

Agreement

DOCUMENT. COVENANT. ROAD MAP

L'viv IT Cluster Report, May, 2016

192 IT companies
88,4% outsourcing companies

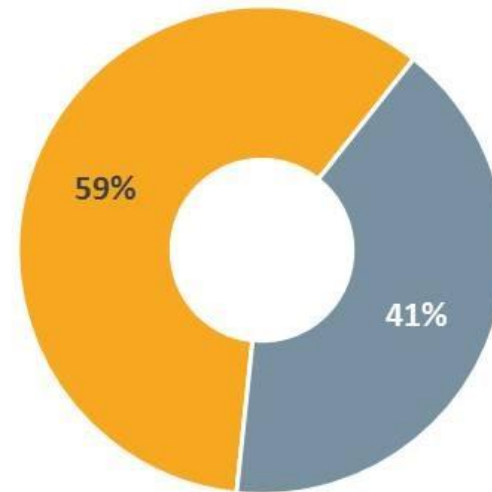


IT Market Directions

Core IT Captures a Higher Proportion of the U.S. Market

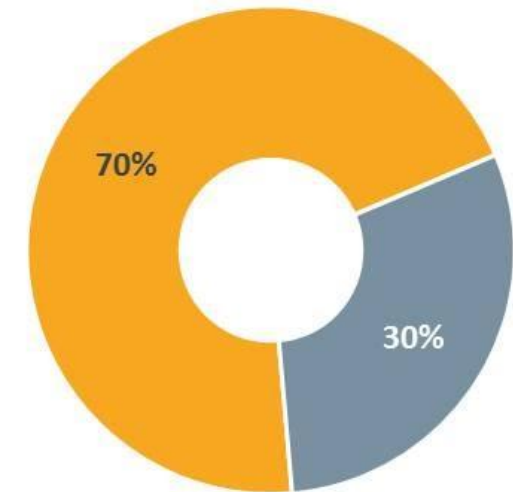
Based on 2016 revenue estimates at constant currency

Global IT Market



- IT HW, SW and Services
- Telecom Services

U.S. IT Market



- IT HW, SW and Services
- Telecom Services

Scope of services

Software development

Software localization

Testing services/quality assurance

Computer system data processing



Contract types

Software license agreement

Software support and maintenance agreement

Agreement for software development and licensing

Computer games development agreement

Demo license

Software distribution agreement

Hardware maintenance agreement

Agreement for web site hosting

Web site software development and support agreement

Trans border data flow agreement

Data processing agreement

Software services agreement

Which one is for you?



GO BACK TO WHERE IT ALL BEGAN.



