

HEALTHCARE PROFESSIONAL CONSULTANCY AGREEMENT





Cover Page

INTRODUCTION:-

- A. The Consultant is an expert consultant and adviser in the field of **[specify field]**; and
- B. **[Insert Your Company Name]** wishes to retain the services of the Consultant in order to provide Consulting Services; and
- C. **[Insert Your Company Name]** appoints the Consultant and the Consultant agrees to the appointment on the terms and conditions of this Agreement.

THE PARTIES SHOWN BELOW AGREE AS FOLLOWS:-

This Agreement shall take effect from **[insert start date]** and shall continue in force until **[insert end date]** unless it is terminated earlier pursuant to clause 4 of the Standard Terms and Conditions.

Parties	[insert entity] (we or us)	[Insert Name of HCP] (you, together with us, the parties and each a party)
Address		
Email		
Attention		
Signature		
Name & Title		
Date		

STANDARD TERMS AND CONDITIONS

1. APPOINTMENT

1.1. Under this Agreement, you are appointed by us to provide the services as detailed in the table below. For the services detailed in the table below, you will be compensated up to a maximum number of [specify maximum number of hours] hours and/or [specify maximum fees]. The hours and fees specified are maximum amounts only; there is no guarantee of a specific number of hours to be compensated.

1.1.1. XYZ, Venue, Date (NA-Number) [if details not yet available, add: Date and Location will be confirmed prior to the meeting / if no fee is being paid, add: you have agreed to perform these services without being paid by Company or You have agreed not to receive any compensation for this activity]

Maximum time anticipated for:

Preparation	00 hours
Travel	00 hours
Active Participation	00 hours
00 hours at \$ 000/hour	Maximum amount: \$ 0'000.00

1.1.2. XYZ, Venue, Date (NA-Number)

Maximum time anticipated for:

Preparation	00 hours
Travel	00 hours
Active Participation	00 hours
00 hours at \$ 000/hour	Maximum amount: \$ 0'000.00

1.2. In addition to the services specified above, we may request you to perform additional services during the term of this Agreement up to a maximum number of [specify maximum number of hours] hours and/or [specify maximum fees], in which case we will provide you with a Statement of Work (“SOW”) substantially in the form attached as Annex 1 detailing the additional services and applicable fees.

1.3. All services performed by you including any such additional services (“Services”), will be subject to the same terms and conditions of this Agreement.

1.4. You will be paid fees for the Services as set out in the table above and/or the SOW relating to the services in Question (“Fees”). Only those Services performed by you and specified in the table above or in a signed SOW will be compensated by us.

1.5. We have engaged you under this Agreement based upon your expertise in your field and your qualifications to perform the requested Services. Our selection of you has not been determined in any manner with regard to or in exchange for any agreement to use, purchase, recommend or influence the purchase of [Insert Your Company Name] products, or the value or volume of any business generated between us.

2. YOUR OBLIGATIONS

2.1. You undertake to perform your obligations under and in accordance with this Agreement and:

- (a) in good faith and with the reasonable care and skill of an individual of your qualifications and as required by the nature of the Services;
- (b) in accordance with all relevant laws and regulations and professional codes and standards that are applicable to you and the provision of the Services; and
- (c) in accordance with any of our lawful company policies of which we inform you in advance.

2.2. You represent that you have not received or will not receive compensation from any other individual, company, or organization for the services.

- 2.3. You represent and warrant that you have obtained all necessary approvals from your employer to enter into this Agreement [, as evidenced by your employer’s countersignature on Annex 5 to this Agreement]. You further represent and warrant that all appropriate notifications have been made to any relevant regulatory authority and that you are not aware of any reason that would prevent you from properly performing your obligations under this Agreement. In addition, you represent and warrant that no third party has any claim or entitlement, whether by virtue of any contract of employment or otherwise, to take ownership of or other rights in any IP Rights that may be created by you in the performance of the Services.

Except where we have already received written approval from your employer, the medical device industry association code of conduct requires us – in the interest of transparency – to notify your employer that you are performing services for us. Our notification will state that you have been engaged to perform services for us, and we will provide a general description of those services. We will not normally provide information on the fees to be paid to you but reserve the right to do so if such details are requested by your employer.

