



**Adapt.** Chart new markets.

SAMPLE

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# **CONSULTANCY AGREEMENT**

between

**::= CAPTAIN CICERO CONSULTING PTY LTD**  
(ABN 98 765 432 1)

and

**BLUE OCEAN LAW GROUP PTY LTD**  
(ACN 618 974 879)

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**CONTENTS**

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**1. Definitions and interpretation 5**

**2. Engagement as Consultant 10**

**3. Provision of the Services 11**

**4. Consultant’s staff 11**

**5. Pricing and invoicing 12**

**6. Payment 13**

**7. GST 14**

**8. Confidentiality 14**

**9. Non-disparagement 16**

**10. Intellectual Property 17**

**11. Insurance 18**

**12. Indemnity 18**

**13. Termination 19**

**14. Restraints 20**

**15. Notices 22**

**16. General 23**

**SCHEDULE 1 | Standard and duties 25**

**SCHEDULE 2 | Non-compete and non-solicitation details 27**

**ANNEXURE 1 | Quote 28**

**EXECUTION 29**

Date .....

## Parties

<b>Consultant</b>	<b>::= CAPTAIN CICERO CONSULTING PTY LTD (ABN 98 765 432 1)</b> Address: C/- Work Club, L8/99 Elizabeth Street, Opp. NSW Supreme Court, Sydney NSW 2000 Fax: +61 (0) 2 9475 0075 Email: cc@blueocwan.law  (the <i>Consultant</i> )
<b>Company</b>	<b>BLUE OCEAN LAW GROUP PTY LTD (ACN 618 974 879)</b> Address: C/- Work Club, L8/99 Elizabeth Street, Opp. NSW Supreme Court, Sydney NSW 2000 Fax: +61 (0) 2 9475 0075 Email: ahoy@blueocean.law  (the <i>Company</i> )

## Recitals

- A The Company has agreed to engage the Consultant to provide the Services to the Company, and the Consultant has agreed to provide the Services to the Company, as an independent contractor on the terms of this agreement.
- B This agreement is intended to be legally binding and the parties agree to give effect to the arrangements contemplated by it.

## Operative provisions

### 1. Definitions and interpretation

#### Definitions

- 1.1 The following definitions apply in this agreement unless the context requires otherwise:

***Authorised Third Party Disclosee*** means any Representative of a Disclosee to whom that Disclosee discloses Confidential Information in accordance with clause 8.

***Business*** means the business of the Company from time to time and includes the particular business activities specified in paragraph 3 of Schedule 2.

***Business Day*** means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

**Change of Control** means, in respect of a particular entity, a person who Controls that entity ceasing to do so or another person acquiring Control of it.

**Charges** means Fees and Expenses.

**Claim** means any claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse (whether in contract, tort, under statute or otherwise).

**Company Policies** means all policies, procedures and guidelines approved and adopted by the Company from time to time.

**Company Property** means, at any particular time, any property of the Company (including any laptop, mobile phone or other equipment, Confidential Information, Intellectual Property, documents, software, digital information (wherever stored), keys and/or access cards) that is in the possession, custody or control of the Consultant and/or its staff, or to which the Consultant and/or its staff otherwise have access, at that time.

**Confidential Information** means all information relating to a party, any customer, clients, suppliers, distributors or joint venture partners, of the party and/or any of the business or financial affairs of any of them, including:

- (a) any information that is specifically designated by any of them as confidential;
- (b) any information which, by its nature, may reasonably be regarded as confidential;
- (c) any information relating to any:
  - (i) agreements, arrangements or terms of trade with any existing or prospective customers, clients, suppliers, distributors or joint venture partners or other contractual counterparties;
  - (ii) customers, clients, suppliers, distributors, joint venture partners, employees, technologies, products, services, proposals, market opportunities, business or product development plans, pricing, financial position or performance, capabilities, capacities, operations or processes; or
  - (iii) Intellectual Property Rights,of any of them; and
- (d) any note, calculation, conclusion, summary or other material derived or produced partly or wholly from any such information.

**Control** has the meaning given in Section 50AA of the Corporations Act.

**Copyright Act** means the *Copyright Act 1968* (Cth).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Default Rate** means a rate of interest of 5.00% per annum.

**Disclosee** means, in respect of any particular Confidential Information, any party that has received that Confidential Information (whether directly or indirectly) from another party.

**Discloser** means, in respect of any particular Confidential Information, any party that has disclosed or discloses that Confidential Information (whether directly or indirectly) to another party.

