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Consultancy agreements (short form) Q&A: India

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India specific information concerning the key legal and commercial issues to be considered when drafting consultancy agreements for use internationally.

This Q&A provides country-specific commentary on Practice note, Consultancy agreements: International, and forms part of Cross-border employment.

See also Standard document, Consultancy agreement (short form): International, with country specific drafting notes.

Status of the consultant

1. Is there a risk in your jurisdiction that a consultant could be deemed to be an employee of the company and then acquire employment rights?

Yes, in India, there is a risk that a consultant could be deemed to be an employee of the company (commonly known as the risk of misclassification).

The Indian courts have held that the basic distinguishing factor between the two arrangements is the level of control and supervision exerted over the person by the entity engaging them:

- The employment arrangement involves greater or complete level of control over the employee.
- One of the basic tenets of an arrangement with independent contractors is that the contractor has the freedom and flexibility to perform the services based on their expertise and experience, with minimal supervision and control. The rule is that an independent contractor can be instructed regarding the nature of the job or services to be performed, but cannot be directed as to the manner in which they are to be performed.

The Supreme Court of India has held that the test which determines and distinguishes an independent contractor from an employee is the right and extent of control of the employer over the manner in which the work is to be done (Dhrangadhara Chemical Works v State of Saurashtra (1954 AIR 264)).

The various factors distinguishing an employee from a contractor were set out by the Supreme Court in Lakshminarayan Ram Gopal & Sons Ltd v Government of Hyderabad:

- Generally, an employer can tell the employee what to do and how to do it.
- Generally, a contractor can be given instructions, but cannot be told how to carry them out.
- An employee is under more comprehensive control than a contractor.

(*1954 25 ITR 449 (SC)*.)

The factors to be considered include:

- Level of control over the worker.
- Integration of the worker within the employer's business.
- The power to appoint and dismiss.
- The responsibility to pay remuneration and deduct social security contributions.
- The responsibility to organise work and supply equipment.
- The nature of the mutual obligations between the parties.
- The terms of the contract between the parties.

(*Supreme Court, Ram Singh v Union Territory of Chandigarh (2004 1 CLR 81)*.)

Factors indicating a genuine consultancy relationship

Generally, factors that indicate a genuine consultancy relationship include:

- The contractual arrangement with a consultant is in the nature of a contract for services (on a principal-to-principal basis), where the consultant is being paid fees for providing the services.
- Unlike in the case of employees, the client's level of control over the consultant is minimal. The consultant can be directed as to what to do, but not how to do it.
- The arrangement with the consultant is non-exclusive. They can also provide services to their other clients.
- Typical employee benefits such as leave/paid time off, holidays, bonus, perquisites, social security, insurance coverage and allowances do not apply to consultants and independent contractors. The employer is not required to reimburse expenses incurred by consultants. Fees typically include and cover all expenses to be incurred by the consultant.
- Consultants are not provided any with company equipment, business cards or email address, for example.
- Consultants are not bound to provide the services from company's premises, and have the flexibility to provide services from any remote location. They are also not required to adhere to the same specified times of work that apply to employees.

Factors indicating an employee relationship

Please see below some factors which indicate an employee relationship:

- The employment relationship is in the nature of a contract of services (on an employer-employee basis) where the employee is paid salary for being employed with the employer.
- The employer is able to exercise complete control over the activities of the employee. An employee can be directed as to how to execute tasks, as well as what to do.
- Typically, an employment relationship is on an exclusive basis, and the employee is required to devote the whole of their working time and attention to the business of the company.
- Employees are entitled to benefits like leave, paid time off, holidays, bonus, perquisites, social security, insurance coverage and allowances, under the applicable labour laws.
- Employees are provided with an employee ID, equipment, business cards and email address, among other things.
- Employees are required to adhere to certain fixed timings for their working day.

2. Could the consultant acquire any other status as a result of the agreement?

No, in the Indian context, the consultant will not acquire any other status as a result of the agreement other than the risk of being misclassified (see Question 1).

