

WELSH SPORTS ASSOCIATION

GUIDANCE NOTE

USING THE CONSULTANCY LETTER AND CONSULTANCY AGREEMENT TEMPLATES

SECTION 1 : INTRODUCTION

The Standard Consultancy Letter and Consultancy Agreement templates are for use when you are engaging an individual to work for you on a consultancy basis. The templates are drafted for use when engaging coaches, but could be adapted to other roles.

The templates contain various options which are appropriate depending on the circumstances and the particular terms and conditions you have agreed with the consultant. This Guidance Note explains these options. The Guidance Note follows the numbering used in the templates.

Before considering the various options, you should first have considered whether or not a consultancy arrangement is appropriate for this particular post or this particular individual. It is possible that a better arrangement would be to make the individual an employee. It is also possible that although you would like the individual to be a consultant he or she is actually going to be seen as an employee either in law or for tax purposes.

General Drafting Notes

The templates use bold, italics, different colours and square brackets to help you to identify optional wording and places where you will need to insert details. You will probably find it helpful to retain these features as you are preparing an initial draft. The final versions of the documents however should have no square brackets and the text should be in the same font throughout without any bold or italics. In the final version of the Consultancy Agreement you should check that the numbering is correct and follows the sequence:

- 1. Heading
- 1.1 clause
- 1.2 clause

- 2. Heading
- 2.1 clause
- 2.2 clause etc.

without any As, Bs, Cs or other letters. These letters are used purely to show options in the template. You should also check that any references to clause numbers in the final agreement are correct.

SECTION 2: CHOOSING BETWEEN THE TEMPLATES

There are two templates which can be used when engaging an individual on a consultancy basis and you need to decide which is most appropriate.

The Standard Letter is shorter and less complicated. It is intended to be used where you have an ongoing relationship with a coach who works for you now and then and perhaps performs a variety of different services from time to time. It is not envisaged that you pay the coach a vast sum and therefore do not need to incorporate a great deal of protection into the agreement.

The Standard Agreement should be used where there is a more in-depth relationship. Usually it is envisaged that you will be engaging the consultant coach to provide a specific service for you, for a fixed length of time. Usually, because you may be paying him or her a significant amount, it will be appropriate for you to have a longer agreement which offers your organisation a greater level of protection than a short letter.

SECTION 3: THE TEMPLATE CONSULTANCY LETTER

You should prepare the letter using the letter head of your national governing body.

1. Paragraph 1

Paragraph 1 defines the length of your relationship with the coach and gives you two options. The first of these is to have an arrangement of a fixed length of time. So that you have the choice to terminate the arrangement earlier than the end of the fixed term, you can insert a notice period into this clause. There is no need to refer to the statutory minimum notice periods as these only apply to employees. Instead you are free to decide the notice period. As the notice is mutual (i.e. the same for both parties) you should consider how much notice you would like the coach to give you and also how quickly you may want to get rid of him or her. Remember you can also terminate the arrangement immediately, in accordance with Paragraph 8.

Your engagement is for a fixed term of *[insert length of fixed term]* starting on *[insert start date]* and finishing on *[insert end date]* unless terminated earlier by either party giving to the other *[insert notice period]* notice in writing or as set out at paragraph 8.

The second option is for an indefinite relationship which will not come to a natural end at any time, but will continue until either party ends it with notice. Again the notice is mutual and so you should consider what length of notice is appropriate, depending on the circumstances.

Your engagement will commence on *[insert start date]* and will continue indefinitely until terminated by either party giving the other *[insert notice period]* notice in writing or as set out at paragraph 8.

2. Paragraph 2

Paragraph 2 explains that the letter is a consultancy agreement. You should insert the basic details of the services which you require from the coach, including the location and times at which the services are to be provided. The wording “or as we otherwise reasonably require” allows you to deviate from the basic agreement, but only so far as is reasonable in all the circumstances.

You are required to provide coaching services to us *[insert details of when and where]* or as we otherwise may reasonably require.

3. Paragraph 3

Paragraph 3 merely states to whom the coach is to report.

You are required to report to *[insert name]*.

