

contractually bind the client to third parties and may limit the client's liability for acts committed by the consultant, even if committed while performing services under the agreement.

Term and Termination. The term of the agreement is typically quantified in months or years. Most likely it will coincide with the compensation schedule. The client should also protect its interests by allowing it to terminate the agreement under certain conditions. Typically these conditions are (1) breach of confidentiality or non-solicitation provisions of the agreement, or (2) illegal activities that affect consultant's performance under the agreement. Without this right to terminate the agreement, the client is obligating itself to the consultant even if the consultant has taken actions contrary to the client.

Rights and Data. The consulting agreement should address the use of the consultant's work. Some agreements allow the client complete use of the physical product delivered by the consultant and may not include an assignment of copyright on the assumption that the consultant will want to retain the copyright. Clauses like the one included in the *Decision File Sample Consulting Agreement File C5-84* do include an assignment of copyright. The best position for the client is to get complete ownership of not only the tangible documents that the consultant prepares, but also the copyrights to those documents. However, the consultant may demand considerable more compensation to assign this right making it impractical. It is very important, however, for the parties to clearly understand their respective rights relating to not only the physical documents but the copyrights as well.

Conflict of Interest; Non-Solicitation. Clients should consider including a non-competition clause in the agreement, at least for the term of the agreement and within the market area of the client. Any non-competition clause must be reasonable to be enforceable. Most consulting agreements also include a statement that the consultant will not solicit the client's employees for at least the term of the agreement.

Miscellaneous Provisions. After spending considerable time negotiating the services to be performed, the compensation, the ownership rights to the work product, etc. it is often easy for parties to neglect the miscellaneous provisions that one typically finds at the end of the agreement. The parties should always pay careful attention to what law will govern the agreement, how disputes will be resolved, and, probably most importantly, the assignability of the rights and obligations under the agreement. Typically, the rights and obligations are not assignable since the client is hiring the consultant because of the consultant's specific expertise and the consultant is agreeing to perform the services only for the client. There may be situations, however, where an assignment may be necessary, i.e. the client merges with or into another entity.

Consequences of Breaching a Consulting Agreement

When a consultant breaches his or her consulting agreement, he or she is subject to remedies available to the client. These remedies include equitable relief and monetary damages. An injunction against the breaching consultant helps prevent any further breach of the agreement. It may also be possible to enforce performance under the agreement - especially if the consultant was hired to perform specific duties that only he or she has the knowledge and ability to complete. However, if a court does not require specific performance because the services can be performed by another party or for other reasons, the court will likely grant injunctive relief and award monetary damages.

Summary

Consulting agreements are frequently used in today's business world and vary in complexity from simple, one-page documents to very complex, 20+ page documents. The terms detailed above, however, should be considered as basic requirements for any consulting agreement. With the key terms detailed in a written agreement, the parties will have reasonable expectations about services to be performed under the agreement and the consequences if those expectations are not met.