It should be noted that India has a unique law, the Contract Labour (Regulation and Abolition) Act 1970 (CLRA), which applies where the independent contractor (as a corporate legal entity whose business is the provision of manpower for the performance of the client's services) provides or deploys manpower for the purposes of performance of the client's services at the client's premises. The CLRA may be triggered, depending on the number of individuals deployed at the client's premises. If it applies, a registration and licence are required by the client and the contractor, respectively.

3. If there is a risk of the consultant being deemed to be an employee in your jurisdiction, what are the tax consequences that could arise for:

- the consultant;
- the company.

Consultant

Deductions

A consultant can deduct all business-related expenses from their gross income.

However, employees can only offset certain specified deductions, such as:

- House rent allowance (a deduction allowed on amounts spent by employees on paying rent for their accommodation).
- Contributions to the public provident fund, life and medical insurance premiums, among other things.

(The government has introduced an alternative taxation regime for employees in lower tax bands (through the Finance Act 2020). However, employees opting to use this regime can only do so if they forego all the deductions available to employees under the standard regime.)

Company

If a consultant is deemed to be an employee, the rate of tax deducted at source by the employer would be

the applicable tax rates for the time being in force (30% (exclusive of surcharge and cess) for the highest tax band) as opposed to 10% (exclusive of surcharge and cess) in case of a consultant. (Surcharge and cess are both levies on high income; the rate of surcharge depends on income, while cess is an additional levy on income tax of 4% plus surcharge.)

Consequences

Income earned by a consultant falls under the head "income from business or profession" (with a 10% tax deducted at source (TDS) rate), whereas income earned by an employee falls under the head "salary" (with a 30% TDS rate for the highest band).

If the tax authorities are of the view that the consultant is in substance an employee warranting a re-classification of the income (and therefore tax rate), they may resort to initiating proceedings against the company under section 201 of the Income Tax Act 1961, for short deduction of tax.

This may involve:

- The levy of simple interest at the rate of 1% per month for the period during which the tax was not deducted.
- Recovery proceedings against the company or the re-categorised consultant.
- Imposition of a penalty (up to 200%) for default on the company (however, if a good faith reason is established for the short deduction of TDS, it should be possible to avoid a penalty).

The tax authorities can re-open these issues up to seven years after the fact.

4. If there is a risk of the consultant being deemed to be an employee in your jurisdiction, how can the agreement be worded in order to minimise or eliminate this risk?

The following clauses are helpful to include in a consultancy agreement, to reduce the risk of misclassification:

- A statement that the relationship between the consultant and the company is not an employer-employee relationship, and that the consultant is an independent service provider and is entitled to a fee for the service provided.
- A statement that the consultant is not eligible to any benefits, allowances and perquisites given by the company to its employees unless these are specifically extended to consultants.
- A statement that the consultant has the freedom to provide services for other clients.

Clauses that provide for the consultant to be given company equipment, business cards or email address, or to have their expenses reimbursed, are likely to increase the risk of misclassification and so should be avoided (see Question 1).

An important point to note is that when determining the nature of relationship between the parties, the courts will not rely solely on the clauses in the consultancy agreement or the terminology used for the describing the relationship; they will also assess the practical functioning of the relationship in terms of the control exercised over the consultant's activities, and to that extent the company will also need to ensure that adequate practical processes are in place to mitigate any misclassification risk arising from the arrangement (see Question 1).

5. To minimise any risk of the consultant being deemed to be an employee, is it common practice for provisions to be included in the agreement for:

- the appointment of a substitute at any time as set out in Standard document, Consultancy agreement (short form): International: clause 2.4?
- the consultant to carry out other activities for other parties as set out in Standard document, Consultancy agreement (short form): International: clause 4?

  Are there any consequences of these clauses that the parties need to be aware of?

It is not common to include a clause in the consultancy agreement allowing the consultant to appoint a substitute. In fact, the typical practice is to mention that the agreement is not assignable by the consultant. This is largely because the consultant may have been engaged by the service recipient based on an assessment of a certain level of expertise and experience in performing the services, which a substitute may or may not possess.

Yes, the clause allowing the consultant to carry out other activities for other parties is important as it helps to confirm the status of the relationship between the company and the consultant as one of contract-for-service (see Question 4).