- 2.4. You shall ensure that any presentations, publications or other materials that you may prepare, use or generate in connection with the education or training activities undertaken by you for or on behalf of us or our affiliates do not promote or otherwise recommend any off label use of [Insert Your Company Name] products. For that reason, you shall provide a draft copy of such materials in advance to us for regulatory review, and you agree to make changes that we require to comply with this paragraph.
- 2.5. You agree to make all required disclosures to ensure transparency in connection with any compensation you receive from, or financial interest you have in, [Company]. This includes disclosing your relationship with [Insert Your Company Name] in any presentations, publications or trainings (a) that are performed at the request of [Insert Your Company Name] and/or (b) that discuss any [Insert Your Company Name] product.
- 2.6. We are a member of AdvaMed and [insert other association names] and are committed to full compliance with all applicable laws, regulations and industry codes in the countries in which we operate. You agree to comply with such laws, regulations and codes to the extent that they are applicable to your activities under this Consultancy Agreement.

3. FEES AND EXPENSES

- 3.1. Fees to be paid by us to you will be in consideration for the Services provided by you and the transfer of any IP Rights pursuant to clause 6 of this Agreement. Please note that we will only compensate you for actual time spent performing activities required to satisfactorily perform the Services up to the maximum limit set forth in the table in clause 1 or in the applicable SOW.
- 3.2. Fees and expenses will be paid to you, following our receipt of a satisfactory and complete work activity report (“WAR”; Annex 2) and supporting documentation from you, [and a fee note/invoice], to a bank account, as notified by you on the attached “Wire Transfer Request Form” (Annex 3), in the country in which you reside. Please submit any WARs and all supporting documentation as soon as possible after the work has been performed.
- 3.3. We will directly organize and pay for reasonable travel expenses (airfare, ground transportation, hotel and group meals) necessary for you to perform the Services. These expenses will only be provided for you and not for any guests or others that are not a party to this Agreement, and only for the period of time necessary to perform the Services. We will reimburse you for minor travel expenses (e.g. taxis, mileage) and meals that could not have been paid directly by us. For any such expenses, we will provide reimbursement upon submission of original, detailed receipts. Hotel health club, mini-bar, in-room movie charges or any entertainment-related expenses are not reimbursable. Where attendance by you at the location is only partly related to the Services under this Agreement, we will only pay a fair proportion of your expenses.
- 3.4. You are responsible for paying all relevant taxes or other deductions (**Deductions**) due in respect

of any Fees or other payments received from us. We are entitled to set-off any costs or liabilities for Deductions that we may have to pay on your behalf against any sums owed by us to you.

4. TERM AND TERMINATION

- 4.1. The term of this Agreement is set out on the Cover Page.
- 4.2. Either party may terminate this Agreement by providing the other with 30 days written notice, provided that any notice which you may give to us pursuant to this clause 4.2 shall not be effective to bring this Agreement to an end before you have completed the performance of any Services specified in the table in clause 1 or in respect of which an SOW has been agreed and signed by you unless both parties confirm in writing that the Services in question need not be completed.
- 4.3. We may terminate this Agreement with immediate effect by written notice to you if you:
- (a) materially breach any term of this Agreement or perform any obligation under this Agreement negligently or incompetently in our reasonable opinion;
 - (b) are convicted of any criminal offence;
 - (c) commit professional misconduct (as concluded by a professional body); or
 - (d) commit any act that, in our reasonable opinion, is likely to bring us or our affiliates into disrepute or otherwise damage our legitimate business interests.

5. CONFIDENTIALITY

- 5.1. You agree, during the term of this Agreement and for a period of five years from its expiry, to keep confidential your work product hereunder and all other non-public information given to you by us or on our behalf (**Confidential Information**), not to disclose the Confidential Information to any third party and only to make use of the Confidential Information in connection with the performance of your obligations under this Agreement or other agreement(s) with us or our affiliates.
- 5.2. Your obligations under clause 5.1 will not apply to any disclosure authorised by us or otherwise required by law or any information which is already in, or comes into, the public domain otherwise than through unauthorised disclosure by you.
- 5.3. As soon as practically possible following the expiry or termination of this Agreement or following a request from us, you will return to us all Confidential Information, documents, papers, materials, computer disks and other property relating to us or our affiliates (including all copies thereof) in your possession or under your power or control.
- 5.4. You consent to us and our affiliates holding and processing personal data relating to you for legal, personnel, administrative and management purposes and for or in connection with our legitimate interests. We will take steps to ensure that appropriate safeguards are in place to protect your personal data. We agree not to disclose this data to third parties except to the extent required by law.

6. INTELLECTUAL PROPERTY

- 6.1. You agree that all patents, trademarks, service marks, logos, trade names, internet domain names, copyright (including rights in computer software) and moral rights, database rights, utility models, rights in designs, rights in inventions, rights in know-how and other intellectual property rights, in each case whether registered (including applications for registration) or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world ("**IP Rights**") created by you in performing the Services will belong to us.

