



CONSULTANCY AGREEMENT

**Prepared by:
The Consultant**

**Prepared for:
The Client**

www.thechange gym.com

PARTIES:

Redequip Pty Ltd T/A The Change Gym ABN: 94 142 055 589

PO Box 165 ELANORA, Queensland, Australia 4221.

Short name '**Consultant**'.

AND

The party to whom this Proposal is addressed.

Short name '**Client**'.

CONSULTANCY AGREEMENT

1. Defined terms & interpretation

In the document:

Agreement means this Consultancy/Training/Coaching Agreement;

Business Hours means the hours between 9.00am and 5.30pm, excluding weekends and public holidays in Queensland;/br

Commencement Date means the date specified in the Proposal;

Confidential Information means any documentation or information marked as confidential and all other information received or developed by the Consultant in the course of their association with the Client (both before and after the day the Agreement is signed by the Consultant), which is not publicly available and relates in any way to the processes, equipment and techniques used by the Client in the course of their business including but not limited to designs for product and manufacturing, Intellectual Property Rights, systems, technology, ideas, concepts, know-how, trade secrets, techniques, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications) technical data and marketing information such as financial information and business plans;

Contract Material means all material created, written or otherwise brought into existence by the Consultant as part of, or for the purpose of performing the Services under this Agreement including, but not limited to, any literary works pursuant to the *Copyright Act 1968* (Cth), all reports (whether in draft or final form), documents, equipment, information and data stored by any means and recorded in or on any medium whatsoever;

End Date means the date specified in the Proposal, or as extended between the parties and evidenced in writing;

GST means the goods and services tax under *A New Tax System (Goods and Services) Act 1999* ('GST Act') and the terms used have the meanings prescribed in the *GST Act*;

Insolvency Event means bankruptcy, amalgamation, reconstruction, winding up, dissolution and assignment for or compromise with creditors, and 'Insolvent' will be construed accordingly;

Intellectual Property (Rights) means all intellectual property rights including:

- patents, copyright, rights in circuit layouts, registered designs, trade marks and the right to have Confidential Information kept confidential; and
- any application or right to apply for registration of any of those

Personal Information has the same meaning as that contained in the *Privacy Act 1988* (Cth); and **Services** means the Services specified in the Proposal.

- In the Agreement, unless the contrary intention appears:
 - the singular includes the plural and vice versa;
 - a reference to a party to this Agreement or any other document or agreement includes its successors and permitted assigns;
 - where a party comprises 2 or more persons, an agreement or obligation to be performed or observed by that party binds those persons jointly and severally and a reference to that party includes a reference to any one or more of those persons;
 - a reference to a clause or schedule is a reference to a clause or schedule to the Agreement and a reference to the Agreement includes any schedules;
 - a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
 - a reference to '\$' is a reference to Australian currency and any conversion is based on the market rate as posted by a leading bank on the day of conversation; and
 - a reference to writing includes typewriting, printing, photocopying and any other method of representing words, figures or symbols in a permanent visible form.

2. Engagement and commencement

- The Client agrees to engage the Consultant to provide the Services stated in this Proposal, or such other services as may be agreed between the Client and the

Consultant from time to time, on and subject to the terms of this Agreement and the Consultant accepts this appointment.

- The Consultant's engagement commences on the Commencement Date noted in this Proposal.
- The Term of this Agreement will be from the Commencement Date noted in this Proposal and will end on the End Date noted in this Proposal unless terminated earlier in accordance with clause 11 (Termination).

3. Services

- The Consultant warrants that it and its employees possess the skill, expertise, capacity and resources to perform the Services required by this Agreement.
- The Consultant and its employees agents and sub-contractors must provide the Services:
 - efficiently, with due care and skill and to the best of their knowledge and expertise;
 - in accordance with all reasonable requests the Client may give from time to time;
 - in compliance with all applicable laws and regulations; and
 - without breaching any obligation to any other
- Without limiting the Services to the Client, the Consultant and its employees must not:
 - act in conflict with the Client's best interests; or
 - compete with the Client.

This clause does not place any impediment on the Consultant performing the Services for other parties.

4. Performance of the Services

- The parties agree that:
 - the Consultant will perform the Services as an independent Contractor and not as an employee of the Client;
 - the Consultant will have the right to determine the method, manner and means by which the Services will be performed;
 - the Consultant is to determine the time spent performing the Services and if the Services are performed at the Client's premises, then the Consultant's time spent at the premises is to be at the discretion of the Consultant, subject to the Client's normal Business Hours and security requirements;

- the Client will not be required to furnish or provide any training to the Consultant to enable the Consultant to perform the Services;
- the Consultant will not be required to devote the Consultant's full time to the performance of the Services, and it is acknowledged that the Consultant has other clients and the Consultant offers Services to the general public; and
- the order or sequence in which the Services are performed will be under the control of the Consultant, subject to the timing requirements of the Client.