ILLUMINATION PRESENTS
MINIONS

IN CINEMAS JUNE 26 BOOK NOW IN 3D & 2D

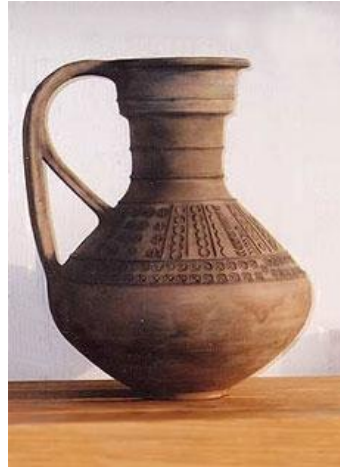
minions.tickets.co.uk

ILLUMINATION

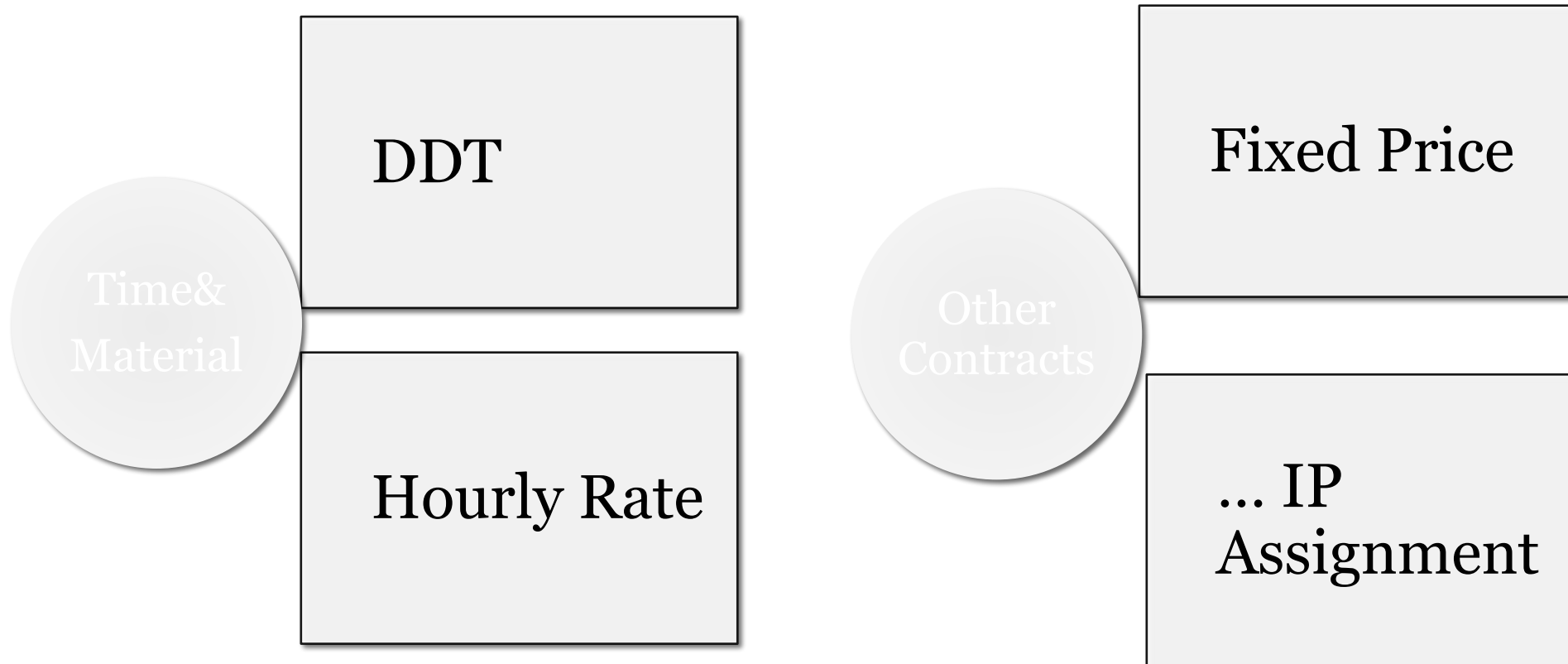
minionsmovie.co.uk [MinionsMovieUK](https://www.facebook.com/MinionsMovieUK)

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Which one is for you?



Contract Types (price)



Templates

Business model approach
Check list
Time
Resources

Future cooperation
forecast
Useful provisions



Comparison

Предмет договору

Ціна

Права і обов'язки сторін

*Право інтелектуальної
власності*

Відповідальність

Строк та порядок припинення

Інші умови

Реквізити сторін

Печатка

Recitals

Definitions

Term ant termination

Payments (fees)

*Ownership (Pre existing materials, third
parties rights, Client's materials,
Deliverables)*

Warranties

Liability (cap or limitation)

Non-closes, Data Protection

Liquidate damages

Indemnities

Notices

Governing Law, Litigation

General (Assignment, Survivals, Waiver of
the Rights, PoA)

