TEMPLATE

Retainer Agreement

This is a template, not legal advice

This document is a general-purpose template provided for information only. It is not legal advice, it does not create a lawyer–client relationship, and nobody has reviewed it against your situation.

Laws differ by country, state and province, and they change. A clause that is standard in one place can be unenforceable — or illegal — in another. Terms that are ordinary between two businesses can be void in a consumer or employment context.

Read every clause before you use it, fill in every blank, and delete anything that does not apply. For anything high-value, unusual, or that you could not afford to lose a dispute over, have a qualified lawyer in your jurisdiction review it before it is signed.

How to use this template

1. Read it end to end and delete any clause that does not apply to you. Blanks are shown as a grey label on a line.
2. Need the other party to sign too, with an audit trail and a tamper-evident seal? That is what the paid product does.

Retainer Agreement

This Retainer Agreement (this "Agreement") is made on [Date] between [Client's full legal name] of [Client's address] (the "Client") and [Consultant's full legal name] of [Consultant's address] (the "Consultant"). The Client and the Consultant are each a "Party" and together the "Parties".

The Client wishes to engage the Consultant on a recurring, month-to-month basis for ongoing professional services, rather than for a single project with a fixed scope and a fixed fee. This Agreement governs that ongoing engagement and each period of it described in clause 3, until it ends under clause 8.

1. Scope of Services

The Consultant shall provide the following categories of services to the Client on an ongoing basis for the duration of this Agreement (together, the "Services"): [Describe the categories of ongoing work, e.g. monthly marketing strategy advice, ad-hoc email and call support, and a recurring performance review].

The Consultant shall perform the Services during each period described in clause 3, at times of the Consultant's own choosing except where a recurring meeting or deadline the Parties agree to requires otherwise. The precise mix of work within the Services may vary from period to period at the Client's request, provided it stays within the categories above and within the Hour Allocation in clause 3.

The following work falls outside the Services and is not covered by the Retainer Fee in clause 3: [List anything expressly out of scope, e.g. new website builds, litigation support, or work requiring a professional licence the Consultant does not hold].

The Consultant is under no obligation to perform work outside the Services. If the Client requests it and the Consultant agrees, the Parties shall record the additional scope and the fee for it in writing before that work begins.

2. Standard of Care and No Guarantee of Results

The Consultant shall perform the Services with the reasonable skill, care and judgement expected of a competent professional in the Consultant's field, and in compliance with the laws and professional standards that apply to the Services.

The Services are advisory in nature. The Consultant does not guarantee any particular outcome, result, saving, revenue, approval or other commercial benefit in any period, and no statement made in the course of the engagement is to be treated as such a guarantee. Recommendations rest on the information the Client supplies and on the conditions known at the time they are given. The Client remains responsible for deciding whether to act on a recommendation and for the consequences of that decision.

The Client shall give the Consultant timely access to the information, personnel, systems and materials the Consultant reasonably needs for each period, and shall ensure that what it supplies is accurate and complete. The Consultant is not liable for any deficiency in the Services that is caused by inaccurate, incomplete or late information from the Client.

3. Retainer Fee, Hour Allocation and Rollover of Hours

In consideration of the Services, the Client shall pay the Consultant a fixed fee of [Monthly retainer fee and currency] for each [Retainer period, e.g. calendar month] of this Agreement (each, a "Period", and that fee for a Period, the "Retainer Fee"), payable in advance under clause 4. The Retainer Fee is due for a Period whether or not the Client uses the full Hour Allocation for that Period, and is not reduced if the Client uses less than the Hour Allocation.

The Retainer Fee for a Period includes up to [Included hours per period, e.g. twenty (20) hours] of the Consultant's time (the "Hour Allocation"). The Consultant shall keep a written record of time spent on the Services in each Period and shall make that record available to the Client on request.

Rollover of unused hours. Of the Hour Allocation for a Period, the Client may carry forward to the immediately following Period only up to [Rollover cap, e.g. five (5) hours, or state that unused hours do not roll over] left unused (the "Rollover Balance"). A Rollover Balance must be used within the single Period immediately following the Period in which it arose. Any part of a Rollover Balance not used by the end of that following Period, and any part of a Period's Hour Allocation left unused that is not carried forward under this clause, expires at the end of that Period and is forfeited.

A forfeited hour is not refunded, credited against a future Retainer Fee, or paid out in cash. Hours the Consultant works in a Period beyond that Period's Hour Allocation and any available Rollover Balance are additional hours, billed at [Overage hourly rate and currency] per hour and invoiced under clause 4. The Consultant shall notify the Client before knowingly exceeding the Hour Allocation and any available Rollover Balance for a Period, except where the Client has requested urgent work that cannot reasonably wait for that notice.

On termination of this Agreement under clause 8, any remaining Hour Allocation or Rollover Balance for the Period in which termination takes effect is forfeited without refund or credit, except that hours already worked in that Period remain payable in full under clause 4.

