Contracting for Consultants

Basic Principles

- Use your own contract which you fully understand, consider amendments carefully
- Make sure your lawyer understands your business and any variations
- If using other party's contract clarify anything you do not understand
- Keep detailed records/lab books
- Look for brand building opportunities

Why Brand?

- Distinguish yourself from others
- Provide an easy way to describe your service
- Perceived value to customers
- Build value independent of you as an individual
- Open up expansion or franchising opportunities

Building a brand

- Need not be original product or service
- Elements must be understandable and reproducible
- Image must appeal to target audience
- Use must be widespread and consistent

Basic Contractual Contents

- Parties details
- What is to be done
- Who is to do it
- What is the timeline
- Any special conditions eg how is it to be done
- Financials
- Legally bits

The Parties

- Distinguish between individual and corporate entities
- Make sure you identify correct company
- Describe by address and sometimes company number
- Do you care if they assign?
- Are services to be carried out by named individual?
- Signing clause details

What is to be done?

- the more specific the better – clarify anything you do not fully understand (or the client does not)
- is this a single use or umbrella agreement?
- use schedules
- provide amendment procedure
- are any consents etc required
- what are the anticipated outcomes?

Who is to do what?

- Are you to cooperate with internal or other external suppliers?
- How are decisions to be taken? Eg project team
- Agents, sub contractors, employees
- Staff changes and assignment
- Ensure you are not liable or out of pocket if others fail you

Timeline

- “ time is of the essence”
- clarity
- are any actions dependent on the completion of others?
- handling delay
- “force majeure”

Any Special Conditions?

- use of templates
- attendance at specific meetings
- travel rules
- careful to avoid being deemed an employee
- insurance requirements

Financials

- Payment in instalments for long jobs
- 30 days etc
- interest for late payment
- success fees
- currency fluctuations
- expenses - be clear what is and is not included

Legally Stuff

- Confidentiality
- Intellectual Property
- Indemnities and liabilities
- No agency
- Non compete
- Choice of law
- Enforcement
- Termination clauses
- Severability and entire agreement

Confidentiality

- only if necessary
- can be one way or mutual
- need to exempt what is already in public domain or becomes public other than your fault
- may restrict to written material
- ensure can disclose if legally required
- keep copy to monitor compliance
- time limit good

Intellectual Property and Record Keeping

- What are they providing?
- What are you providing?
- What results will they

  -own?

  -have access to?

  -be able to use and in what manner or for what purpose?

Yours and Your Clients

- Background
- Foreground
- Protect
- Use

- Your contract must be drawn up to take each element into account

Be careful of...

- Exclusive licences
- Rights to sublicense
- Rights to use “freely”
- Disclosing ideas when bidding for work
- Developing ideas in collaboration with others
- Non-contractual extensions or pre-contractual work
- Using their data unnecessarily

Indemnities and Liabilities

- try only to be responsible for what you can control and pass on to any subs
- try to put a cap on liabilities
- get an indemnity for whatever client does with your work and don’t warrant fitness for purpose
- can’t exclude personal injury or death arising from negligence
- exclude special and indirect damages

Enforcement

- ensure appropriate and affordable
- negotiation
- litigation
- arbitration
- expert determination
- mediation

Termination

- expiry
- breach
- force majeure / impossibility
- just want to stop
- insolvency

- ensure consequences are appropriate to reason

bonaccord

Patricia Barclay

www.bonaccord.eu

0131 202 6527