**Expenses** mean the expenses of the Consultant for which the Consultant is entitled to be reimbursed by the Company pursuant to clause 5.5.

**Fees** has the meaning given in clause 5.1.

**Governmental Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

**GST** has the same meaning given to that expression in the GST Law.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

**GST Law** has the same meaning given to that expression in the GST Act.

**In-Scope Work** means work that has been expressly and specifically designated as being within the scope of the Services.

**Input Tax Credit** has the meaning given in the GST Law.

**Insurance Policies** means:

- (a) workers compensation insurance cover;
- (b) professional indemnity or commercial general liability insurance cover; and
- (c) public liability insurance cover.

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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.

**Losses** means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character (including legal and other professional fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all:

- (a) liabilities on account of Tax;
- (b) interest and other amounts payable to third parties;
- (c) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and
- (d) all amounts paid in settlement of any Claim.

**Moral Rights** has the same meaning as that term has in Part IX of the Copyright Act.

**Non-Compete Area** means each region specified in paragraph 4 of Schedule 2.

**Non-Compete Period** means each period of time specified in paragraph 2 of Schedule 2.

***Non-Solicitation Period*** means each period of time specified in paragraph 1 of Schedule 2.

***Out-of-Scope Work*** means any work that is not In-Scope Work, including the work specifically described as being out of scope in the Quote (if any).

***Personal Information*** has the meaning given in the Privacy Act.

***Privacy Act*** means the *Privacy Act 1998* (Cth).

***Quote*** means the quote, proposal, work order or other similar document dated 17 July 2020 that is attached to this agreement as Annexure 1.

***Relevant IP*** means all Intellectual Property Rights that the Consultant makes, develops or conceives (whether alone or in conjunction with someone else, and whether during or outside normal working hours) in the course of, or arising out of, the provision of the Services and/or Consultant's engagement with the Company, including any Intellectual Property Rights so made, developed or conceived:

- (a) using the premises, resources or facilities of the Company or any of its customers, clients or suppliers;
- (b) in the course of, as a consequence of, or in relation to, the provision of the Services by the Consultant and/or the performance (whether proper or improper) of the Consultant's duties and responsibilities to the Company under this agreement or otherwise;
- (c) as a direct or indirect result of any person's access to any Confidential Information or Intellectual Property Rights of the Company or any of its customers, clients or suppliers; or
- (d) in respect of any of the products or services of the Company or any of its customers, clients or suppliers, or any alterations, additions or methods of making, using, marketing, selling or providing such products or services.

***Representatives*** means, in respect of a person, the employees, officers, consultants, agents and professional advisers of that person.

***Serious Misconduct*** means any of the following on the part of the Consultant and any of its staff or representatives who are involved in work related to the Services:

- (a) committing any material or persistent breach of this agreement;
- (b) any conduct that, in the reasonable opinion of the Company, constitutes a repudiation of this agreement;
- (c) committing, or being involved in any way in, any act of dishonesty, fraud, misrepresentation, theft or assault:
  - (i) in the course of its engagement with Company; or
  - (ii) that affects any customer, supplier or other contractual counterparty of the Company or its suitability for engagement with the Company;
- (d) misleading the Company in any material way;
- (e) being convicted of a criminal offence that, in the reasonable opinion of the Company, affects the Consultant's suitability for engagement as a contractor to the Company

under this agreement or brings, or may bring, the Company and/or the Consultant into disrepute;

- (f) ceasing to be legally entitled to reside or work in Australia;
- (g) disobeying or refusing to carry out any lawful and reasonable direction given by or on behalf of the Company in relation to the Services;
- (h) undergoing a Change of Control without the prior written consent of the Company;
- (i) being intoxicated or under the influence of drugs while providing any of the Services;
- (j) engaging in any conduct that unduly causes risk to the health or safety of any person; or
- (k) wilfully neglecting its duties or gross incompetence.

**Services** means the services that the Consultant has agreed to provide to the Company as more specifically described in the Quote.

**Stamp Duty** means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above, but excludes any GST.

**Start Date** means the date of this agreement or such other date as the parties may agree in writing.

**Tax Acts** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

**Tax or Taxation** means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, Stamp Duty and GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

**Works** means all programs and programming and literary, dramatic, musical and artistic works within the meaning of the Copyright Act.

## **Interpretation**

1.2 The following rules of interpretation apply in this agreement unless the context requires otherwise:

- (a) headings in this agreement are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this agreement is prepared by (or on behalf of) that party;