4. Paragraph 4

Paragraph 4 sets out the rate at which the coach is to be paid. You should decide whether the coach is to be paid on an hourly, daily or weekly rate or whether he or she is to be paid a fixed fee per session. You should also decide the timing of the payment.

The fact that the agreement states that the coach is not entitled to be paid if he or she does not deliver the services means that you only need to pay him or her when the services are actually performed. The coach is not entitled to sick pay for example. This principle also operates if you decide to cancel the coach's services.

We shall pay you at the rate of [*£insert details*] per [*hour/session/day/week*] (exclusive of VAT) which shall be payable [*weekly/monthly*] following receipt of an appropriate written invoice from you. You are not entitled to be paid for any services which you do not provide, including where the reason for your non-provision of the services is at our request.

5. Paragraph 5

Paragraph 5 deals with the payment of expenses. There are two options depending on whether you have an expenses policy - the first option applies if you do have a policy:

You shall also be entitled to reasonable travelling and other expenses in accordance with our Expenses Policy.

If you do not have a policy, but still agree to pay expenses, you should use the second option:

You shall be entitled to such travelling and other expenses as may be agreed in advance of you incurring the expense and subject to you providing us with reasonable evidence of the expense.

6. Paragraph 6

Paragraph 6 is vital and states the relationship between you and the coach. You should always include this. You must remember however that having this statement will not convert a relationship which is actually one of employment into a consultancy relationship, because the courts and tribunals can ignore documents which are a sham. Please refer to the **WSA Guidance Note on Employment Status**.

Our relationship with you will be one of independent contractors. Nothing in this letter should be taken as having the effect of constituting any relationship of employer and employee between us and you are not entitled to receive any benefits available to our employees.

7. Paragraph 7

Paragraph 7 specifies that the coach is responsible for his or her own income tax and NI contributions. The same concerns arise in relation to this paragraph as to paragraph 6.

You shall have the status of a self employed person and shall be responsible for any tax liabilities arising from your engagement with us as a coach, including but not limited to the payment of any income tax or national insurance contributions due on any payments made by us to you under the terms set out in this letter.

8. Paragraph 8

Paragraph 8 deals with situations when you can terminate the arrangements between you. It includes provisions for immediate termination without notice:

- where the coach is sick or otherwise incapacitated - you will need to insert an appropriate length of time into the clause depending on the job the coach does and the length of the fixed term if there is one
- where the coach performs badly or shows poor conduct; and
- where the coach wilfully causes your governing body to suffer any loss or damage or if such damage is caused through his/her negligence.

We reserve the right to terminate this engagement immediately without prior notice in the event that:

- you are unable to provide the services for a continuous period of [] or for [] in aggregate;
- your performance or conduct brings or is likely to bring the [*insert name of National Governing Body*] into disrepute; or
- you cause loss or damage to the [*insert name of National Governing Body*] or any third party by a negligent or wilful act or omission.

9. Paragraph 9

Paragraph 9 allows you to insert any other specific matters or obligations which you may wish to include. You can use the longer and more detailed Consultancy Agreement template to find appropriate clauses if you wish. Of course, if you feel it appropriate to include several clauses, you should probably be using the Consultancy Agreement template rather than the letter template. For example:-

- **Clause 3** of the Consultancy Agreement template contains a number of clauses putting obligations on the Coach which you may wish to incorporate into the letter.
- **Clause 4** of the Consultancy Agreement template could be incorporated into the letter if you wish.
- **Clause 5.2** of the Consultancy Agreement template could be incorporated into the letter if you think you should be giving the Coach paid holiday.
- **Clause 7** of the Consultancy Agreement template contains a number of clauses which you may wish to incorporate.
- **Clause 8** of the Consultancy Agreement template could be incorporated if you wish.
- **Clause 11.2** of the Consultancy Agreement template could be incorporated into paragraph 7 of the letter template to make this stronger.
- **Clause 12** of the Consultancy Agreement template could be incorporated if you wish to be specific about the possibility of using substitutes.

If nothing further is required the reference to paragraph 9 should be deleted.

Insert any other specific obligations or matters agreed.