Time is of the essence

Предмет договору
Ціна
Права і обов'язки сторін
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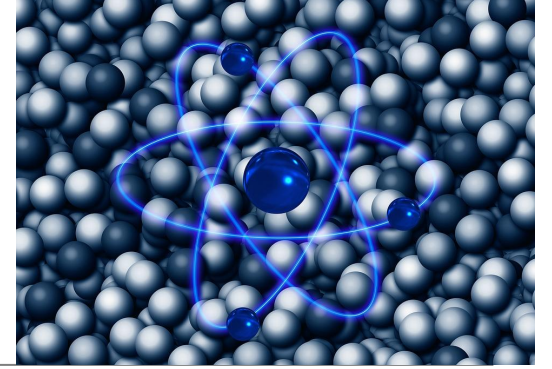
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Elements



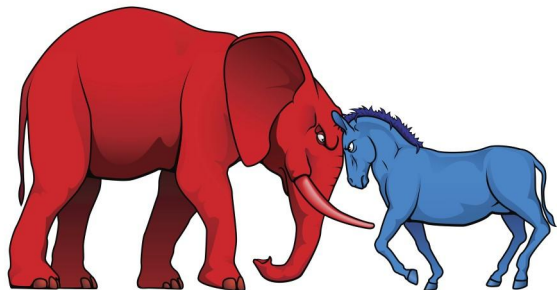
“Contract body”- contractual terms and covenants

- Particular check lists
- Addendum (Annex, Appendix, Exhibit, etc)
 - SOW
 - Policies (Customer and Consultant)
 - Awareness of (Confidentiality, Subcontractor’s status)

Parties

Contractual Parties

- Client/Customer/Company/
 - Its
Affiliates/Assignees/Successors
- Vendor/Supplier/Contractor
 - Employees, subcontractors



THIS CONSULTING AGREEMENT
("Agreement"), effective _____, 200__,
is between _____ (the
"Company"), and NAME Inc., a Delaware
corporation (the "Consultant").

This agreement (the "Agreement" or "MSA") made
as of this __th day of _____, 2016 (the
"Effective Date"), by and between CLIENT'S
NAME Inc., a Delaware corporation having its
principal place of business at 0000 N West St
0000, TOWN, DE CODE, USA (the "COMPANY"),
and NAME ("Contractor"), a corporation having its
principal place of business at 0000 STREET 0000,
TOWN, COUNTRY, register number

Statuses 1 (IRS35 avoidance)

Independent Contractor Status.

The Consultant and the Company agree that the Consultant is an independent contractor and shall not be treated for any purpose as an employee or agent of the Company and **does not have any right to any benefits the Company grants its employees, and shall not be authorized to act on behalf of or bind the Company in any way.**

Furthermore, it is understood that the **Company shall not be responsible for payment of workers' compensation, disability benefits, unemployment insurance, or medical benefits for the Consultant's personnel, nor shall the Company withhold any amount from the compensation payable to the Consultant.**

Statuses 2 (type of relationship)

Independent Contractors.

