

CONSULTANCY AGREEMENT

(Form of Agreement with terms and conditions attached)

Date of Agreement	
LSTA	Lead Sheet Training Academy Limited
LSTA Address	Unit 10, Archers Park, Branbridges Road, East Peckham, Kent, TN12 5HP
LSTA Reference/Order No	
LSTA Contacts	
Client	
Client Manager/Site Contacts	N/A
Client Address	
Client Reference/Order No	
Site Address	
LSTA Manager	
Services Description	
Specific Deliverables	
Start date of the Services	
Estimated Duration	
Charges	
Down payment	
Estimated Expenses	
Site(s) (if any)	
Other Special Conditions	
Signed for and on behalf of the Client Name..... Position.....	Signed for and on behalf of LSTA Name: Position:

CONSULTANCY SERVICES PROVIDED BY LSTA - TERMS AND CONDITIONS OF SERVICES PROVISION

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

Agreement: the Form of Agreement, the Terms and any other documents expressly incorporated into the contract for the provision of the Services.

Client: the customer of LSTA for the Services named in the Form of Agreement.

Client Equipment: any equipment, systems, or facilities provided by the Client and used directly or indirectly in the supply of the Services.

Client Manager: the Client's manager for the Services as described in the Form of Agreement as appointed by the Client and notified to LSTA from time to time.

Deliverables: all documents, products and materials developed by the LSTA or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications, but excluding the LSTA Manual.

Form of Agreement: the first page of this Agreement containing the headed 'Form of Agreement' details relating to the Client and the Services.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

LSTA Equipment: any equipment, including tools, systems, cabling or facilities, provided by LSTA or its subcontractors and used directly or indirectly in the supply of the Services.

LSTA's Manager: LSTA manager for the Services as described in the Form of Agreement or appointed by LSTA and notified to the Client from time to time.

LSTA Manual: Any pages, tables, drawings, images and text from any current or previous editions of "Rolled Lead Sheet The Manual" by the Lead Sheet Training Academy and formerly by the Lead Sheet Association.

Pre-existing Materials: all documents, information and materials provided by either party relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications

Services: the services to be provided by LSTA to the Client as described in the Form of Agreement.

Site: the premises owned, controlled or occupied by the Client where any part of the Services are to be undertaken.

Terms: these terms and conditions which, with the Form of Agreement, constitute the Agreement.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.3 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

15 A reference to **writing** or **written** includes fax and e-mail.

2. COMMENCEMENT AND DURATION

2.1 LSTA shall provide the Services to the Client on the terms and conditions of this Agreement.

2.2 The Services shall be supplied for the Estimated Duration set out in the Form of Agreement unless this Agreement is terminated in accordance with clause 12. Nevertheless, the Services shall continue to be supplied and paid for thereafter unless this Agreement is terminated by one of the parties giving to the other not less than one months' notice, unless this Agreement is terminated in accordance with clause 12.

3. LSTA OBLIGATIONS

3.1 LSTA shall use reasonable endeavours to provide the Services and to deliver the Deliverables to the Client in all material respects. Whilst LSTA will use reasonable efforts to give recommendations where reasonable to do so, these shall be limited to the information and access actually given to LSTA to perform the Services and the Client shall be entirely liable for its decision to either follow such recommendations (in whole or in part) or not to do so.

3.2 LSTA shall use reasonable endeavours to meet any performance dates requested but any such dates shall be estimates only and time for performance by LSTA shall not be of the essence of this agreement.

3.3 LSTA shall still be entitled to Charge appropriately and proportionally in the event of any delay or failure of LSTA to deliver the Services caused by the Client or its agents.

3.4 If LSTA's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, LSTA shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

4. CLIENT'S OBLIGATIONS

4.1 The Client shall:
(a) co-operate with LSTA in all matters relating to the Services;
(b) provide, for LSTA, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably required by LSTA to provide the Services;
(c) provide, in a timely manner, such information as LSTA may require, and ensure that it is accurate in all material respects;
(d) inform LSTA of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's Site;
(e) ensure that all Client's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services;

4.2 Before undertaking and Services of a building or inspecting a building, the Client shall be responsible for undertaking a prior health and safety inspection and assessment of the location and the work method (including scaffolding, lifting, platforms, hoists etc) required for LSTA to perform the Services and for ensuring that proper safe access is given to LSTA to provide the Services. LSTA will not be liable for any failure to carry out the Services if the LSTA employee undertaking the Services has not first been given a 'Permit to Work' in accordance with the Client's health and safety policies or, if it has none, as complying with law (and LSTA reserves the right not to undertake the Services with no liability under this Agreement where an assessment has not taken place to LSTA's satisfaction and/or a Permit has not been given).