Finalising the Letter

The letter should be signed by an authorised signatory of your governing body and sent, in duplicate, to the coach for him or her to sign. The coach should keep one copy of the letter and you should keep the other. You may also wish to send the coach a Working Time Opt Out, if you think that he or she may work more than 48 hours a week for you or for you and another organisation. Be careful to use the Consultant's Working Time Opt Out and not the Employee's Working Time Opt Out.

SECTION 4: THE CONSULTANCY AGREEMENT TEMPLATE

Introductory Details Section

The agreement template begins with an opening introductory details section:

NAME: [NAME OF COACH] (the "Coach")

ADDRESS: [ADDRESS OF COACH]

DATE: [DATE OF AGREEMENT]

Insert the name of your governing body and the name and address of the coach at the top of page 1 of the agreement. Throughout the agreement, the coach is referred to as the Coach – with a capital "C". Your governing body should be referred to as the Client (with a capital "C"). You should insert the date that the coach's engagement under this particular agreement is due to begin (or actually began if it has already commenced).

The introductory section also includes a section called the Recitals. This section is not a binding part of the agreement, but operates to introduce it and explain to those reading it, what the agreement intends.

WHEREAS

In reliance on the Coach's skill, expertise and knowledge, the Client wishes to engage the Coach to provide services.

The Coach agrees to provide services to the Client on and subject to the terms and conditions set out in this agreement and its schedules (the "Agreement").

1. Provision of Services

Clause 1 is the basis of the whole agreement and provides for the coach to provide to you the services listed in the schedule to the agreement. You should list the services which you require to be included in the agreement at Schedule 1.

The Client engages the Coach to provide the services set out in schedule 1 (the "Services") and the Coach agrees to provide the Services on and subject to the terms and conditions contained in this Agreement.

2. Duration of Agreement

Clause 2 of the agreement confirms the start date, the duration of the agreement and when it is expected to come to an end. The guidance below tells you what each option means.

Options

Option A should be used where you want to engage the Coach for a fixed period. This would be appropriate where the funding for the work is fixed for a set period of time. You should note that you can terminate the agreement earlier than the end of the fixed term, in accordance with clause 9.

- A. This Agreement shall commence with effect from *[insert start date]* and shall continue for a fixed term of *[insert length of fixed term]* until *[insert end date]* subject to the terms and conditions set out in this Agreement unless terminated earlier in accordance with clause [9].

Option B should be used where the arrangement is intended to last indefinitely.

- B. This Agreement shall commence with effect from *[insert start date]* and shall continue subject to the terms and conditions set out in this Agreement until terminated in accordance with clause [9].

Option C should be used when you are engaging the coach to complete a specific project. You may wish to incorporate a long stop date in such circumstances and this is catered for in Option D.

- C. This Agreement shall commence with effect from *[insert start date]* and shall continue, subject to the terms and conditions set out in this Agreement, until *[the completion of a specific task]*, unless terminated earlier in accordance with clause [9].

- D. This Agreement shall commence with effect from *[insert start date]* and shall continue, subject to the terms and conditions set out in this Agreement, until the earlier of *[the completion of a specific task]* or *[insert end date]* being the end of a fixed period of *[insert length of fixed term]* or unless your employment is terminated earlier in accordance with clause [9].

3. Coach's Obligations

Clause 3 is a very important clause as it sets out the coach's obligations when providing the services.

Clause 3.1 incorporates a general obligation on the coach to provide the services in accordance with best practice and to act in your organisation's best interests at all times. The coach is also required to comply with all of your reasonable instructions and lawful directions. This clause should not be deleted.

- 3.1 The Coach agrees and undertakes to provide the Services with all due care and diligence and in accordance with best practice, to act in the best interests of the Client at all times and to obey all lawful and reasonable instructions and directions of the Client from time to time.

Clause 3.2 deals with when the coach is to provide the services and contains 4 different options. When deciding which of the options is most appropriate you should consider the circumstances and what you want the coach to do. Another factor to take into account is the employment status of the coach. The less control you have over the coach's comings and goings the lower the risk of the relationship being deemed to actually be one of employment at some time in the future.

Option A should be used where the coach is to provide the services at specific times and on specific days. You should insert the required details into the clause. The wording "or as otherwise reasonably required" allows you to vary the specific times provided you are being reasonable when you do so.