There are no additional consequences that the parties need to be aware of.

Vicarious liability

6. Does the law in your jurisdiction stipulate that the company could be responsible for the consultant's acts and behaviour, if they cause loss or damage to the company, its employees, customers or suppliers, during the term of the agreement?

While the doctrine of vicarious liability is recognised in Indian courts, it is largely limited to employer-employee relationships, and does not extend to an independent contractor relationship. As a result, in general, the company would not be held vicariously responsible for the consultant's acts and behaviour.

Consultancy agreements generally contain an indemnity clause with respect to any losses or damage that the company might incur because of the consultant's negligence during the term of the agreement.

Duration

7. Are there any limitations or requirements in law that the consultant or the company needs to be aware of in relation to the term or duration of the consultancy agreement (Standard document, Consultancy agreement (short form): International: clause 1)?

No, there are no limitations or requirements in law with respect to the duration of consultancy agreements. However, ideally it is advisable to ensure that consultants are not engaged with the company for a long time, as this may increase misclassification risks. Typically, the maximum time period for which companies enter into a consultancy arrangement is 18 to 24 months.

Even with a shorter duration consultancy arrangement, if the initial period is then extended several times this may also increase the risk of misclassification.

Services

8. Are there any duties or services that would be standard practice to include within the agreement (Standard document, Consultancy agreement (short form): International: clause 2)? Are there any duties imposed by national law on consultants?

Yes, it is standard practice to include the following clauses in a consultancy agreement regarding the consultant's duties:

- The consultant agrees and undertakes to perform certain services as may be required by the company.
- The services will be performed consistent with the standards as may be expected, required or specified by the company from time to time.
- The consultant agrees to comply with all applicable policies of the company as introduced, replaced, amended or varied from time to time.
- The consultant will not hold themselves out to any person as an employee or agent of the company, nor will the consultant enter into any contract, agreement or arrangement with any person that binds the company or creates any liability or obligation on the company.

There are no provisions under national law that impose any specific duties on consultants.

Payments

9. In your jurisdiction, is it permissible to include provisions for any sums due to the company to be deducted from the amounts owed to the consultant as set out in Standard document, Consultancy agreement (short form): International: clause 3.4 and clause 10.4?

Yes, it is fairly common to include these provisions in the consultancy agreement.

The arrangement between the company and the consultant is purely contractual in nature and to that extent, it is the parties' prerogative to include any obligations they see fit, including one on recovery of sums due to the company from the amounts owed to the consultant (similar to Standard document, Consultancy agreement (short form): International: clause 3.4.

Generally, companies also tend to include an indemnity clause similar to Standard document, Consultancy agreement (short form): International: clause 10.4 for the consultant to indemnify the company for any losses which it might incur due to the consultant's negligence.

Tax and social security

10. What tax, social security or other payments will each party be liable to make in your jurisdiction as a result of the consultancy agreement and how should they be dealt with in the agreement (Standard document, Consultancy agreement (short form): International: clause 3)?

- the consultant;
- the company?

Consultant

Tax. The fees received by a consultant under a consultancy agreement are subject to tax deducted at source at the rate of 10% of the fees (exclusive of surcharge and cess) (see Question 3). The remainder of the taxes (on the basis of the rates in force) would need to be paid by the consultant on an advance payment basis.

As the fees earned by consultant would fall under the head of "profits and gains from business and profession", the consultant would be able to make business-related deductions under the Income Tax Act 1961.

Social security. In a consultancy arrangement, there is no legal obligation on a company to provide social security benefits to a consultant. It is advisable for the company not to extend any social security benefit contributions to consultants working for it, as this would increase the risk of misclassification.

Other. If the Central Goods and Services Tax Act 2017 applies to the services performed, the consultant will need to pay goods and services tax (GST) to the relevant tax authorities on the fees received for the performance of services under the consultancy agreement. The consultant usually adds the GST amount to their invoice to the company, collects the GST from the company and then pays this to the relevant tax authorities.

Company

Tax. The company must withhold tax at source at the rate of 10% (exclusive of surcharge and cess) of the fees payable to the consultant (see above).

Social security. See above.