- 6.2. You will inform us immediately upon becoming aware of any IP Rights that arise in the course of the Services. If future IP Rights can be assigned in advance of their creation, then by this Agreement you assign all rights in any such IP Rights to us. For any IP Rights that cannot be assigned in advance of their creation, you agree to assign those IP Rights to us as and when they are created.
- 6.3. You will complete and sign any documents reasonably required by us (at our cost) in order to give us or our nominee the benefit of this clause 6 for no additional consideration. The obligation pursuant to this clause 6.3 does not extend to any IP Rights you have already created under your normal clinical practice or as part of your duties to your employer or any previous assignments for other sponsors.
- 6.4. You undertake that any IP Rights assigned to us under this Agreement arise from your own work and are free from any claims of ownership by a third party.
- 6.5. This Section 6 does not apply to Speaking&Teaching activities requested by **Company**; all other services are covered by this Section 6 unless otherwise expressly exempted in writing.

7. OTHER

- 7.1. **Amendments.** Amendments to this Agreement may only be effected by a document signed by both you and us.
- 7.2. **Third Party Rights.** Other than our affiliates, who may enforce the provisions of this Agreement for their benefit, no person who is not a party to this Agreement shall have any right under any statutory provision to enforce any of its terms.
- 7.3. **Status.** You are engaged under this Agreement as an independent contractor and nothing in this Agreement shall render you an employee, agent or partner of us or our affiliates.
- 7.4. **Notices.** Any notices to be given under this Agreement shall be in writing and signed on behalf of the party giving it and delivered by post or fax to the addresses listed on the first page of this Agreement or such other address as may be designated in writing. Notice may also be provided by email if receipt is acknowledged or demonstrated.
- 7.5. **Assignment.** You shall not assign, transfer, charge or otherwise deal with all or any of your rights or obligations under this Agreement without our prior consent. We may assign or otherwise transfer any or all of our rights and obligations under this Agreement to any of our affiliates.
- 7.6. **Invalidity.** Each of the provisions of this Agreement is severable. If any such provision is held to be or becomes invalid or unenforceable in any respect under the law of any jurisdiction, it shall have no effect in that respect and the parties shall use all reasonable efforts to replace it in that respect with a valid and enforceable substitute provision, the effect of which is as close to its intended effect as possible.
- 7.7. **Intentionally left blank.**
- 7.8. **Surviving Provisions.** The provisions of clauses 2.2, 2.3, 3, 5, 6 and 7 shall survive the expiry of this Agreement or its earlier termination pursuant to clause 4.
- 7.9. **Governing Law.** This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, the law of **[insert jurisdiction in which the HCP resides]**.
- 7.10. **Dispute Resolution.** Any dispute or claim arising out of or in connection with this Agreement, including breach, termination or invalidity of it shall be finally resolved by binding arbitration in **[insert location]**. The arbitration shall be conducted in the English language under the Rules of Arbitration of the International Chamber of Commerce (**ICC**) by a sole arbitrator appointed in

accordance with the Rules of the ICC. The arbitration proceeding shall be conducted in private and each party shall keep confidential the arbitration proceedings and all information, documents and materials disclosed to it in connection with the arbitration proceedings, or prepared by it for use in connection with the arbitration proceedings.

7.11. **Waivers, Rights and Remedies.** Except as expressly provided in this Agreement, no failure or delay by any party in exercising any right or remedy relating to this Agreement shall affect or operate as a waiver or variation of that right or remedy or preclude its exercise at any subsequent time. No single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy.

7.12. **Entire Agreement.** This Agreement together with any other documents referred to in this Agreement constitutes the entire agreement and understanding between the parties and supersedes all other agreements both oral and in writing between the parties (other than those expressly referred to herein).

ANNEX 1

FORM OF STATEMENT OF WORK

[Date]
[Address]

Dear [insert name of HCP]

[Insert [Insert Your Company Name] Contract Reference Number, if applicable]

We refer to the agreement between you and [insert [Insert Your Company Name] entity] dated (the **Agreement**). This letter is a Statement of Work as defined in the Agreement and sets out, in respect of this engagement, the Services that you will provide and the remuneration that you will receive (the **Engagement**). Capitalised terms used, but not defined, in this letter shall have the meaning given to them in the Agreement.

1. SERVICES

[The table below provides an example format for the way in which services to be provided by the HCP in respect of the Engagement may be recorded. This may be amended as required.]