A The Coach agrees to provide the Services to the Client [*specify the days/hours to be worked if very specific*] or as otherwise reasonable required by the Client.

Option B should be used where there are no set times when the coach is to provide the services, but this is entirely at his or her discretion, subject to a maximum limit. Details of the maximum limit should be inserted.

B The Coach agrees to provide the Services to the Client for a minimum of [] and a maximum of [] hours per week at such times as may be reasonably required by the Client.

Option C should be used where you want more control over the coach than when using option B, but not as much as with option A. Option C provides that the coach will provide the services when you require, subject to a maximum limit.

C The Coach agrees to provide the Services as and when reasonably required by the Client, provided that the Coach shall not provide the Services for more than [*insert number*] [*hours/days*] per [*week/month/year*] in total.

Option D is the most flexible option, providing as it does for the coach to provide the services as and when you reasonably require.

D The Coach agrees to provide the Services as and when reasonably required by the Client.

Clause 3.3 deals with the location where the coach will provide the services. There are two options. Again, a factor you should consider when choosing between them is the fact that the more control you have over the coach, the greater the risk of him or her being deemed to be an employee and not a self-employed consultant.

Option A should you be used where there is a specific location where the coach will work. The use of the words "or such other locations as the Client may from time to time reasonably request" gives you the flexibility to relocate if necessary.

A The Coach agrees to provide the Services at [] or such other locations as the Client may from time to time reasonably request.]

Option B allows the coach to pick his or her working location, but this is expressed to be subject to you being able to direct the coach to work at a location of your choice.

B [Subject to the Client reserving the right to direct the Coach to provide the Services at a location of the Client's choice, the Coach shall be entitled to determine when and at which locations the Services shall be provided.]

Clause 3.4 provides for the coach to travel. The geographical area in which the coach is required to travel should be inserted in this clause, replacing the current wording in blue if different.

3.4 The Coach agrees to undertake such travel within [*the United Kingdom and overseas*] as the Client shall reasonably require in connection with the Services.

Clause 3.5 provides for the coach to attend meetings at such locations and at such times as you require, in addition to providing the services generally.

3.5 The Coach agrees to attend such meetings at such locations and at such times as the Client shall reasonably require in connection with the Services.

Clause 3.6 provides for the coach to supply certain equipment and resources to assist in the provision of the services. This can be physical equipment, but may also include human resources. This clause is optional, but is useful to include if circumstances allow. This is because the fact of the coach providing and using his or her own equipment will make it more likely that he or she is a self-employed consultant. Any equipment or resources to be provided should be listed in Schedule 2 of the agreement.

3.6 The Coach shall be responsible for the provision of the resources and equipment specified in Schedule 2 of this Agreement. The provision and maintenance of such resources and equipment shall be at the Coach's own expenses, unless otherwise agreed in writing with the Client.

Clause 3.7 is optional and requires the Coach to provide you with an Enhanced Disclosure from the Criminal Records Bureau. This will be important if the Coach is to work with children and/or vulnerable adults. If you include this clause you should also include the wording in blue in **clause 9.2(c)** (see below).

3.7 The Coach agrees to provide the Client with an Enhanced Disclosure from the Criminal Records Bureau, which the Client, in its absolute discretion, considers to be satisfactory and agrees that he shall be obliged to continue to satisfy this obligation throughout his engagement with the client.

You should also include in **clause 3** any other obligations which you wish to specify. You may wish to seek advice about the types of obligations that would be appropriate here.

4. **Exclusivity of Engagement**

Clause 4 deals with whether during the time that the coach is providing the services for you, he or she can provide services and or work for other organisations. There are two options. Option A prevents the coach from working for other people whilst option B allows it.

In considering which is appropriate, you should take into account the fact that if the coach provides consultancy services to other clients, he or she is less likely to be your employee. To ensure that you are aware of the nature of the coach's other obligations (so that you can check that they do not conflict with the interests of your governing body). Option B requires the coach to provide you with such details of the coach's other engagements as you may reasonably require.

A The Coach shall not be employed by, perform any work for and/or accept any engagements with any third parties during the continuance of this Agreement.