Other. Where a consultant located in India is engaged by a company located outside India, the company runs a high risk of having a permanent establishment (PE) for tax purposes in India through that individual if misclassification of that consultant is subsequently deemed to have occurred.

If this is the case, the profits attributable to a PE in India will, in principle, be subject to tax in India at the rate of 40% (exclusive of surcharge and cess). However, the exact tax position for that PE will depend on the tax treaty in place between India and the jurisdiction in which the company itself is incorporated.

Anti-bribery and corruption

11. What national and international anti-bribery and corruption legislation may the consultant be required to comply with in relation to services performed in your jurisdiction (Standard document, Consultancy agreement (short form): International: clause 2.7)?

The consultant may need to comply with India's anti-bribery and anti-corruption law, the Prevention of Corruption Act 1988 (POCA). POCA does not have extra-territorial applicability and so does not apply to instances of corruption and bribery occurring outside the Indian jurisdiction.

In addition to POCA, it is common to refer in the consultancy agreement to the US Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010, both of which have extraterritorial application.

Data protection

12. What data protection and privacy issues arise in your jurisdiction as a result of this arrangement and where personal data is transferred internationally? Is Standard document, Consultancy agreement (short form): International: clause 6 sufficient to address these issues?

Data privacy

The relevant legislation is:

- The Information Technology Act 2000 (IT Act).
- The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (Sensitive Personal Data Rules).

Under these, a company which collects, receives, possesses, stores, deals or handles information

provided by a person should provide a privacy policy for its handling of or dealing in personal information (including sensitive personal data or information (SPDI)) and ensure that this is available for view by the person who has provided that information under lawful contract. This policy must be published on the company's website.

An individual must provide express consent to any collection, handling, processing or transfer of their SPDI. SPDI is defined under the Sensitive Personal Data Rules to include information relating to:

- Passwords.
- Financial information such as bank account or debit and credit card details.
- Physical and mental health condition.
- Sexual orientation.
- Biometric information.
- Medical records and history.

Under the law, the client must ensure that the consultant has consented, in writing, to the collection, handling, processing or transfer of any of their SPDI.

Where data collected constitutes SPDI, the client should follow the processes set out by the Sensitive Personal Data Rules, including:

- Keeping the information secure and complying with reasonable security practices and procedures in accordance with the comprehensive documented information security policy which it should have in place.
- Not retaining the information for longer than is required for the purposes for which it can lawfully be used or is otherwise required under any other law in force at the time.
- Only using the information for the purpose for which it has been collected.

The same provisions would apply to any handling of data undertaken by the consultant as part of the services provided.

Standard document, Consultancy agreement (short form): International: clause 6 is sufficient for these purposes.

Data transfer

If the data being transferred constitutes SPDI, then it can only be legally transferred if:

- The entity to whom the data is being transferred (whether that entity is based in India or abroad) ensures the same level of data protection adhered to by the transferor (*Sensitive Personal Data Rules*).
- The transfer is necessary for the performance of a lawful contract between the recipient of the data (or any person on its behalf) and the provider of the information.
- The person whose data is being transferred has consented to the data transfer.

It should be noted that a new data protection law is in the pipeline in India; the Personal Data Protection Bill 2019 was introduced in the lower house of Parliament in India on 11 December 2019, but it has not yet been passed as a law. There is no clear timescale for its enactment. If enacted, the Bill would lead to a major overhaul of current data protection law in India, being far more complex and far-reaching than the current regime, and covering wider categories of data and setting a lower threshold for what constitutes sensitive personal data.

Intellectual property

13. Other than where it is explicitly stated in the agreement, who will own any intellectual property rights created by the consultant during the term of the agreement under the laws of your jurisdiction (Standard document, Consultancy agreement (short form): International: clause 7)?

Unlike an employer-employee relationship, in a consultancy arrangement the intellectual property rights in relation to any intellectual property conceived and generated by the consultant during the consultancy agreement must be specifically assigned in favour of the company: in the absence of a specific assignment, those intellectual property rights will continue to vest with the consultant.

As a result, an extensive clause on intellectual property should be included in the consultancy agreement to protect, on the client's behalf, the intellectual property rights created by the consultant (see Question 24).