5. Services Fee

- The Consultant shall be remunerated for the Services in accordance with the 'Service Fee'.
- The Consultant must provide a valid tax invoice to the Client for the Service Fee quoting the Consultant's ABN number.
- The parties agree that the Consultant's invoice shall be paid within 30 days of the date of issue by the Consultant. The Consultant undertakes to provide the Client with each invoice within five (5) days of it being issued.

6. Confidential information

- Where the Client and its employees receive Confidential Information, the Client and its employees must:
 - keep the Confidential Information confidential at all times and accordingly, must take all reasonable steps and do all things necessary, and do all things that may be reasonably requested by the Consultant from time to time to keep the Confidential Information within the Client's sole possession, custody or control;
 - only use the Confidential Information in connection with the Services and not for any other purpose;
 - not use, copy or reproduce, or cause, permit or allow any other person to use, copy or reproduce any Confidential Information or create any document, material or medium making reference to any Confidential Information otherwise than in connection with the Services and in accordance with this Deed;
 - immediately notify the Consultant if it becomes aware of any unauthorised access to, use or disclosure of any Confidential Information.
- If the Client is uncertain as to whether any information is Confidential Information, the Client will treat the information as if it were Confidential

Information and as not being in the public domain unless and until the Consultant agrees in writing that the information is in the public

- The Client and its employees must only disclose Confidential Information to persons who:
 - are aware and agree that the Confidential Information must be kept confidential; or
 - have signed any confidentiality agreement required by the Client from time to time; and either:
- have a need to know (and only to the extent that each has a need to know); or
- have been approved by the person or persons nominated by the Client from time to
 - The Client and its employees must keep confidential all Confidential Information other than Confidential Information:
 - that was public knowledge when the Agreement was signed by the Client or became so at a later date (other than as a result of a breach of confidentiality by the Client); or
 - that they are required by law to
 - The Client must immediately notify the Consultant of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.
 - The Client must provide all assistance reasonably requested by the Consultant in relation to any proceedings the Consultant may take against any person for unauthorised use, copying or disclosure of Confidential Information.

7. Intellectual Property Rights

- The Client acknowledges and agrees that any Intellectual Property Rights or improvements that the Client may create, acquire or suggest at any time during the term of this Agreement whether or not during business hours, which may be connected with the Services will fully and freely and immediately be communicated by the Client to the Consultant and will belong to and be the property of the Consultant absolutely.
- Due to the nature of the Confidential Information being disclosed to the Client, the Client acknowledges and agrees that it will not at any time including and after the expiration or termination of this Deed:
 - challenge, contest or deny the validity of:
 - the Consultant's Intellectual Property Rights;

- the Consultant's ownership of the Intellectual Property including the copyright in the Contract Material; or
 - the right or title of the Consultant to the Intellectual Property created by the Consultant
- do any act which may invalidate or put in dispute the validity of the Consultant's Intellectual Property Rights including the Copyright in the Contract Material or the Consultant's claim to the ownership or use of the Copyright in the Contract
- The Client will not directly or indirectly interfere with, circumvent, or attempt to circumvent, avoid, by-pass or obviate the Confidential Information, Intellectual Property and interests or the interest or relationships the Consultant may establish or has established with third parties to deliver the Services.

8. Privacy

- The Consultant undertakes to take all reasonable steps to ensure the integrity and confidentiality of the Personal Information obtained pursuant to this Agreement.
- The Consultants shall:
 - observe the National Privacy Principles under the *Privacy Act 1988* (Cth) and the *Spam Act 2003* (Cth); and
 - not disclose, use or hold any Personal Information in breach of the *Privacy Act 1988* (Cth).
- The Consultant will indemnify and keep indemnified the Client against all costs (including the Client's reasonable legal costs) expenses, losses, claims, orders and determinations suffered or incurred by, or made against, the Client as a result of the Consultant not complying with its obligations, determinations or orders regarding privacy.