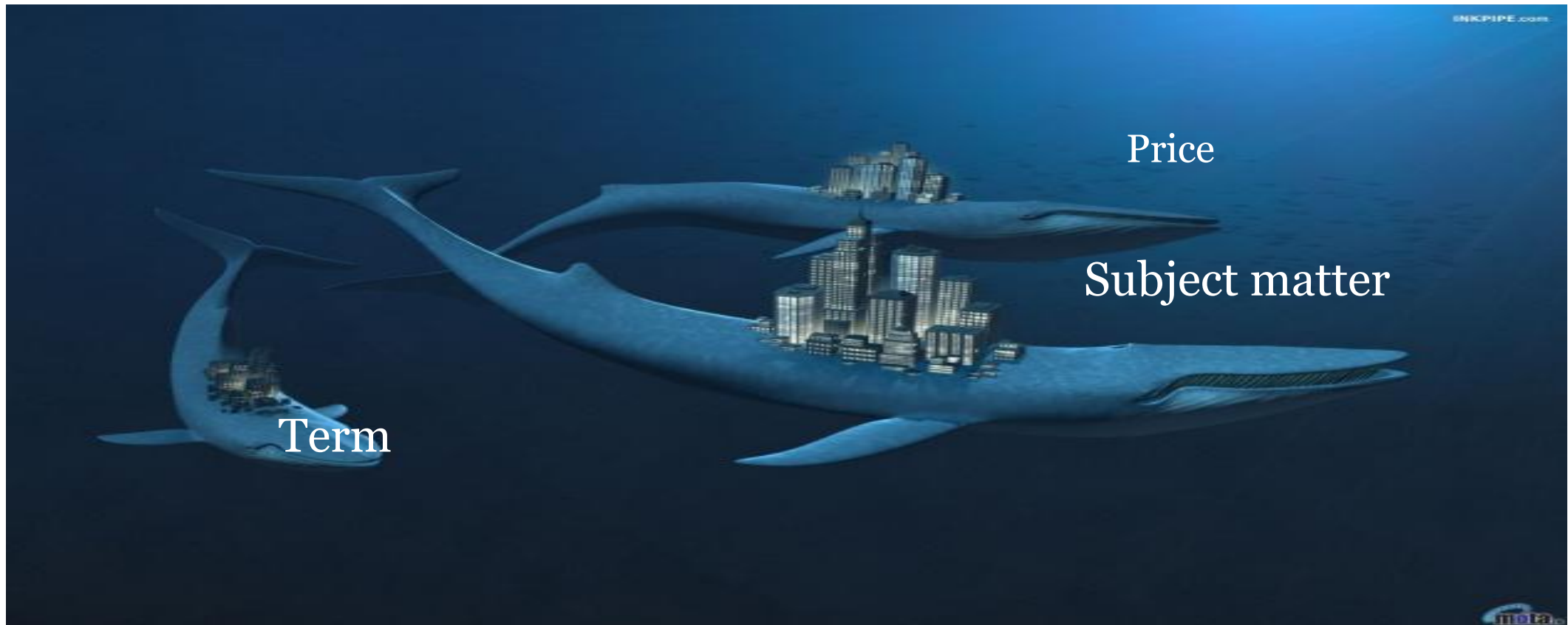
Neither this Agreement, nor any terms and conditions contained herein, will be **construed as creating a partnership, joint venture, principal/agent relationship, employer/employee relationship or franchise relationship between the Company and Contractor.** Contractor agrees that it will act as an independent contractor and it will not hold itself out as a legal Contractor or representative of Company, or attempt to bind Company to any third-party agreement, without the express written prior approval of the Company

Statuses 3 (solely obliged player)

Subcontractors:

Vendor may subcontract any part of its obligations under this Agreement to COMPANY and its related legal entities provided that Vendor shall remain **solely liable for its performance in accordance with the terms of this Agreement**. The Vendor shall make subcontractors aware of the confidentiality provisions contained in Section 9 hereof and obtain a written acknowledgment of compliance.

Contractual Terms: traditional approach



SUBJECT MATTER

Services
Warranties
Ownership (PreExM, IPR for Deliverables, TPR)
Indemnification + Liability

TERM (PERIOD)

Agreement expiration

Set/not set, refer to Addendums or particular provisions

Notices

Changes to Scope or SOW, Team modification, Litigation, Assignment/ChControl

Other periods (payment terms and delays)

FEES

Price for Services (refers to Addendum)

- Monthly payable fee/Fixed Amount/
- Pre-payments/Deposit - returnable payment
- Employment expenses: payment in case of vacations, leaves, illness
- % of increase or discount– automatically or by additional approve

Additional payments

- Travel expenses, additional expenses (any other, non predictable or overestimated costs)
- Specific Parties Fees, penalties