Indemnities

14. Does your national law recognise the concept of one party indemnifying the other as set out in Standard document, Standard document, Consultancy agreement (short form): International: clause 10 of the consultancy agreement? If not, what can be included in the agreement to create such protection?

Yes, the Indian Contract Act 1872 contains provisions which recognise the concept of indemnity, and are triggered where this is contractually agreed in a contract. Where one party promises to indemnify the other person from loss caused to them by the action/conduct of the indemnifying party themselves, or by the action/conduct of any other person caused by the fault/breach negligence of the indemnifying party.

Discrimination

15. Is the consultant protected against discrimination during the term of the agreement and if so, can any wording be included in the agreement to minimise the risk for the company against a potential claim from a consultant?

In India, the following anti-discrimination and harassment laws apply to private establishments:

- The Equal Remuneration Act 1976 (ERA).
- The Rights of Persons with Disabilities Act 2016 (RPDA).
- The Transgender Persons (Protection of Rights) Act 2019 (TPA).
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (SHA).

While the ERA applies only to an employer-employee relationship, the TPA and RPDA are broader in their application and prohibit discrimination against any disabled or transgender person (not just an employee) respectively.

The SHA includes within its ambit sexual harassment of any woman (including a consultant or independent contractor) in the workplace.

Additionally, if the company's policies extend the applicability of other anti-discrimination provisions to consultants and independent contractors, then these may also need to be taken into consideration when ascertaining the risk of the consultant bringing discrimination claims against the company.

It is not common practice to include any clauses pertaining to discrimination or attempting to mitigate the risk of it in a consultancy agreement. However, they could legally be included.

Confidentiality

16. Can a confidentiality clause be included as set out in Standard document, Consultancy agreement (short form): International: clause 5 that continues after termination of the agreement? Could such a clause suggest that the consultant is an employee instead of an independent contractor?

Yes, a confidentiality clause that continues after termination of the consultancy agreement can be included in the agreement. Since that the consultant may have access to confidential information of the company in the course of rendering their services which, if disclosed by the consultant after termination of the consultancy agreement, might cause substantial damage or loss to the company, the company can rightfully and legally bind the consultant with confidentiality restrictions even after termination of the consultant agreement.

The inclusion of such a clause will not lead to a misclassification risk.

Restrictive covenants

17. Can restrictive covenants be included for agreement by the consultant? Is the limitation in Standard document, Consultancy agreement (short form): International: clause 4 permissible in your jurisdiction?

Yes, certain restrictive covenants can be included in the consultancy agreement. It is typical to include a clause providing for non-solicitation of employees, clients and customers.

The non-solicitation clause can apply during the term of the agreement and for a reasonable period after its termination (what is reasonable will depend on the circumstances, but is usually three to six months).

The limitation in Standard document, Consultancy agreement (short form): International: clause 4 is permissible in India.

Termination

18. Under what circumstances can the consultancy agreement be terminated without notice as set out in Standard document, Consultancy agreement (short form): International: clause 8 by:

- the consultant
- the Company?

Without notice termination for other causes

There are no statutory provisions regarding when consultancy agreements can be terminated without notice by either party. However, contractually, parties can agree to circumstances in which without notice termination can occur. These may include:

- Breach of any of the material conditions or terms of the agreement.
- The following behaviour by either the company or the consultant:
  - fraud;
  - negligence;
  - misrepresentation;
  - dishonesty; or
  - misconduct.

Procedure. No particular procedure is defined in law.

19. On termination, does the law in your jurisdiction stipulate that any mandatory notice period or payments are to be made to the consultant?

No, Indian law does not stipulate any mandatory notice period or payments to be made to the consultant on termination of the consultancy agreement; in this regard, the arrangement between a company and a consultant is purely governed by the parties' agreement under the contract.

Mediation

20. Is it suitable in your jurisdiction to include a CEDR international core mediation clause?

While the parties to the agreement can decide contractually on the nature of a dispute resolution mechanism to resolve disputes arising out of the agreement, it is not common to see mediation as a preferred mode of dispute resolution in India. The dispute resolution mechanisms typically used in the context of consultancy agreements are arbitration or litigation.