B The Coach shall be free to be employed by, perform work for and/or accept any engagements with any third party during the continuance of this Agreement. The Coach agrees to provide such details of any employment by, work for and/or engagements with any third parties as the Client may reasonable require.

5. **Client's Obligations**

In addition to setting out the obligations which the coach must meet, the agreement also specifies the obligations on your club. These are dealt with in **clause 5**.

Clause 5.1 states that you will give the coach such access to your resources as he or she may require to provide the services. This could mean to physical equipment, use of a particular location or administrative resources.

5.1 Throughout the period of this Agreement the Client shall afford the Coach such access to the

Client's resources as the Coach may reasonably require to provide the Services.

Clause 5.2 is optional, but should be included if the coach falls within the definition of a "worker" found within the Working Time Regulations 1998. This is explained in more detail in the **WSA Guidance Note on Employment Status**. You should note however that it is very likely that the coach will be a worker for the purposes of this piece of legislation. If the coach is a "worker", he or she will be entitled to paid holiday. The entitlement of a full time consultant is to 4 weeks paid annual leave per year. If the coach is working part time, his/her entitlement should be pro rated.

5.2 The Client recognises that the Coach is a "worker" as defined in the Working Time Regulations 1998 (as amended) and therefore agrees that the Coach is entitled to paid holiday. The Coach's entitlement to paid holiday is to [] days holiday to be taken at such times as may be agreed in advance with the Client.

If, as is likely, the coach is a "worker" under the Working Time Regulations 1998, you should also ask him or her to complete an Opt Out agreement. This removes the limit on weekly working hours of 48 hours per week (as averaged over a 17 week reference period) contains in the regulations. This is important if the coach might work more than this or if the coach works for other organisations and you have no control over his or her working hours. You should note however that you cannot force the coach to sign an opt out.

6. Fees

Clause 6.1 deals with the level of fees which you agree to pay the coach, with **clause 6.2** dealing with the payment arrangements.

You should insert into **clause 6.1** details of the agreed fee rate, which could be an hourly or daily rate or even a fixed weekly or monthly fee. The clause should specify whether or not the fee is inclusive or exclusive of VAT. This will depend on the coach's VAT registration status, which in turn will depend on his or her annual income.

6.1 The Client shall pay to the Coach a fee of £[] ([inclusive/exclusive] of VAT) per [].

The second sentence of **clause 6.1** specifies that the coach is not entitled to be paid if services are not provided. If you include the words in blue, this principle will extend even to occasions when the reason for the coach not providing the services is because you asked him or her not to do so.

The coach is not entitled to be paid for any services which the coach does not provide [, including where the reason for the Coach's non-provision of the services is at the Client's request].

Clause 6.2 specifies the payment arrangements. Payment should only be made against invoices submitted by the coach. If VAT is chargeable, the invoice should specify the coach's VAT registration details. Payment can be arranged in advance or in arrears as agreed. You should insert the details of the time frame for payment into this clause.

6.2 The fees shall be payable by the Client [weekly/monthly] in [advance/arrears] on submission by the Coach of an invoice in respect of Services performed to the satisfaction of the Client. Any VAT chargeable on the fees or any part of them shall be paid by the Client to the Coach provided that the invoice submitted by the Coach is in an appropriate form.

Clause 6.3 deals with the payment of expenses. There are two options depending on whether you have a written expenses policy.

Option A should be used if you do have an expenses policy. The wording in blue should be retained if there is a separate policy to the usual policy for employees for consultants, but deleted if the same policy is used for both.

- A The Client shall reimburse to the Coach all travelling and other expenses reasonably incurred in the proper performance of the Services in accordance with its Expenses Policy [on Consultant's expenses].

Option B should be used if you do not have an expenses policy.

- B. The Client shall reimburse to the Coach agreed travelling and other expenses reasonably incurred in the proper performance of the Services provided that the Coach shall provide the Client with such receipts or other evidence of such expenses as the Client may reasonably require.

Clause 6.4 is a legal clause which should not be deleted. It ensures that the fact that you may make payment to the coach does not prevent you taking other action against him or her (including terminating the agreement without notice) if you later discover that the coach has not performed his or her obligations properly. It also allows you to make deductions from any payment you make to the coach in respect of any monies he or she may owe you.