UNIVERSAL CLAUSES

Delivery	Finances	IT	Marketing	Legal
Subject Matter	Payment terms	SWE and additional	Advertising note	IPR (TPR, PreExM)
Warranties	Deposit/pre-p	Software/Hardware	Competition	Jurisdiction
Deliverables	Fees increase	Data Protection		Governing Law
Working hours	Travel fees	Information Security	HR	Indemnification
Notices	Licenses		Solicitation	Confidentiality
	Additional costs		Confidentiality	Non Solicitation
				General terms

Services

Subject Matter

Consultant shall

- perform services to design, develop and test (QA) and maintain software....
- develop Customer's products
- prepare deliverables, undertake software development work and perform other services for Customer and Consultant is willing to perform such services on the terms and conditions set forth herein
- provide professional services of engineers and consultants in the sphere of software development, and/or software quality assurance, and/or software localization services, and/or computer system data processing

Refers to SOW or Addendum

Clearly determined or general meaning

Warranties

Subject Matter

I. General/commercial

It has, and will have throughout the term of this Agreement, any and all licenses and permits required in connection with the performance of the services pursuant to this Agreement.

It is free to provide the Client with the services, upon the terms contained in this Agreement, and there are no legal, commercial or contractual restrictions preventing the Vendor from fully performing all of his duties hereunder.

Warranties

Subject Matter

II. Corresponding to Services

The services rendered under this Agreement shall be provided in a competent and workmanlike manner in accordance with the level of professional care customarily observed by highly skilled and experienced professionals rendering similar services

The quality and content of the Services shall be equal to the level of quality and content of other services, deliverables, designs, products or software development work similar in nature to the Services which other respected consulting organizations would produce and also equal to the highest level of quality called for by the best practices of the consulting industry.

Warranties

Subject Matter

III. Corresponding to Deliverables

Consultant has title to and proprietary interest in the Deliverables resulting from the performance of the Services and the right and power to transfer such title and proprietary interest in the Deliverables to Customer, in accordance with the terms of this Agreement, free and clear of any liens, claims, or encumbrances, except any claim for payment of the Services.

Consistent with Specifications. Consultant warrants that the Deliverables and Services shall fully conform to and perform in accordance with the specifications set forth in the applicable SOW or other applicable specification document.

Ownership

Pre-existing materials

Third Parties Materials

Intellectual property Rights



Deliverables

Indemnification



Contractor shall

- defend, indemnify and hold harmless
- Company, its officers, directors, employees, sublicensees, Company clients and agents
- from and against any and all claims, losses, liabilities, damages, expenses and costs (including attorneys' fees and court costs) (a "Claim") arising

Indemnification

from or relating to:

- (i) any breach or alleged breach of any representation, warranty or other provision of this Agreement by Contractor,
- (ii) any infringement or alleged infringement by Contractor, the Professional Services or any Deliverable of any third-party Intellectual Property Rights;
- (iii) any personal injury or property damage caused by the negligence or willful misconduct of Contractor (including its employees, agents, or subcontractors); or
- (iv) Contractor's delivery of Professional Services or Deliverables to third parties, including Company's clients.
 - Company shall give Contractor written notice of any such Claim and Company has the right to participate in the defense of any such Claim at its expense. In no event shall Contractor settle any Claim without Company's prior written consent (which consent shall not be unreasonably withheld).

Indemnification

The indemnities contained herein are conditioned upon

(a) written notice of the details of such claims by the indemnified party to the indemnifying party,

(b) the indemnifying party's right to sole control of the defense and all related settlement negotiations of all such claims, related lawsuits or proceedings, and

(c) the indemnified party's provision to the indemnifying party of such reasonable assistance, information, and authority as is reasonably necessary to perform the above.

In no event shall the indemnified party be **responsible for any settlement or compromise made without the indemnified party's consent**, and the indemnifying party shall not enter into any settlement or compromise which shall affect the indemnified party without the indemnified party's consent, which consent shall not be unreasonably withheld.

