
Address

Date:

Dear Insert name

Please sign this letter to acknowledge and agree that you are fully aware that your status is 'self-employed' and that you are in business on your own account. You are not entitled to any employment style benefits as you are not an employee of the University.

You provide your services through a limited company or as a self-employed sole trader to the University and have not been advised or facilitated by the University to do so. You are responsible for the correct and appropriate level of tax payable as a result of providing your services and will ensure that such tax is paid to the correct authority.

If you have any queries with regards to this Agreement or if you are in any doubt as to your employment or tax status you are advised to seek independent legal advice.

Yours sincerely

Insert name

Signed by:

Insert name

Dated: _____