- 6.4 Payment by the Client of any fees or expenses shall be without prejudice to any claims or rights which the Client may have against the Coach and shall not constitute any admission by the Client as to the performance by the Coach of the obligations contained in this Agreement. Prior to making any such payment the Client shall be entitled to make deductions or deferments from any such payments due to the Coach in respect of any disputes or claims whatsoever with or against the Coach.

7. **Additional Obligations**

This clause deals with some more specific obligations that you may wish to impose on the coach.

Clauses 7.1 and 7.2 deal with the coach's use of any property owned by your club and require him or her to take proper care of it and return it on termination of the agreement. You can choose to list any specific property which you give the coach and which you will be concerned to recover.

- 7.1 For the purposes of this Agreement, the expression "Property" shall mean all or any property belonging to the Client which is provided to the Coach or prepared by the Coach in connection with the Services and includes without limitation, *[list details of specific property provided to the Coach]* and any confidential information belonging to the Client whether stored as part of a document or in any other medium (including electronic and digital media).
- 7.2 The Coach agrees, whenever requested by the Client and in any event on the termination of this Agreement to surrender to the Client promptly any Property in the Coach's possession, custody or control. The Coach acknowledges and agrees that, on the expiry or termination of this Agreement, the Coach shall not be entitled to retain and shall not retain any Property.

Clauses 7.3 and 7.4 incorporate a confidentiality obligation requiring the coach to keep secret any confidential information which he or she learns as a result of working with your organisation, both during the time he or she is working for you and afterwards.

- 7.3 Save in the proper performance of the provision of the Services and subject to clause 7.4, the Coach shall not, at any time, use, copy, disclose, communicate and/or publish or enable or cause any person(s) to become aware of and/or use, copy, disclose, communicate and/or publish any confidential information belonging to the Client.

7.4 The obligation contained in clause 7.3 shall not apply to any information which:-

- (a) the Coach is ordered to disclose by a court or tribunal of competent jurisdiction or which he is otherwise required or permitted to disclose by law; and
- (b) is (otherwise through the Coach's breach of clause 7.3 available to the public generally.

Clause 7.5 is an important clause if the coach will be processing personal data on your behalf. This is probably inevitable, as keeping a list of names and telephone numbers constitutes processing personal data. The Data Protection Act 1998 provides that any person processing data on behalf of a data controller must enter into a written agreement containing certain obligations. These obligations are set out in **clause 7.5**.

7.5 The Client believes that in connection with the provision of the Services, the Coach may be required to process personal data (as such term is defined in the Data Protection Act 1998 (the "Act")) on behalf of the Client. The parties acknowledge that for the purposes of the Act, the Coach is a data processor in respect of any personal data which the Coach may process and accordingly the Coach agrees:-

- (a) not to process any personal data other than in accordance with the prior instructions of the Client;
- (b) not to do or omit to do anything which may result in the Client being in breach of its obligations under the Act; and
- (c) if, under the Act, the Client is required to provide any personal data which is in the possession or under the control of the Coach to any individual, to provide all necessary co-operation to the Client to enable the Client to meet its obligations under the Act.

Clause 7.6 merely states that the obligations contained in clause 7 will survive the termination of the agreement or in other words are ongoing even after your relationship with the coach has ended.

7.6 The obligations contained in this clause [7] are capable of surviving the termination of this Agreement shall continue to apply following the termination of this Agreement.

8. **Liability**

Clause 8 is an optional clause, but if used has two very important advantages. **Clause 8** is an indemnity clause under which, if the actions or behaviour of the coach cause your governing body to be sued or otherwise to suffer loss, the coach agrees to meet any associated costs. Not only does this protect your organisation, but also shows that the coach is carrying a level of financial risk and thus more likely to be self-employed than employed.

Clause 8.1 is the basic indemnity clause.