4.3 The Client shall be liable to pay to LSTA, all costs, charges or losses sustained or incurred by LSTA or its employees (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to LSTA confirming such costs, charges and losses in writing.

4.4 The Client shall not at any time from the date of this Agreement to the expiry of six months after the last date of supply of the Services solicit or entice away from LSTA or employ or attempt to employ any person who is, or has been, engaged as an employee of LSTA in the provision of the Services. Any consent given by LSTA in accordance with clause 4.4

shall be subject to the Client paying to the LSTA a sum equivalent to 20% of the then current annual remuneration of LSTA's employee or, if higher, 20% of the annual remuneration to be paid by the Client to that employee.

5. CHARGES AND PAYMENT

5.1 In consideration of the provision of the Services by LSTA, the Client shall pay the Charges as set out in the Form of Agreement. The Downpayment shall form part of the Charges and shall be paid within 5 days of the Date of Agreement and in any event before any provision of Services occurs.

5.2 Whilst the Estimated Expenses are an indicative guide only, the Charges exclude:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom LSTA engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the LSTA for the supply of the Services; (all with VAT added) which LSTA shall add to its invoices; and
 - (b) VAT at the appropriate rate;
- all of which LSTA shall add to its invoices and shall be payable by the Client.

5.3 LSTA may at any time review and increase the Charges provided that the Charges cannot be increased more than once in any 12 month period. LSTA shall give the Client written notice of any such increase one month before the proposed date of that increase. If such increase is not acceptable to the Client, it may, within one week of such notice being received (or deemed to have been received), terminate this Agreement by giving one month's written notice to LSTA.

5.4 The Client shall pay each invoice submitted to it by LSTA in full and in cleared funds within 30 days of receipt to a bank account nominated in writing by LSTA. The Downpayment shall be paid without invoice in accordance with clause 5.1.

5.5 Without prejudice to any other right or remedy that it may have, if the Client fails to pay LSTA on the due date then the Client shall pay interest on the overdue amount at the rate set in the Late Payments of Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2013. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount; and LSTA may suspend all Services until payment has been made in full.

5.6 All sums payable to LSTA under this Agreement shall become due immediately on its termination, despite any other provision.

5.7 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. INTELLECTUAL PROPERTY RIGHTS

6.1 As between the Client and LSTA, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by LSTA.

6.2 The Client hereby grants to LSTA the right for LSTA to use and refer to the name of the Client in a moderate, truthful manner in relation to the Services provided in LSTA's publicity and promotional activities.

6.3 In providing the Services to the Client, LSTA will provide the Client with access to, or copies of, the whole or any part of the LSTA Manual. LSTA hereby grants to the Client a non-exclusive, non-transferable, non-sublicensable, terminable, royalty-free licence to use the Deliverables and the LSTA Manual in the UK and Ireland solely to the extent necessary to use the Services and Deliverables for the purpose for which they were supplied and in each case only for the duration of this Agreement.

6.4 The Client will not at any time:
6.4.1 copy or reproduce in any way the whole or any part of the LSTA Manual or the Deliverables unless expressly authorised by LSTA in writing;

6.4.2 make copies of the LSTA Manual or Deliverables available to the public;

6.4.3 modify or alter the whole or any part of the LSTA Manual; or

6.4.4 do or permit anything to be done in relation the Deliverables or the LSTA Manual (or any part of either of them) which would or could jeopardise the validity of any Intellectual Property Rights therein.

6.5 The Client will not obtain any right, title, interest or benefit in or to the Deliverables or the LSTA Manual other than as expressly granted to it under this Agreement.

6.6 Breach of any part of this clause 6 shall constitute a material breach for the purposes of clause 8.1(b).

6.7 The Client will promptly report to LSTA particulars of any use by any other person of the Deliverables, the LSTA Manual or any other materials which may infringe LSTA's Intellectual Property Rights or amount to unfair competition or passing off at common law.

