

Definitions

In this agreement, unless the context otherwise requires

"Agreement" means these terms and conditions together with the Schedule;

"Confidential Information" means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know - how, personnel, customers and suppliers of a party to this Agreement, together with all information derived from the above and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;

"Fees" means the fees set out in the applicable Schedule;

"Services" means the services to be provided by Encore Services t/a TallGuyDigital (including the delivery of the Deliverables), as described in the Schedule;

"Products" means any hardware and/or third party software provided to the Customer by or on behalf of The Consultant pursuant to this Agreement;

"Terms and Conditions" means this document comprising Clauses 1 to 1.4 but excluding any Order;

"Schedule" means a document setting out the details of the Services, Products and the Fees agreed between the Parties to be subject to this Agreement.

Consulting Services

1. The Consultant will provide consulting services to the Customer relating to the services as specified in the Schedule ("the Services"). Subject to any lawful restraint imposed upon it by any other party (such as an obligation as to confidence), the Consultant will make available to the Customer all knowledge, information and expertise in its possession in performing the Services. If the Customer wishes the Consultant to perform any services other than those specified in the Schedule (including without limitation to provide any additional functionality) or to provide further or other Products or software, then the Consultant shall be entitled to quote the Customer separately for the provision of those services or the provision of those products or software. If the Customer accepts that quotation then the provisions of this Agreement will apply to the provision of those additional services, products or software.
2. Unless otherwise agreed in writing by the parties, the term of this Agreement will commence on the date specified in the Schedule.
3. Unless specifically stated as a fixed price quote, any cost estimates that are or have been given by the Consultant are estimates only. Actual time spent and Products supplied may be used as the basis for billing.

Products

4. The Consultant may also supply the Customer with Products (as ordered by Customer and agreed by The Consultant) from time to time. In the context of this Agreement, "Products" means any hardware and/or third party software provided to the Customer by or on behalf of The Consultant pursuant to this Agreement.

Reporting and Meetings

5. The Customer shall make its employee (specified in the Schedule or such other person as the Customer shall nominate in writing) (the "Customer Contact") available to meet with the Consultant when reasonably required by the Consultant for the purposes of discussing the status of the Services. The Consultant will

meet regularly with the Customer Contact (by remote communication facility if necessary) and report to the Customer on the status of the Services.

Consulting Fees and Other Expenses

6. The Consultant will provide Services to the Customer and will be entitled to charge the Customer for such Services at the fees specified in the Schedule.
7. The Consultant shall be entitled to provide the Services remotely from its own premises and will not be required to attend the Customer's premises. If the Consultant is required to attend the Customer's premises for any reason pursuant to this Agreement, the Customer will reimburse the Consultant for reasonable transport and/or accommodation expenses incurred by the Consultant in doing so. However this does not include transport or accommodation expenses where the Customer's premises are located within 25kms of the Consultant's address as specified above.
8. The Customer authorizes the Consultant to obtain access to the Customer's computing facilities referred to in the Schedule (the "Facilities") using the remote means of access referred to in the Schedule ("Means of Access") and subject to any Restrictions on Access set out in the Schedule, for the purposes of providing the Customer with Services.
9. The Consultant will not use the Means of Access (or any other methods of remote access) to access the Facilities for any purpose other than to provide the Services. However, the Consultant shall be permitted to gain remote access to the Facilities for lawful purposes using any publicly available means (such as the World Wide Web), which do not require special authorization.
10. The Consultant will take the following steps to ensure the security of the Facilities (insofar as the use of the Consultant's systems and the Means of Access are concerned):
 - a) ensuring that no passwords are stored in easily recognizable form on the Consultant's own systems in circumstances where a breach of the Consultant's own internal security may reveal them;
 - b) ensuring that only those employees and contractors of the Consultant who are required to access the Facilities using the Consultant's systems and the Means of Access are able to do so with prior agreement by the Customer;
 - c) ensuring that the Facilities are not capable of being accessed by a system or user, which transits the Consultant's own systems, except as permitted by this Agreement.
11. The Customer indemnifies the Consultant against any loss or damage arising directly or indirectly from any unauthorized use of the Facilities to which the Consultant has been granted remote access, provided that such unauthorized use has not arisen as the result of any material breach by the Consultant of its own obligations under Clause 10 of this Agreement.
12. The Customer will also reimburse the Consultant for all expenses incurred by the Consultant on the Customer's behalf or in carrying out its obligations under this Agreement.
13. The Customer will pay the Consultant for the cost of any Products (including any licensing that the Consultant is required to pay to obtain a sub-license in favour of the Customer for any third party software) together with the Consultant's own charge that it levies for handling and/or obtaining any relevant sub-licenses.

Payment of Invoices

14. The Consultant will be entitled to invoice the Customer on an interim basis at least monthly for progress payments for any Services performed or Products supplied during the previous month (or during any earlier period which has not previously been invoiced) together with such expenses as the Customer is required to reimburse the Consultant. Such invoices shall contain such information and detail as the Customer may

reasonably require to permit the Customer to account for the Services and Products (for instance, by attaching copies of any time sheets) reasonably prescribed by the Customer.

15. All invoices rendered by the Consultant are payable within fifteen (15) days from the date of invoice. The Customer agrees to pay the Consultant in full within this time period.
16. If the Customer fails to pay any invoice by the due date for payment, then without prejudice to the Consultant's rights under this Agreement, the Customer shall also pay the Consultant interest on the outstanding amount at the rate of 2% per month.
17. Payment can be made through PayPal, cash in hand, cheque or bank transfer to an agreed bank account.

Confidentiality

18. The Consultant will not disclose to any third party or use other than for the purposes of this Agreement any knowledge or information imparted to or obtained by it during or in connection with the fulfilment of this Agreement which is of a secret or confidential nature relating to the business, equipment, processes relating to the equipment, the products, services, process or business strategies offered or employed by the Customer. This obligation of confidence will cease to apply in relation to information that the Consultant is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach by the Consultant of its obligations of confidence under this Agreement.

Intellectual Property

19. Unless otherwise agreed in writing by the Consultant, the copyright and all other rights relating to any software provided to the Customer by or on behalf of the Consultant pursuant to this Agreement (the "Intellectual Property") will remain the property of the Consultant or where applicable its licensors.
20. Upon payment in full for the Services provided by or on behalf of the Consultant pursuant to this Agreement, the Consultant grants the Customer a non-exclusive and non-transferable perpetual license to use the Intellectual Property for the Customer's own business purposes, and in the case of the third party software, will obtain a sub-license in favour of the Customer in similar terms.
21. The Consultant warrants to the Customer that to the best of its knowledge, it has the right to grant the licenses referred to in this Agreement, and the use by the Customer of any software provided by the Consultant will not infringe the rights of any third party.
22. The Consultant also grants the Customer the right to copy the Intellectual Property for the purposes of staff and subcontractor education and system backups. However, the Customer must not copy any of the Intellectual Property for any other purposes.
23. The Customer must not de-compile, disassemble, decrypt, extract or otherwise reverse engineer any part of any software that is provided to the Customer by the Consultant without the Consultant's prior written consent.
24. The Customer must hold any software (in source and/or in object code) and other materials provided to the Customer by the Consultant confidential. The Customer must not disclose any of those materials to any third party without the Consultant's prior written consent. The Customer must also take all reasonable steps within its power to protect the Intellectual Property of the Consultant.