Liability

Subject Matter

Limitation

Parties ACKNOWLEDGES AND AGREES THAT THE other Party SHALL NOT BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS OR ANY INDIRECT, SPECIAL, **INCIDENTAL OR CONSEQUENTIAL DAMAGES** OF ANY KIND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



Liability

Subject Matter

Liability cap

Subject to applicable law, neither Company nor any of its officers, managers, Members, Contractors or other person or entity shall be liable to Contractor for any claims or liability arising out of Contractor's engagement to provide Professional Services hereunder. In no event will Parties' liability exceed in the **aggregate the amounts paid by Company** to Contractor in conjunction with the SOW pursuant to which the liability claim arose.

Liability

Subject Matter

Exclusion

Neither Party excludes liability for

- (a) death or personal injury caused by the negligence of that Party, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation;
- (c) any other liability which may not be excluded by law;
- (d) particular covenants under Article X (non solicitation, non compete, non disclosure, indemnification).

Terms

Agreement expiration

- Set/not set, refer to Addendums or particular provisions

Notices

- Changes to Scope or SOW, Team modification, Litigation, Assignment/ChControl

Other periods (payment terms and delays)

Termination

For Cause

1. If CONSULTANT neglects or fails to perform or observe any of CONSULTANT's obligations hereunder and cure is not effected by CONSULTANT within fifteen days following its receipt of cure notice issued by Client; or
2. If a judgment or decree is entered against CONSULTANT approving a petition of an arrangement, liquidation, dissolution or similar relief relating to bankruptcy or insolvency and such judgment or decree remains unvacated for thirty days; or
3. Immediately, if CONSULTANT shall file a voluntary petition in bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to bankruptcy, insolvency or other relief for debtors or shall seek or consent or acquiesce in the appointment of any trustee, receiver or liquidation of any of CONSULTANT's property.

Termination

For Convenience

For Convenience. Client may terminate this Agreement at any time without cause upon submitting to CONSULTANT a written notice to terminate. Upon receipt of such notice, CONSULTANT shall immediately cease to incur expenses pursuant to this Agreement, unless otherwise directed in Client's termination notice. CONSULTANT shall promptly notify Client of costs incurred to date of termination. Payment of any outstanding amounts shall be made in accordance with Section 2 hereof.

If, however, Client wishes to terminate the contract for Convenience while CONSULTANT is rendering services under SOW that specifies longer termination notices, Client shall provide Agreement termination notice under conditions of respective SOW.

Termination

For Convenience

By CONSULTANT: CONSULTANT may terminate this Agreement at any time without cause upon submitting to Client a written notice to terminate. Effective date of termination shall be no earlier than thirty (30) days following the date of the termination letter unless otherwise mutually agreed. CONSULTANT's final invoice shall be submitted within five (5) days of termination date. Notwithstanding the above, CONSULTANT shall be obligated to complete any Services under any existing SOW, unless otherwise agreed to by Client in writing.

Fees -payments

Price for Services (refers to Addendum)

Monthly payable fee/Fixed Amount/

Pre-payments/Deposit - returnable payment

Employment expenses: payment in case of
vacations, leaves, illness

% of increase or discount– automatically or by
additional approve

Dedication models

40/5/8

S cost +
Fixed amount



Payments under invoice
10-60 days, depends on Client

Hourly rates

Value is the expertise

Timesheets

Acceptance

Payments after acceptance



Fixed price

Designated in SOW

Regarding to schedule/model/criteria

Pre-payments/Milestones

Change management



Universal Clauses

- Assignment/Change of Control/PoA
- Data Protection
- Waiver, Severability, “wording references” (headlining, capitalizing, entire document)
Force Majeure,

- Survival of obligations
- Notices in writing (DDT composition/increase/reduction/)

- Use in Advertising, Right to reuse
- Insurance clause

Universal Clauses

Confidentiality

Non-solicitation

Non-competition (Clients and inner)



Universal Clauses

- Governing law
- Jurisdiction
- Litigation

DEAL

Decide whether to negotiate

Determine type of negotiations style

Follow ethical and law standards

Develop your power

