



Radically Simple Services Agreement (a Majoto Beta Club workstream)

Design notes and graveyard document

What this graveyard document contains

- An overview of the approach taken with the Radically Simple Services Agreement and its scope.
- A list of excluded clauses with reasons why we have not included, together with additional design and drafting notes.

The scope of the Agreement

- Intended for simple consulting services.
- Designed for use by freelancers and small consultancy practices.

What we included: the basics

- **WHO:** The names of the organisations buying and performing the services
- **WHAT (CONSULTANT):** The consultant provides the listed services and deliverables.
- **WHAT (CLIENT):** The client pays the fees (expenses and taxes), in the invoice period and interest on overdue sums.
- **WHEN:** The date when the consultant starts the services, how it will progress them and when it expects to complete them.
- **PERFORMANCE:** The quality standard for the services and a requirement to meet the project objectives.
- **HOW:** Process for changes to the services, revising timeframes, resolving issues, ending the agreement, responding to requests for data and resources.
- **DATA:** Vesting of copyright in the deliverables and mutual compliance with data laws.
- **RISK:** Limiting the consultant's liability and confirmation that the consultant maintains insurance.

What we excluded: the graveyard

Substantive clauses:

Clause type	What it typically contains	Reason for excluding
Effective date	A starting date for the obligations.	The parties should date the agreement when it has been signed. As it is radically simple, it can be read, understood, negotiated and signed <i>before</i> the consultant starts the services. If a different starting date needs to be specified, that can be done in the statement of work (which needs to accompany the agreement).
Confidential information	- This will indicate whose disclosures are to be considered confidential, what types of materials (and in what media) are confidential, in what manner a disclosure must occur for it to be confidential, and whether marking something as confidential is required. - Definitions often involve non-exclusive lists of types of confidential information.	For most simple projects, a requirement not to disclose/to keep information confidential will be sufficient. In common law jurisdictions, there may be an implied duty to keep private any information which is business-sensitive which would offer protection. Where the project involves significant elements of business-sensitive data, the parties can adopt an additional confidentiality document and refer to that in the statement of work.
Data Compliance	- Obligation to comply with data protection laws. - Definition of controller / processor roles.	Data compliance is mandatory under many national laws. Where the parties are both controllers of data, they have an obligation to comply even if the agreement is silent. If one of the parties is a processor (for example if the consultant has access to personal data within the client's systems and is doing something with it), the parties should use a separate detailed agreement (a data processing agreement or DPA) on the processing, handling and storage of data. This could be done via an industry standard agreement like the oneDPA, which allows the parties to avoid negotiating a detailed separate agreement.

Clause type	What it typically contains	Reason for excluding
Warranties	• Ability to operate the contract (e.g. have appropriate resources and personnel). • Competence. • No conflicts of interest. • Consultant having necessary licences and consents.	The parties should list any specific project objectives (in the statement of work). It is better practice to carry out due diligence <i>before</i> agreeing to work together, rather than rely on warranties as a means of claiming damages after performance has started. Agreements will often frame obligations as warranties (for example “the consultant warrants that it will do xyz”). This is a misunderstanding of the role of this statement: a warranty is a promise that something is true, whereas a promise to do should be stated as an obligation to provide a termination remedy for breach. This agreement focuses on positive obligations for clarity. The agreement avoids warranties like “appropriate resources personnel” and “competence” warranties, partly because these are subjective. The most important consideration is whether the agreed work is delivered. If it is not, then the client has a claim for breach.
Indemnities	An indemnity from the consultant to the client to cover breach of the agreement as a whole or specific clauses such as those relating to mandatory laws or policies, data breaches, intellectual property infringements and the like.	The client does not need (and gains little benefit from) an indemnity in the event of breach by the consultant as it has a right to bring a claim for breach of contract. Indemnities create a significant risk for the giver (especially when not backed by insurance) and introduce significant complexity to a document. Indemnities are suitable for high-risk, high-impact contingencies, for which this agreement is not intended.
Intellectual Property developed in the course of the project	• Confirmation of which party owns the intellectual property of the deliverables created during the project - it may be owned by the consultant, transferred to the client or owned jointly.	This agreement is intended for use where the documents created are relatively limited. It provides for ownership of any deliverables by the client, but everything else (including what can be termed ‘background intellectual property’) stays with the consultant.

