

Consultancy Agreement Review

Whilst I cannot provide legal advice in relation to the agreement I can make sure you understand some of the clauses and point out those you should read and understand

- The hourly rate is the total to be paid for your hours and the range depends on the type of work. The agreement does not specify which type of work applies to which rate. Services are set out in the schedule and include- aged care, locum, private home visits and educational training. You should ask which rate applies to each of these services.
 - o Reference Schedule, page two of letter dated 21 July 2010, clause 4 of Agreement
- The agreement is not exclusive, so you are able to work as a nutritionist other than for ABC Pty Ltd - this is important and allows you to continue to do business in your own name or as an employee for other entities
 - o Reference clause 2.1- but the other work is not to interfere with providing services to ABC Pty Ltd so you should check what happens if there is a conflict eg you work for your existing employer Monday and ABC Pty Ltd assign you to a job on that day - what happens? Are you in breach of the agreement? I would ask if this is the case.
- The agreement allows you to subcontract the work to another suitably qualified person- this allows them to treat you as a contractor rather than an employee. You need their consent however if you were to utilize this option
 - o Reference clause 2.2
- You are responsible for rectifying any defects in service you provide
 - o Reference clause 3.1(f)- this allows them to treat you as a contractor rather than an employee but you should be aware that this might require work being performed without payment if the service is deemed to be defective
- You are to comply with ABC Pty Ltd policies and procedures. You should ask generally what this requires and if possible read them before you sign.
 - o Reference clause 3.2
- You are required to submit time sheets and invoices
 - o Reference clauses 3.3 and 4.2
 - o The consultancy fee of \$50 to \$95 is exclusive of GST. If you are registered for GST then 10% should be added on the invoice. I would suggest that you are not required to be registered for GST as your turnover will be less than \$75,000. However in future years should your turnover exceed this amount that you should register for GST.
- Invoices will be paid within 14 days of date- this is important for your cash flow and is acceptable.
 - o Reference clause 4.3
- It is made clear that you are not an employee of ABC Pty Ltd and you do not have tax withheld from payment, no annual or sick leave etc, no superannuation and you need to have your own insurance. I have suggested you set aside approximately 20% of your gross income for future tax obligations.
 - o Reference clause 4.4 (c) and 10
- You are required to obtain professional indemnity insurance to cover \$5million of claims. This is high in terms of my own experience and I would make sure that the quotes you obtain cover you for this amount. You should ensure that insurance covers the items listed in clause 5.1 and 5.3. You must provide a copy of the insurance certificate to ABC Pty Ltd.
 - o Reference Clause 5 and schedule
- You must keep all information obtained confidential and any information remains the property of ABC Pty Ltd.

- o Reference clause 7
- Whilst you can continue your own business during the life of the agreement you are restrained from soliciting other contractors or employees of ABC Pty Ltd for this business and customers of ABC Pty Ltd. This is normal business practice. This restraint is for up to 12 months after the agreement is terminated.
 - o Reference clause 8
- The agreement can be terminated by yourself or ABC Pty Ltd with 4 weeks notice. Termination without notice by ABC Pty Ltd is provided in clause 9.1- you should read this through.
 - o Reference clause 9