

WEBSITE PRODUCTION AGREEMENT

This Agreement is made on the day of, 2003

between

..... (“the Company”)

and

[name of other party] of [address] (“Contractor”).

Recitals

(...)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context indicates the contrary:

“Affiliate” means the parties and any entity which either party has an interest of 25% or more of the voting securities or other ownership interest and any subsidiary of such an entity.

“Approved Testing Policy and Procedures” means the document approved by the Company which sets out the procedures which the Contractor must use, and the policies which will govern, the Contractor’s testing of all Content and the Contract Website;

“Assigned Content” means all Content provided by the Contractor to the Company under this Agreement which is not contained in a Licensed Content List;

"Commencement Date" means [date];

“Confidential Information” is defined in Schedule 5;

"Content" means all content and other materials created, developed, enhanced and/or maintained by the Contractor for the Company or supplied by the Contractor to the Company under the terms of this Agreement including but not limited to all graphics, logos, text, software, animation, audio, video and all other materials to be placed on the Contract Website and the Contract Website itself, but excluding all the Existing Content;

"Contract Website" means the Website which is created, developed, enhanced and/or maintained by the Contractor under the terms of this Agreement and which is identified in the Website Specification in Schedule 1;

“Event of Default” is defined in clause 6.3;

“Existing Content” means all content and other materials in or on the Contract Website including the Contract Website itself (if any) as at the date of this Agreement and any other content supplied by the Company which the Contractor develops, enhances and/or maintains under the terms of this Agreement;

"Hyperlink" means a hypertext pointer embedded in an icon, object or graphic which when selected refers the user to the relevant URL;

"Initial Project" means the Project in respect of the Contract Website as set out in the Website Specification in Schedule 1, the Production Schedule in Schedule 2 and the Payment Schedule in Schedule 3;

"Internet" means the global network of computers commonly known as the Internet, including the individual networks and systems which make up the global network;

"Licensed Content" means the Content identified as Licensed Content in the relevant Licensed Content List and which the Contractor licences to the Company under clause 7;

"Licensed Content List" means the list approved by the Company which contains a description of all Licensed Content to be used by the Contractor in relation to a Project;

"Milestone" means a specified obligation or group of obligations under this Agreement which the Contractor must fulfil and the date by which the obligation(s) must be fulfilled;

"Payment Schedule" means the document approved by the Company which sets out the amounts which the Company is to pay the Contractor under this Agreement and the Milestones to which the payments relate;

"Production Schedule" means the document approved by the Company in writing which sets out the Milestones in respect of a Project;

"Network" means the online service operated by the Company, including without limitation:

- (i) the Website with its portal page at "the Company.com" and all related Websites (whether managed or operated by the Company or not),
- (ii) pages on the world wide web which are (A) part of a third party's Website and (B) branded as part of the Company's service, and
- (iii) all related Websites worldwide which are operated by a Microsoft company including any Microsoft Network;

"Notice of Dispute" means a notice given by one party to the other stating that a dispute, difference or claim has arisen between the parties, giving the detailed particulars of such dispute, difference or claim, stating its contractual or legal basis and notifying the other party of the name and contact details of its chief executive officer or nominee who is authorised to settle the matter;

"Project" means any project or work performed by the Contractor during a specified period of time in which the Contractor creates, develops, enhances and/or maintains the Contract Website and/or Content for the Company under the terms of this Agreement and which is governed by a Website Specification, a Production Schedule and a Payment Schedule which have been approved by the Company in writing;

"Subsequent Project" means any Project in respect of the Contract Website following the commencement of the Initial Project;

"Technical Scoping Document" means the document which sets out the technologies which the Contractor intends to incorporate into the Contract Website;

"Terms of Use" means the various terms which govern users' access to and use of the Contract Website as posted in the relevant Contract Website;

“URL” means Universal Resource Locator;

"Web" means that part of the Internet commonly referred to as the World Wide Web, which contains, among other things, pages written in hypertext markup language (HTML) or any similar or substitute standard format;

"Website" means a collection of inter-related pages on the Web located at a common or related URL; and

"Website Specification" means the document approved by the Company in writing which sets out the agreed form and substance of the Contract Website in relation to a Project or the work which the Contractor is to perform in respect of the Contract Website;

1.2 Construction

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (...)