4. Payment Terms

The Consultant shall invoice the Client for the Retainer Fee for each Period [Invoice timing, e.g. on or before the first day of that Period] , and shall invoice separately, [Overage invoice frequency, e.g. monthly in arrears] , for any overage hours billed under clause 3 and any expenses reimbursable under clause 5. Each invoice is payable within [Payment period, e.g. fifteen (15) days] of its date, by [Accepted payment method, e.g. bank transfer to the account named on the invoice] . Fees are exclusive of value added tax, goods and services tax, sales tax and any similar tax, which the Client shall pay in addition where it applies.

The Client shall notify the Consultant of any disputed item on an invoice within [Dispute window, e.g. seven (7) days] of receiving it, giving its reasons. Amounts that are not disputed in that period remain payable on the due date.

If an undisputed amount remains unpaid more than [Grace period, e.g. ten (10) days] after its due date, the Consultant may charge interest on the outstanding balance at [Late payment interest rate, e.g. 1.5% per month] and, on written notice, may suspend the Services until the account is settled. A suspension under this clause does not put the Consultant in breach, does not extend the deadline by which a Rollover Balance must be used under clause 3, and does not entitle the Client to a refund of, or credit against, a Retainer Fee already paid for the Period in which the suspension occurs.

5. Expenses

The Client shall reimburse the Consultant for reasonable out-of-pocket expenses necessarily incurred in performing the Services, limited to the following categories: [Reimbursable categories, e.g. travel, accommodation, and third-party software or data purchased for the engagement] .

Any single expense above [Approval threshold, e.g. $250] requires the Client's written approval before it is incurred. The Consultant shall submit receipts or equivalent records with the invoice on which the expense appears, and reimbursable expenses are payable on the same terms as fees.

6. Ownership of Work Product

"Work Product" means the reports, analyses, recommendations, designs, code, models and other materials the Consultant prepares specifically for the Client under this Agreement. On payment in full of the Retainer Fee and any overage fees for the Period in which a given item of Work Product was produced, the Consultant assigns to the Client all right, title and interest in that Work Product, and shall sign any document the Client reasonably requires to give effect to that assignment.

The Consultant retains ownership of everything it brings to the engagement or develops independently of it — its methods, frameworks, templates, tools, know-how and any pre-existing material (together, "Consultant Materials"), including any improvement made to them during the engagement. Where Consultant Materials are embedded in the Work Product, the Consultant grants the Client a perpetual, worldwide, non-exclusive, royalty-free licence to use them as part of the Work Product for the Client's own business purposes.

Nothing in this Agreement prevents the Consultant from providing services of the same or a similar kind to any other client, or from using the general skills, experience and knowledge it acquires during the engagement, provided it complies with clause 7.

7. Confidentiality

Each Party may receive non-public information from the other in connection with the engagement, in any form and whether or not marked confidential ("Confidential Information"). It includes the Client's business, financial, customer, pricing, personnel and technical information, the Work Product, the Consultant Materials, and the terms of this Agreement.

The receiving Party shall keep Confidential Information in confidence, use it only for the purposes of this Agreement, and disclose it only to those of its personnel, contractors and professional advisers who need it and who are bound by obligations at least as protective as these. These obligations continue for [Confidentiality survival period, e.g. three (3) years] after this Agreement ends, and for as long as the information remains a trade secret under applicable law. A Party may disclose Confidential Information where required by law, regulation or court order, and shall where lawful and practicable notify the other Party first. On request, or when this Agreement ends, each Party shall return or destroy the other's Confidential Information, except for copies it must retain by law or under its ordinary backup and record-retention practices, which remain subject to this clause for as long as they are held.

The obligations in this clause do not apply to information that the receiving Party can show:

(a) was already lawfully known to it, without any duty of confidence, before the other Party disclosed it;

(b) is or becomes public through no act or omission of the receiving Party;

(c) is lawfully received from a third party who is free to disclose it; or

(d) was independently developed by the receiving Party without reference to the Confidential Information.

8. Term and Termination

This Agreement takes effect on [Start date] and continues for successive Periods, renewing automatically at the end of each Period, until it is terminated under this clause.

Either Party may terminate this Agreement for convenience by giving the other at least [Notice period, e.g. thirty (30) days] written notice before the start of the Period in which termination is to take effect. Either Party may terminate it immediately on written notice if the other commits a material breach that is not remedied within [Cure period, e.g. fourteen (14) days] of written notice describing the breach, becomes insolvent, or ceases to carry on business. The Consultant may also terminate immediately if an undisputed invoice remains unpaid [Non-payment termination period, e.g. thirty (30) days] after its due date.

Clause 3 governs what happens to any unused Hour Allocation and Rollover Balance on termination. Otherwise, on termination the Client shall pay the Retainer Fee for any Period that has begun before termination takes effect, any overage hours already worked in that Period, and reimbursable expenses incurred up to the termination date, and the Consultant shall deliver the Work Product produced up to that date. Clauses 6, 7, 9, 10, 11 and 13 survive termination, together with any other provision that by its nature is intended to survive.