Clause type	What it typically contains	Reason for excluding
	- Any licences set out what they cover, permitted uses, permitted areas and duration. - Ownership and licensing of background.	Where intellectual property is an important feature, additional provisions can be incorporated into the statement of work, or a separate licence or assignment can be agreed.
Restrictions on Consultant	In some jurisdictions, the client may treat consultants as if they were employees and seek to restrict the other clients they can work for or their availability during a project. This can often prove controversial as employment laws might then apply. In other situations, where consultants are delivering a market-sensitive service, clients may want to restrict the consultant from working with other customers in order to avoid knowledge leakage, through exclusivity and non-compete provisions.	This agreement is for use by consulting practices and freelancers who are not acting as employees of the client. Terms that might apply to an employment situation are not relevant and can confuse the situation for national tax or employment services. The agreement is not intended for market-sensitive services that would require exclusivity or non-compete clauses. Such restrictions, to be workable and enforceable, would need bespoke legal drafting so are outside this agreement's intended use.
Liability Period	A period after which claims cannot be brought by one or both of the parties.	This is set by national laws and stating or limiting it adds little value. This agreement focuses on limiting the monetary amount of any claim, as it aids risk analysis and acts as an anchor in negotiations.
Working Together	A statement of the intention of the parties to work together on a project or for a specific period.	This agreement provides a basic framework for the parties – allowing internal processes to be used without conflicting with its terms. The parties can adapt the statement of work to add extra detail about precisely how they will work together, e.g. periods for replying to requests, access to resources, meeting client policies and so on.

Boilerplate clauses:

Clause type	What it typically contains	Reason for excluding
Compliance with laws	A statement that the parties (or sometimes just the consultant) will comply with all relevant laws or listing some specific laws which are more pertinent. This may be combined with a right to terminate for breach of those laws.	Laws are, by their nature, mandatory and differ from country to country. The parties are expected to know of and comply with all relevant legislation. Breach of such legislation would allow termination under the terms of the agreement, without specifically mentioning this.
Exclusion of third-party rights	A statement that no other party can rely on or enforce the terms of the consultant agreement.	Some jurisdictions, either through statute or common law, allow or prevent third parties from relying on or enforcing the terms of a contract.
Right to subcontract	The consultant's rights to subcontract or delegate all/part of the services to another may be subject to controls such as notice, consent or restrictions on the basis of that subcontracting.	This agreement is intended for use with simple projects. The consultant may be permitted to subcontract its obligations under common law or national laws.
Notices	A process setting out the format, delivery method and presumed delivery dates of notices required under the agreement.	The agreement does not contain a notice provision – most interactions are now electronic and instantaneous. Even notices of termination can be sent electronically. See note under working together.
Counterparts	A statement that the agreement can be prepared to two counterparts and then exchanged.	Most agreements are e-signed and this agreement is intended for eSignature. The counterpart clause is functionally obsolete.
Severability	A statement that the national courts can sever any part of the agreement that is illegal, unenforceable or invalid.	It is highly unlikely that any of the terms of this agreement will be found illegal, unenforceable or invalid (either as a matter of law or of practice - these kinds of agreements are very unlikely to be litigated). The national courts can make their own determination if it is.

Other drafting notes

- The above considerations were made primarily on the basis of **common law**. We welcome comments from those working in civil law jurisdictions.
- We did not include terms which we believed to be unique to **specific types of contract** (e.g. with consumers) or specific jurisdictions only.
- With regard to **liability caps**, the team took the view that a liability cap equivalent to fees is a balanced approach that should suit a majority of cases (but users can provide for a different cap in the SoW if necessary). In the standard Service Terms, we have not attempted to deal in a detailed way with categories of liability that cannot be excluded or limited by law (for example fraud or personal injury) because these are treated differently in different jurisdictions. We have instead opted for a general proviso (“to the extent permitted by applicable law”), acknowledging that this might not be effective in some jurisdictions - but in the target use case it is highly unlikely that the parties will litigate this. We have provided guidance in the SoW including alternative wording in the playbook (in the Majoto implementation) that contains frequently excluded matter under common law.
- We have included a limited short-form promise on the part of the Consultant that Deliverables will be authored by the consultant and not knowingly copied (a plain language alternative to “original work of authorship”). This is functionally equivalent to a **non-infringement warranty** limited by knowledge, but in a form that is better understood to someone without legal training.
- We have taken the approach that **dispute resolution** in the local courts is adequate for the target use case, and that alternative dispute resolution mechanisms (which would require more long form arbitration wording depending on the chosen forum) is not worth the extra complexity.