2. OBLIGATIONS OF THE CONTRACTOR

2.1 Creation, Development, Enhancement and Maintenance of Content and Contract Websites

- (a) The Contractor will create, develop, enhance and/or maintain the Contract Website and all relevant Content in respect of the Initial Project in accordance with the Website Specification in Schedule 1 and the Production Schedule in Schedule 2.
- (b) Notwithstanding anything in this Agreement, the Company is under no obligation to instruct the Contractor in respect of any Subsequent Project. In the event that the parties agree that the Contractor will work on a Subsequent Project, all services of the Contractor on the Subsequent Project will be governed by the terms of this Agreement including a Website Specification and a Production Schedule agreed by the parties in respect of the Subsequent Project.
- (c) The parties agree that this Agreement will apply to the Contractor’s work in relation to the Contract Website identified in the Website Specification in Schedule 1 only and that any work by the Contractor for the Company in respect of any other Website will be governed by the terms of a separate document.
- (d) It is the Contractor’s responsibility to provide the Company with a draft Licensed Content List for approval before the relevant Project has been agreed by the parties.
- (e) The Contractor must follow all reasonable directions of the Company in respect of the supply of services and the fulfilment of all of its obligations under this Agreement.
- (f) The contractor will properly test all Content and the Contract Website in accordance with the Approved Testing Policy and Procedures before delivering the Content and/or the Contract Website to the Company.
- (g) Notwithstanding anything in this Agreement, the Contractor will use its best endeavours to consult with and advise the Company on an ongoing basis during the term of this Agreement in respect of:

- (i) its progress in creating, developing, enhancing and/or maintaining all Content and the Contract Website,
 - (ii) the feasibility of implementing each Website Specification, Production Schedule and instruction of the Company in a safe and prudent manner and in compliance with the warranties set out in clause 8.1.
- (h) For the sake of clarity, it will not be sufficient for the Contractor merely to accept and/or comply with any instruction from the Company under this Agreement without first evaluating such instruction and advising, and consulting with, the Company on how the relevant instruction should best be implemented, whether or not it can be implemented in compliance with the warranties set out in clause 8.1 and whether other means might better achieve the desired result.
- (i) the Company will have the right at any time to specify which employees of the Contractor or other individuals under the Contractor's control or supervision will or will not perform the obligations of the Contractor under this Agreement.
- (j) The Contractor will 60 days prior to the end of the Initial Project, and thereafter 60 days prior to the end of each Subsequent Project (if any) ascertain from the Company its plans (if any) in respect of the Contract Website and the relevant Subsequent Project. If the Company wishes the Contractor to continue its involvement with the Contract Website and provides the Contractor with a briefing document setting out its plans in respect of the Subsequent Project, the Contractor will prepare and deliver to the Company a draft Website Specification, a proposed budget and Gantt chart within 14 days of receipt of the briefing document from the Company.

2.2 Progress Meetings and Reports

The Contractor must:

- (a) arrange for and attend meetings with the Company's representatives on a regular basis or at any time as reasonably requested by the Company to discuss the Contractor's work under this Agreement and prepare and deliver to the Company minutes in respect of each such meeting in a form specified by the Company;
- (b) provide the Company with regular written reports in a form specified by the Company which:
 - (i) outline the work in progress on production, and
 - (ii) record all testing which the Contractor has undertaken in respect of the Contract Website; and

2.3 Quality control and the submission of Content

(a) The Contractor must:

- (i) comply with all technical specifications and procedures notified by the Company to the Contractor from time to time;
- (ii) label the Contract Website in accordance with (...)