6.8 The Client will assist LSTA as LSTA may reasonably require to protect LSTA's Intellectual Property Rights in the Deliverables and the LSTA Manual, and the Client will lend its name to or join as a party to an infringement proceedings or other litigation conducted by LSTA.

6.9 LSTA will have the exclusive right to determine whether or not any litigation will be instituted or other action taken in connection with any infringements or potential infringements referred to in clause 6.8. The Client will not institute any litigation or other action relating to any such infringement or potential infringement without LSTA's prior written consent.

6.10 This Agreement does not affect the ownership of Pre-existing Materials. The parties agree and acknowledge that all Pre-existing Materials shall remain the property of the party introducing it.

7. LIMITATION OF LIABILITY

7.1 Nothing in this agreement limits or excludes either party's liability for:
(a) death or personal injury caused by its negligence;
(b) fraud or fraudulent misrepresentation; or
(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, LSTA shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
(a) loss of profits;
(b) loss of sales or business;
(c) loss of agreements or contracts;
(d) loss of anticipated savings;
(e) loss of or damage to goodwill;
(f) loss of use or corruption of software, data or information;
(g) any indirect or consequential loss; or
(h) LSTA's failure to provide any or all of the Services in the event that the Client has not fully complied with its obligations in clause 4.2.

7.3 Subject to clauses 7.1 and 7.2, LSTA's total aggregate liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to:
(a) £5000 per claim; and
(b) in respect of all claims (connected or unconnected), the equivalent of the total Charges paid by the Client in that period prior to the date the cause of the claim arose.

7.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are to the fullest extent permitted by law excluded from this agreement.

7.5 LSTA will maintain Professional Indemnity insurance cover to £1 million. Any additional cover required or considered appropriate by LSTA or as requested by the Client that it obtains shall be put in place by LSTA if referred to in the Special Conditions in the Form of Agreement; and LSTA reserve the right to charge separately for the expense of such cover that exceeds £1 million.

8. TERMINATION

8.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of ten days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits

- inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 an individual or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors.
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
- (i) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

9. CONSEQUENCES OF TERMINATION

- 9.1 On termination or expiry of this agreement:
- (a) the Client shall immediately pay to LSTA all of LSTA's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, LSTA may submit an invoice, which shall be payable immediately on receipt;
- (b) the following clauses shall continue in force: clause 6 (Intellectual property rights), clause 7 (Limitation of liability), this clause 9.1, clause 19 (Notices) and clause 20 (Governing law and jurisdiction).
- 9.2 Following the termination date all rights granted under clause 6 will immediately cease and the Client will immediately return or destroy, at LSTA's election, all Deliverables and copies of the LSTA Manual (whether physical, electronic or otherwise) and provide LSTA with confirmation in writing that it has complied with this clause 9.2.
- 9.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

10. FORCE MAJEURE

- 10.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation: acts of God, flood, or other natural disaster; terrorist attack, civil commotion or riots, war; any law or any action taken by a government or public authority, collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts and interruption or failure of utility service.
- 10.2 If a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 10.3 If the Force Majeure Event prevails for a continuous period of more than one month, either party may terminate this agreement by giving seven days' written notice to all the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

11. VARIATION

- 11.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12. WAIVER

- 12.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial

exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13. RIGHTS AND REMEDIES

- 13.1 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

14. SEVERANCE

- 14.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 14.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15. ENTIRE AGREEMENT

- 15.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

16. ASSIGNMENT

- 16.1 This Agreement is personal to the Client and the Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 16.2 LSTA may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

17. NO PARTNERSHIP OR AGENCY

- 17.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18. RIGHTS OF THIRD PARTIES

- 18.1 No one other than a party to this Agreement shall have any right to enforce any of its terms.

19. NOTICES

- 19.1 A notice given to a party under or in connection with this Agreement shall be sent to the party for the attention of the Client Manager or LSTA Manager, as the case may be at the address given in the Form of the Agreement.
- 19.2 A party may change its address details by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of: the date, if any, specified in the notice as the effective date for the change; or

20. GOVERNING LAW AND JURISDICTION

- 20.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 20.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).