The CEDR are not commonly used in India (the authors have not come across any mediations administered by them). The mediation centres in India are generally affiliated with the High Courts of Delhi and Chennai. There are certain international mediation centres which administer mediation in India, such as the Singapore International Mediation Centre (SIMC). While India is a signatory to the Singapore Convention on Mediation, it has not yet ratified it, and so mediation settlements entered into abroad are not currently enforceable in India. However, we expect domestic legislation in this area shortly.

Governing law and jurisdiction

21. Does the law in your jurisdiction dictate which governing law and jurisdiction will apply to this agreement (Standard document, Consultancy agreement (short form): International: clause 14 and clause 15)?

The parties to the agreement are free to decide the governing law and jurisdiction that will apply to the agreement.

However, if the agreement is between two Indian parties, from a practical perspective it is best for ease of enforceability for the governing law and jurisdiction to be Indian.

Execution and other formalities

22. How does this agreement need to be executed in order to ensure that it is valid and enforceable? Does it need to be registered with any authority in your jurisdiction?

Execution formalities

The agreement needs to be signed by both the parties (under the Indian Contract Act 1872, a contact must, among other things, be entered into "on a consensus").

Either original, or digital or electronic, signatures are acceptable.

An instrument (document) creating rights and obligations for the parties must be stamped under the local stamp duty law on or before the date of execution, to be admissible as evidence in an Indian court. Depending on the state in which stamping is done, it can be achieved by:

- Purchasing stamp paper.
- Franking the agreement.
- Obtaining an e-stamp online.

The agreement does not need to be registered with any authority in India.

Language

23. Does the agreement need to be in a language other than English in order for it to be valid and enforceable (Standard document, Consultancy agreement (short form): International: clause 16)?

No. There is no legal requirement that the agreement should be in any language other than English to be valid and enforceable.

General

24. Are there any clauses in the Standard document, Consultancy agreement (short form): International that would not be legally enforceable or not standard practice in your jurisdiction??

Standard document, Consultancy agreement (short form): International: clause 2.4 on the appointment of a "suitably qualified substitute to perform the Services" is not a common clause in consultancy agreements in India (see Question 5).

25. Are there any other clauses that would be usual to see in a consultancy agreement and/or that are standard practice in your jurisdiction?

The following amendments or additions could be made:

Confidential information. A broader definition of "Confidential Information" could be included, as follows:

> **"Confidential Information"** means and includes, information which is confidential and proprietary to the Company and/or Affiliates and/or to certain third parties with which the Company and/or Affiliates has relationships and disclosed to or obtained by the Employee from the Company and/or Affiliates and/or such third parties, whether (without limitation) in graphic, written, electronic or machine readable form on any media or orally and whether or not the information is expressly stated to be confidential or marked as such and includes, but is not limited to information of value or significance to the Company and/or Affiliates and/or its Competitors (present or potential) such as: [•]; but does not include information: (i) that is in the public domain other than by Employee's breach of this Agreement and/or of any other agreement to which the Employee is bound by; (ii) that was previously known by Employee, as established by written records of the Employee prior to receipt of such information from the Company and (iii) that was lawfully obtained by the Employee from a third party without any obligations of confidentiality to the Company."

Intellectual property. The clause on intellectual property conceived by the consultant during the term of the agreement could be made more robust, including:

- A list of intellectual property already created by the consultant which would be excluded from the scope of the consultancy agreement.
- A provision for exclusive ownership by the client of all content and/or part of intellectual property that is not protected under copyright laws and /or other intellectual property law and/or that is not patentable shall be automatically and irrevocably transferred to the company from date of creation; for example, "***The Employee agrees that the exclusive ownership of all content and/or part of Intellectual Property that is not protected under copyright laws and / or other intellectual property law and/or that is not patentable shall be automatically and irrevocably transferred to the Company from date of creation.***"
- A Provision for "co-operation and assistance to secure and maintain the Client's rights and to carry out the intent of the consultancy agreement and for vesting the Client with full title of intellectual property and all rights, titles and interests, and to sign, execute, affirm all documents, including, without limitation, all applications, forms, instruments of assignment and supporting documentation and perform all other acts as may be required for the abovementioned purposes".