9. Indemnity

- The Client agrees to indemnify and keep the Consultant indemnified against:
 - all actions, claims, liabilities, expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against the Client) that the Consultant may sustain or incur whether directly or indirectly from:
 - any wilful, unlawful or negligent acts or omissions of the Client or its personnel arising out of or in relation to this Agreement, including, but not limited to, claims by third parties and whether they are made in contract or in tort; or

- a breach by the Client of its obligations hereunder including any liability that might arise by reason of any infringement or allegation of infringement of Copyright, Intellectual Property Rights, Privacy Rights or other Confidential Information; and
- all taxes, charges, fees and other imposts (including any fine or penalty) levied, assessed, charged or collected in connection with this Agreement (including payments made under this Agreement) or otherwise relation to the Services, excluding any taxes on income.

10. Default

- If either the Consultant or the Client:
 - defaults in any obligation under this Agreement which is or has become essential; or
 - fails to comply with any of the warranties, guarantees, conditions and agreements of a material nature and on the part of the Consultant or the Client to be observed and performed under this Agreement, in addition to any other rights which may be conferred upon it at law and at equity the non- defaulting party may give the defaulting party seven (7) days written notice to rectify the default. If the defaulting party does not rectify the default within the seven (7) days from the date the notice was sent, then the non-defaulting party has the right to terminate this Agreement.

11. Termination

- This Agreement may be terminated by either the Consultant or the Client upon giving fourteen (14) days written notice, or, in lieu of such notice, a pro-rated payment equivalent to fourteen (14) days notice calculated on the average hours the Consultant worked per week over the Term of the Agreement.
- Notwithstanding clause 11.1, the Client may terminate the Consultant's engagement at any time without notice if the Consultant:
 - is unable to perform the Services; or
 - commits any breach of the Consultant's obligations under this Agreement which is unable to be remedied by the Consultant within seven (7) days notice of such breach from the Client; or
 - commits any serious or persistent breach of any of the provisions of this Agreement which is unable to be remedied, or performs any wrongful act, or by misconduct or any other wrongful or negligent means, does anything as a result of which the Client will incur liability to any person; or
 - through no fault of the Client, breaches this Agreement, which breach constitutes fraud, dishonesty or wilful disregard for the interests of the Client; or

- becomes convicted of a serious criminal offence which, in the reasonable opinion of the Client, seriously impairs the ability of the Consultant to effectively discharge his duties hereunder or brings the Client into disrepute; or
- is guilty of any dishonesty, misappropriation of funds or wilful breach or continued neglect of the terms of the Agreement; or
- becomes, threatens or is in jeopardy of suffering an Insolvency
- Termination of the Consultant's engagement does not affect any accrued rights or remedies of either the Consultant or the Client.

12. What happens after termination of engagement

- If the Consultant's engagement is terminated for any reason:
 - The Client must return all the Consultant's property to the Consultant on termination including all written or machine readable material, software keys as requested;
 - The Consultant's obligations under clauses 6, 8 and 9 of this Agreement continue after termination except in respect of information that is part of his general skill and knowledge; and
 - The Client must not record any Confidential Information in any form after

13. GST

- It is agreed that any consideration and all other amounts to be paid by the Client to the Consultant are exclusive of GST.
- In respect of each payment by the Client under this Agreement, the Consultant agrees to deliver to the Client, as required under the GST Act, tax invoices in a form which complies with the GST Act, and the regulations, to enable the Client to claim an input tax credit in respect of the taxable supply.

14. Severability

- Part or all of any clause of the Agreement that is illegal or unenforceable will be severed from the Agreement and the remaining provisions of the Agreement will continue in force.

15. Waiver

- The failure of the Consultant or the Client at any time to insist on performance of any provision of the Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of the Agreement.

16. Notice

- Notice given under this Agreement must be given in writing to the address stated in this Agreement or to the party's solicitor. A notice so given is taken to be received:
- if hand delivered, on delivery;
- if sent by prepaid post, three days after the date of posting; and
- if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight (8) Business Hours after that transmission, the Client informs the sender that it has not received the entire notice.

17. Governing Law

- The Agreement is governed by the law applicable in Queensland and the Consultant and the Client irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that state.

18. Entire Agreement

- The Agreement (including its schedules):
 - constitutes the entire agreement between the Consultant and the Client as to its subject matter; and
 - in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by the Consultant or the Client.

19. Alteration

- The Agreement (including its schedules) may only be altered in writing signed by the Consultant and the Client.

20. The Agreement is Confidential

- The terms of the Agreement and any subsequent amendments are confidential and may not be disclosed by the Client to any other person, other than for the purpose of obtaining professional legal or accounting advice, without the written approval of the Consultant.

21. Headings

- Headings are for ease of reference only and do not affect the meaning of the Agreement as set out in this Agreement.