- (iii) correct and edit all relevant Content and the Contract Website as reasonably requested by the Company either prior to or following delivery to bring it into compliance with the Website Specification;
 - (iv) properly test and review all Content and the Contract Website in respect of levels of quality and performance and ensure its compliance with the criteria set out in the Approved Testing Policy and Procedures (if any) or as otherwise instructed by the Company before the submission by the Contractor of any Content to the Company under this Agreement; and
 - (v) deliver all Content to the Company by file transfer protocol (FTP) download or other delivery mechanism as instructed by the Company from time to time.
- (b) The Contractor will use specific technologies in the production of the Contract Website as instructed by the Company from time to time including products in beta form.
 - (c) the Company will have the right to reject any Content at any time which in its reasonable discretion does not comply with the terms of this Agreement or the express instructions of the Company. The Contractor must amend and resubmit all rejected material for reconsideration by the Company within 7 days of the relevant rejection by the Company or as otherwise agreed by the parties.
 - (d) the Company's receipt, use and/or publication of any Content supplied by the Contractor under this Agreement will not be deemed to be an acceptance or representation by the Company that:
 - (i) the Contractor has complied with its warranties or other obligations in this Agreement, or
 - (ii) such Content complies with any relevant laws or other legal requirements.

2.4 Monitoring of the Contract Website following Publication

Following any publication of the Contract Website and any Content (including any amended Contract Website or Content) on the Network, the Contractor will monitor the relevant Contract Website and all Content to ensure that it functions properly and in accordance with the relevant Website Specification and must advise the Company promptly of any defects in functionality or operation.

2.5 Preparation of Technical Documentation for the Contract Website

- (a) The Contractor will prepare and keep up to date at all times technical documentation and procedural operating manuals in respect of the Contract Website and its work for the Company under this Agreement. The content of the technical documentation and procedural operating manuals must be in a form approved by the Company and must be sufficient to allow the Company to seamlessly take over production and maintenance of the Contract Website at any time if it so desires.
- (b) The Contractor must deliver copies of all technical documentation and procedural operating manuals, together with associated site maps and source code to the Company as per the Production Schedule.

2.6 Exclusivity and Non-competition

- (a) Except for the Websites listed in [location], The Contractor must not during the Term without the prior written authorisation of the Company (which may be granted or withheld

in the Company's absolute discretion), on its own behalf or on behalf of any third party, be involved in the creation, development, production, enhancement and/or maintenance of any Website or multi-media product containing, or relating to, any subject, "look and feel" and/or target audience which is similar to that of the Contract Website.

- (b) The Contractor must not during the term use any part of the Contract Website, any Content or Confidential Information, or other information about the Company:
 - (i) to promote any person, entity or service other than the Company;
 - (ii) for any purpose other than to fulfil its obligations under this agreement (including without the Company's express authorisation in writing, the showing of any Content whatsoever to any third party before it has been published on the Web by the Company); or
 - (iii) without limiting the generality of the above, in any way which could reasonably be construed as being in competition with the Company.

2.7 Promotion and Marketing of the Contract Website

The Contractor will assist the Company in its promotion of the Contract Website by:

- (a) making such staff available for promotion of the Contract Website as is reasonably required by the Company;
- (b) providing relevant Content to the Company promptly on request; and
- (c) referring all media enquiries concerning the Contract Website, any Content or the Network to the Company and informing the Company immediately of each such enquiry.

2.8 Contractor's Credits

- (a) If the Contractor creates a Contract Website, then it may produce a separate credits page as part of the Contract Website. If the Contractor creates a separate credits page as part of the Contract Website, the following will apply:
 - (i) the Contractor must place the word "Credits" on the homepage of the Contract Website in the position and in the manner instructed by the Company and embed in that word a Hyperlink to the credits page,
 - (ii) the credits page supplied by the Contractor to the Company must contain text only, and the text must read as follows: "[name of the Contract Website] was developed by [Contractor's name] on behalf of the Company Pty Limited. [Name of the Company producer] produced the site."
 - (iii) the number of Hyperlinks on the credits page will be limited to a maximum of two, one linking back to the homepage of the Contract Website (mandatory if the Contractor provides a credits page) and one linking to the homepage of the Contractor's Website (optional).
- (b) If the Contractor places a Hyperlink on the credits page linking to the homepage of its Website under clause 2.8(a)(iii), then the Contractor must ensure that its Website complies with all guidelines issued by the Company from time to time in relation to allowable Hyperlinks and linked Websites.