Status and liability. If the consultant/independent contractor is a company whose business is the provision of manpower for the performance of the client's services, then the arrangement could, subject to the number of individuals deployed at the client's premises, fall within the application of the CLRA (see Question 2). In that case, the following clause could be incorporated:

> **"Contract Labour:** You covenant that (i) you shall assist the Client in obtaining or updating (as the case may be) its contract labour registration under the provisions of the Contract Labour (Regulation and Abolition) Act 1970 ("**CLRA**") (if applicable) and (ii) during the Term, you shall obtain and validly retain the contract labour licence under the CLRA for provision of the services (if applicable). You shall duly comply with all your obligations under the provisions of the CLRA and your licence."

In the event the independent contractor is engaging its employees for the performance of services, then the following additional clause may be considered:

> "You shall be responsible for payment of all wages, salary, and/or other benefits to all contract employees assigned to the Client under this agreement (**Contract Employees**) and the payment of all payroll, social security, insurance premiums and all statutory and contractual benefits including but not limited to salary, allowances, perquisites, bonus, overtime, leave, holidays, maternity benefits (including crèche, if applicable), provident fund contribution, employees' state insurance contribution, labour welfare fund contribution, profession tax, retrenchment compensation, gratuity, notice pay, etc. You shall ensure that the wages paid to the Contract Employees are not less than the minimum wages provided under the Minimum Wages Act 1948 as revised from time to time. In the case of revision of minimum wages during the Term, such revision will be implemented from the effective date of notification in the first instance by you. You shall be responsible and liable to provide to the Client, on a monthly basis, appropriate details (along with all supporting documents) evidencing such payments to the Contract Employees. You hereby indemnify the Client and keep it indemnified for non-payment of any amounts to the Contract Employees."

Arbitration. As an alternative to court litigation as a dispute resolution mechanism, an arbitration clause can be included in the agreement. For example:

> "Governing Law and Arbitration:
>
> This Agreement will be governed by and construed in accordance with the laws of India. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with Arbitration and Conciliation Act, 1996 and the rules of the Mumbai Centre for International Arbitration (MCIA), which rules are deemed to be incorporated by reference in this clause. The seat and venue of the arbitration shall be [City]. There shall be a sole arbitrator appointed as per the MCIA rules. The language of the arbitration shall be English. The law governing the arbitration shall be Indian law."

Representations and warranties. The following clause on representations and warranties could be added:

> "1) You hereby represent and warrant to the Client that:
>
> a) you have been provided with a copy of this agreement for review prior to signing it;
>
> b) you have reviewed the agreement and that you understand the terms, purposes and effects of this agreement;
>
> c) you have signed the agreement only after having had the opportunity to seek clarifications;
>
> d) you have not been subjected to duress or undue influence of any kind to execute this agreement and this agreement will not impose an undue hardship upon you;
>
> e) you have executed this agreement of your own free will and without relying upon any statements made by the Client or any of its representatives, agents or employees;
>
> f) this agreement is in all respects reasonable and necessary to protect the legitimate business interests of the Client;
>
> g) you have all requisite power and authority, and do not require the consent of any third party to enter into this agreement and grant the rights provided herein;
>
> h) the execution, delivery, and performance of this agreement by you does not and will not conflict with, breach, violate or cause a default under any agreement, contract or instrument to which you are a party or any judgment, order or decree to which you are subject;
>
> i) you are not a party to or bound by any employment agreement, consulting agreement, non-compete agreement, confidentiality agreement or similar agreement with any other person; and
>
> j) the services rendered by you and all items and/or materials furnished by or in connection with or as a result of such services shall not infringe upon or violate the personal, civil or property rights, or the rights of privacy of, or constitute a libel, slander or unfair competition against or violate or infringe upon any common law right, copyright, trademark, trade name or patent or any other right of any person or entity.
>
> 2) You hereby represent and warrant that you will not execute any instrument or grant or transfer any rights, titles and interests inconsistent with the terms and conditions of this agreement."

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