8.1 The Coach agrees and acknowledges that the Client will be relying upon the skill, expertise, knowledge, and experience of the Consultant in the provision of the Services (or any substitute involved in the provision of the Services under clause 12) and accordingly, but subject always to sub-clause [8.2], the Coach agrees to fully indemnify and keep the Client fully indemnified against and from all claims, demands, awards, damages, actions, losses, costs (including legal costs) and other expenses arising as a result of or in connection with the provision of the Services (or any of them).

Clause 8.2 sets an upper limit on the amount you can expect the coach to pay. The limit cannot be applied to death or personal injury because statute prevents this.

8.2 The Coach's total liability to the Client under this agreement shall not exceed [£ insert limit] in aggregate. This limit shall not apply to any liability of the Coach for death or personal injury.

Clause 8.3 ensures that the coach should be able to meet the potential liability to which he or she is agreeing in this clause, through professional indemnity and any other appropriate insurance.

8.3 The Coach shall maintain in force throughout the duration of this Agreement such insurance policies as are adequate to meet the potential liabilities of the Coach under this Agreement.

9. **Termination**

Clause 9 of the agreement deals with the circumstances when the agreement can be terminated.

Clause 9.1 covers termination by either party by notice. There is no need to refer to the statutory minimum notice periods as these only apply to employees. Instead you are completely free to decide the notice period. As the notice is mutual (i.e. the same for both parties) you should consider how much notice you would like the coach to give you and also how quickly you may want to get rid of him or her.

9.1 This Agreement may be terminated by either party giving to the other not less than [] notice in writing.

Clause 9.2 sets out the circumstances when you will be entitled to terminate the Agreement immediately without notice. These circumstances include:

- in 9.2 (a) where the coach is in breach of his or her obligations. You are expected to give the coach a notice of the breach and an appropriate period to remedy the breach before the right to terminate becomes operational. The standard template allows for a period of 14 days, but you can choose such period as you consider will be appropriate in the circumstances. You should consider how this would fit in with the general notice period under the agreement. The period should be considerably shorter if relying on this clause is to have any advantage.
- in 9.2 (b) where the coach is sick or otherwise incapacitated – you will need to insert an appropriate length of time into the clause depending on the job the coach does and the length of the fixed term if there is one.
- in 9.2 (c) where the coach performs badly or shows poor conduct. You should retain the wording in blue if the coach may work with children and/or vulnerable adults. Please refer to **clause 3.7** above; and
- in 9.2 (d) where the coach wilfully causes your club to suffer any loss or damage or if such damage is caused through his/her negligence.

9.2 Without prejudice to any other rights or remedies to which the Client may be entitled whether under this Agreement or at law, the Client shall be entitled to terminate this Agreement immediately by notice in writing if:-

- (a) the Coach is in breach of any obligations under this Agreement and such breach (if capable of remedy) is not remedied by the Coach within [14] days of receipt of a

notice from the Client specifying the breach and requiring its remedy;

- (b) the Coach for whatever reason is unable to provide the Services for a continuous period of [insert length of time] or for [insert length of time] in aggregate;
- (c) the Consultant's performance or conduct brings or is in the opinion of the Client likely to bring the Client into disrepute[. For the avoidance of doubt, if the Coach is unable to provide a satisfactory Enhanced Disclosure from the Criminal Records Bureau as required by clause 3.7, the Client shall be entitled to terminate this Agreement immediately]; or
- (d) the Coach causes loss or damage to the Client by negligent or wilful act or omission.

Clause 9.3 enables you to withhold payment from the coach in the event of the coach being in breach of the agreement and causing you to terminate it.

9.3 In the event of termination in accordance with sub-clause [9.2], the Client shall be entitled to withhold any or all of the fees and expenses whether or not they may have accrued and without prejudice to any other rights the Client may have in respect of the Consultant's breach, performance or conduct.

Clause 9.4 prevents you from relying on clause 9.2 to terminate the agreement, if the reason for the coach's breach is actually your fault. The coach is meant to tell you where this has occurred within 72 hours.

9.4 The Coach shall not be required to fulfil an obligation under this Agreement and the provisions of sub-clause [9.2] shall not apply, if, the Coach is prevented from fulfilling the obligation by any acts or omissions of the Client. The Coach shall only be entitled to rely on the provisions of this clause 9.4 if the Coach gives written notice to the Client of any act or omission which prevents the Coach from fulfilling the obligation within 72 hours of the occurrence of the Client's act or omission.