Type of Services	e.g. speaking engagement, provision of training, attendance at seminar
Specific detail of Services	e.g. time and date where services will be performed, duration (generally, number of hours), specifics of topics/projects and preparation required
Location(s)	e.g. where the services will be performed
Timelines for completion	e.g. time and date for completion as appropriate and reporting procedure as necessary
Deliverables	e.g. tangible work product to be produced
Other	e.g. any other information relevant to the services not covered in the boxes above

2. FEES

For the satisfactory completion of the services and upon receipt of a complete and accurate work activity report [and fee note/invoice], we will compensate you for the actual hours performed, up to a maximum amount of [specify amount], at an hourly rate of [specify rate]. [We are pleased to confirm a single fee in respect of this Engagement of [insert amount and currency and specify whether fee includes or excludes any taxes]

You will not be compensated for any work completed outside of the scope as set out above.

3. EXPENSES

We will [not reimburse you for any expenses in connection with this Engagement] [reimburse your expenses in connection with this Engagement as set out in section 3 of the Agreement].

4. CONTACT DETAILS

If you have any queries in respect of this Engagement please contact:

[insert name of contract manager]

[insert address]

[insert email address]

[insert direct telephone number]

5. OTHER

Please countersign and date the enclosed copy letter and return it to my attention at the address listed in section 4.

We very much look forward to working with you on this Engagement.

Yours sincerely,

Name: [insert contract manager name]

Title: [insert contract manager title]

Agreed and accepted

Name: [insert name of HCP]

Date:

ANNEX 2

Work Activity Report for [Insert Your Company Name and Address]	Service Provider	
	Name:	
	Address:	

2012 Quarter Q1, Q2, Q3, Q4

***Activity Types**

- | | |
|---|--------------------------------|
| 1. Evaluation & Consultation | 5. Delivery of Presentations |
| 2. Time/Cost Reducing Enhancements | 6. Surgical Observers |
| 3. Promotional Materials & Publications | 7. Market Research Information |
| 4. Preparation of Presentations | 8. Travel |

Date (dd mm yy)	Activity Type*	Hours (HH:mm)	Description/Results
Total			(rounded to the nearest quarter)

(Please submit supporting documents.)

The undersigned certifies the above to be true and correct as of: _____ (Date)

Signature of Service Provider

Reviewed by the Contract Manager on: _____ (Date)

Signature of Contract Manager

Manager:

Forward completed form to the Contract

Name	
Company	
Street	
ZIP / City	
E-Mail	

ANNEX 3

Wire Transfer Request Form

Beneficiary: _____

Bank Name: _____

Bank Address: _____

Account Number: _____

BLZ: _____

SWIFT: _____

IBAN: _____

Sort Code: _____

Signature: _____

(Print Name)

Date: _____

ANNEX 4

Non-Employee Travel Reimbursement Form

[Your Company Name]

Non-Employee Travel Reimbursement Form

Date	
Name	
Address	
City, St. Zip	
Phone	()

Contract ID	
Event Title	
Event Dates	
Event Location	

ALL EXPENSES MUST HAVE ORIGINAL RECIEPTS ATTACHED IN ORDER TO BE REIMBURSED.

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	TOTAL
Date								
Airfare								
Taxi-Limo								
Rental car								
Parking								
Tolls								
Auto Mileage								
From:	km	km	km	km	km	km	km	
To:	km	km	km	km	km	km	km	
Travel Totals								
Breakfast								
Lunch								
Dinner								
Meal Totals								
Lodging								
Gratuities								
Miscellaneous								
Lodging & Miscellaneous Totals								
Daily Totals								

GRAND TOTAL

I CERTIFY THAT THE EXPENSES STATED ON THIS REPORT ARE ACCURATE AND TRUE.

Traveler's signature	Date	Contract Manager Approval	Date
		Cost Center:	Account no.:

ANNEX 5

EMPLOYER APPROVAL

The undersigned is a duly authorized representative of *[insert name of healthcare professional's employing institution]* ("**the Institution**"). By signing below, the undersigned confirms:-

1. that the Institution gives approval for *[insert name of healthcare professional]* to perform the Services at the request of **[Insert Your Company Name]** and to receive the Fees specified below as compensation for such services and payment or reimbursement of expenses incurred in performing such services; and
2. that the Institution will not claim or otherwise assert against **[Insert Your Company Name]** any rights or other interest in or to know-how, inventions, works or similar intellectual property conceived or developed by *[insert name of healthcare professional]* in the course of the performance of the Services.

Fees.....

[Insert name of healthcare professional's employing institution]

Duly represented by:

Name of authorized representative: _____

Signature: _____

Date: _____