9. Indemnification

The Consultant shall indemnify the Client against any loss, liability, damage, cost and reasonable legal expense the Client incurs arising from the Consultant's negligence or wilful misconduct, from a breach by the Consultant of clause 7, or from a claim that the Work Product infringes a third party's intellectual property rights. This indemnity is subject in all respects to clause 10.

The Client shall indemnify the Consultant against any loss, liability, damage, cost and reasonable legal expense the Consultant incurs arising from the Client's negligence, wilful misconduct or breach of this Agreement, from the Client's use of the Work Product for a purpose other than the one for which it was prepared, or from a third-party claim relating to a decision the Client took in reliance on the Services.

A Party seeking indemnity shall notify the other promptly on becoming aware of the claim, allow the indemnifying Party to control its defence and settlement, and give reasonable assistance at the indemnifying Party's expense. No settlement that imposes an obligation or admission on the indemnified Party may be agreed without that Party's written consent.

10. Limitation of Liability

Neither Party is liable to the other for loss of profit, loss of revenue, loss of anticipated savings, loss of business, loss of goodwill, loss or corruption of data, or any indirect or consequential loss, however arising, even if that loss was foreseeable or the Party was told it might occur.

The Consultant's total aggregate liability arising out of or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, is limited to [Liability cap, e.g. the total Retainer Fees paid under this Agreement in the twelve (12) months before the claim arose] .

Nothing in this Agreement limits or excludes either Party's liability for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation, for a Party's wilful misconduct, or for any other liability that cannot lawfully be limited or excluded.

11. Non-Solicitation of Personnel

During the term of this Agreement and for [Non-solicitation period, e.g. twelve (12) months] after it ends, neither Party shall knowingly solicit for employment or engagement any employee or contractor of the other Party who was materially involved in the Services.

This clause does not prevent a Party from running a general advertisement or recruitment campaign that is not targeted at the other Party's personnel, or from engaging someone who responds to one, or from engaging someone whose employment or engagement with the other Party ended at least [Cooling-off period, e.g. six (6) months] earlier. If a Party engages a person in breach of this clause, it shall pay the other [Agreed sum for a breach, e.g. thirty percent (30%) of that person's first-year compensation] as a reasonable pre-estimate of the recruitment and disruption cost the other Party will incur.

12. Independent Contractor Status

The Consultant is an independent contractor and not an employee, partner, agent or joint venturer of the Client. The Consultant controls the manner and means by which the Services are performed, supplies its own equipment unless the Parties agree otherwise, and is responsible for its own taxes, insurance and any statutory contributions arising from the fees paid under this Agreement. The recurring nature and duration of this Agreement does not make the Consultant an employee. The Consultant is not entitled to any employee benefit of the Client, and neither Party may bind the other or hold itself out as able to do so.

13. Governing Law and Jurisdiction

This Agreement, and any dispute or claim arising out of it or its subject matter, are governed by the laws of [Governing law, e.g. the State of Delaware] . The Parties submit to the exclusive jurisdiction of the courts of [Jurisdiction] .

Before commencing proceedings, the Parties shall attempt in good faith to resolve the dispute by discussion between senior representatives and thereafter by [Step required before litigation, e.g. mediation in the jurisdiction named above, or state that there is none] . Nothing in this clause prevents either Party from seeking urgent injunctive or other interim relief at any time.

14. General

This Agreement, together with any statement of work or schedule the Parties sign under it, is the entire agreement between them concerning the Services and replaces any earlier proposal, quotation or understanding on that subject. Any purchase order or standard terms issued by the Client do not apply. This Agreement may only be amended in writing signed by both Parties.

Neither Party may assign this Agreement without the other's written consent, which shall not be unreasonably withheld, except that either Party may assign it to a successor of the business to which it relates. The Consultant may engage a subcontractor to perform part of the Services with the Client's prior written consent, and remains responsible for that subcontractor's work and for its compliance with this Agreement.

Neither Party is liable for a failure or delay in performance caused by an event beyond its reasonable control, provided it notifies the other promptly and resumes performance as soon as it reasonably can. If any provision is held unenforceable, the remainder continues in force. A failure to enforce a provision is not a waiver of it. Notices must be given in writing to the addresses above or to an email address the Parties have used for the engagement. This Agreement may be signed in counterparts and by electronic signature, each of which is an original and all of which together form one agreement.

In agreement with the terms above, the parties have signed below on the dates written beside their signatures.

Client

Signature: ______________________________

Printed name: ______________________________

Company: ______________________________

Title: ______________________________

Date: ______________________________

Consultant

Signature: ______________________________

Printed name: ______________________________

Company: ______________________________

Title: ______________________________

Date: ______________________________