10. **Relationship**

Clauses 10.1 and 10.2 are vital and state the relationship between you and the coach, clarifying that he or she is not an employee of your organisation and so is not entitled to any of the usual employee benefits.

10.1 For the avoidance of doubt, it is stated that the parties intend and agree that this Agreement shall be treated for all purposes as a contract for services with the relationship between the Client and the Coach being one of independent contractors.

10.2 Nothing contained in this Agreement shall be construed as having or have the effect of constituting any relationship of employer and employee between the contracting parties and the Coach shall not be entitled to receive any benefits available to employees of the Client including, without limitation, any salary, overtime payments, payment of sick pay, and pension contributions.

11. **Tax Liabilities**

Clause 11.1 is also vital and states that the coach is responsible for his or her own income tax and national insurance position.

11.1 The Coach shall have the status of a self-employed person and shall be responsible for all tax liabilities arising in connection with the provision of the Services including but not limited to liability for the payment of income tax and National Insurance in respect of the fees.

Clause 11.2 is also an indemnity clause. It is not compulsory to include clause 11.2, but it is highly recommended. If, at any time in the future, the government were to pursue your organisation for non-payment of income tax or National Insurance contributions in respect of the coach you would have the right, relying on this clause, to recover the amount you owe the government from the coach.

11.2 The Coach agrees to fully indemnify and keep the Client fully indemnified against and from all claims, demands, awards, damages, actions, losses, costs (including legal costs) and other expenses arising as a result of or in connection with any claims that may be made by the relevant authorities against the Client in respect of tax and/or national insurance or similar contributions owed by the Client in connection with the Services.

12. **Substitution**

Clause 12.1 is not compulsory, but is a very useful clause to include to avoid the coach being considered to be your employee. This is because a contract of employment is a personal obligation. If the coach can send a substitute in his/her place, he/she is more likely to be a consultant.

12.1 If the Coach is unable to personally provide all or part of the Services to the Client, the Coach shall be entitled to nominate a substitute to provide all or part of the Services on the Coach's behalf.

Clause 12.2 contains two options for how you can arrange to approve substitutes in advance. Option A should be used if there is to be no formal mechanism of advanced approval whereas Option B should be used where you want to have a list of substitutions approved in advance.

- 12.2 A Any substitute must be considered by the Client to be suitably qualified and experienced and must be approved in advance in writing by the Client.
- B The Coach and the Client shall agree a list of substitutes acceptable to the Client at the commencement of the term of this Agreement. The Coach shall ensure that only substitutes approved by the Client in advance will be used.

Clause 12.3 sets out that the Coach will be responsible for the substitutes fee rate, actually paying the substitute and ensuring the substitute is covered by insurance.

12.3 The Coach shall be responsible for:-

- agreeing a fee rate with any substitutes;
- for making any payment due to any substitutes; and
- for ensuring that any insurance policies referred to in Clause 8.3 above cover any substitutes.

13. **General**

Both of the sub clauses in clause 13 are optional. It is recommended that they are included however as they cover standard issues applicable to all agreements of employment.

Clause 13.1 provides that only the coach can sue you for anything under the agreement and not third parties. Without this clause, you cannot prevent this.

13.1 Neither party intends that any term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party.

Clause 13.2 confirms that the jurisdiction where any disputes concerning the agreement will be heard, is England and Wales.

- 13.2 This Agreement shall be governed by and interpreted in accordance with the law of England and Wales and each of the parties submits to the exclusive jurisdiction of the English and Welsh Courts as regards any claim or matter arising under this Agreement.

Finalising the Agreement

The final agreement should be sent out to the coach in duplicate. Both copies must be signed by an authorised signatory of your club, who, in addition to signing, should fill in his/her name and date the signature. You should also ask the Coach to sign a Working Time Opt Out at the same time if you feel this is appropriate (see the notes under **Clause 5** above). Be careful to use the Consultant's Working Time Opt Out and not the Employee's Working Time Opt Out.

The coach must then sign both copies of the Agreement and the Working Time Opt Out, returning one to you and keeping one for his/her own records.