- (c) the Company is not obligated to display any credits page in respect of the Contractor's contribution where the Contractor's involvement on the relevant Project has been only to provide Content and/or maintain the Contract Website.

3 . CONTROL OF CONTRACT WEBSITE

3.1 General

Notwithstanding anything in this Agreement, the Company will retain full editorial and technical control over the Network and the Contract Website including but not limited to all content, Hyperlinks and advertisements and may amend or delete all Content and the Contract Website at any time in its sole discretion.

3.2 Website Revenue

The Contractor has no right to participate in any revenue generated by the Contract Website whatsoever.

4 . AMENDMENTS

4.1 Amendments - General

Except as expressly set out in this Agreement, no amendment is binding on the parties unless it is in writing and signed by a duly authorised representative of each of the parties.

4.2 Amendments to a Website Specification and Production Schedule

- (a) the Company has the right in its absolute discretion to amend any Website Specification or Production Schedule at any time.
- (b) If the Company amends a Website Specification and/or a Production Schedule, the Contractor will record the relevant amendment in the minutes in accordance with clause 2.2 and must then use its best endeavours to complete the work required in accordance with the amended a Website Specification and/or Production Schedule and in good faith without any additional costs or charges being incurred.
- (c) If it is not possible to complete the amendments in accordance with the amended Website Specification and/or Production Schedule under clause 4.2(b), or the Contractor can reasonably show that in complying with the amended Website Specification and/or Production Schedule it would not be able to avoid additional cost or charges, then each party will use its best endeavours to agree on a way in which the relevant amendments can be made at minimal cost to the Company.
- (d) (...).

4.3 Amendments to a Payment Schedule

(...).

5 . TERMS OF PAYMENT

5.1 Payment

- (a) Subject to clause 5.1(b), the Company will pay the Contractor the amounts set out in the Payment Schedule within 30 days of the latter of:

- (i) the receipt by the Company from the Contractor of an invoice in accordance with the Payment Schedule and in the form approved by the Company, or
 - (ii) the Contractor's completion of the relevant Milestone.
- (b) The Contractor must not submit any invoice before the relevant Milestone has been achieved.
- (c) The Company reserves the right to withhold payment of the whole or any part of the amounts specified in any Payment Schedule if any Content delivered by the Contractor is rejected by the Company as not being in accordance with the relevant Website Specification.
- (d) The Company will not pay any amounts not set out in the relevant Payment Schedule unless it has approved the relevant work or expenditure in writing.

5.2 Effect of Delay and Non-compliance

(...).

5.3 Tax

(...).

6. COMMENCEMENT, TERM AND TERMINATION

6.1 Commencement and Term

- (a) This Agreement commences on the Commencement Date.
- (b) This Agreement will continue until the Initial Project is completed in accordance with its terms:
 - (i) unless it is extended in accordance with clause 2.1(b), or
 - (ii) unless or until it is terminated in accordance with the provisions herein or by law.

6.2 Termination at Will by the Company

- (a) At any time after the Commencement Date, the Company may in its absolute discretion terminate this Agreement by notice in writing to the Contractor in which case this Agreement will terminate 30 days after receipt by the Contractor of such notice.
- (b) On receipt of the Company's notice of termination under clause 6.2(a), the Contractor will act in good faith and use its best endeavours to:
 - (i) work with the Company to determine the way in which the Contractor's involvement with the Contract Website will be completed within the notice period;

(...).

6.3 Termination for an Event of Default

- (a) Upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement with immediate effect.
- (b) Each of the following occurrences will be deemed to be an Event of Default:
 - (i) a material breach of any term of this Agreement which the breaching party fails to rectify within 14 days of written notice by the non-breaching party;

(...)

6.4 Consequences of Termination

- (a) Upon any termination or expiration of this Agreement, the Contractor must:
- (i) deliver to the Company all Content, Confidential Information, materials and other results and proceeds of the services of the Contractor under this Agreement including all completed technical documentation and procedural operating manuals which the Contractor must produce in accordance with clause 2.5,
 - (ii) return all Existing Content and any computer hardware and/or software supplied by the Company to the Contractor.

(...)

7. INTELLECTUAL PROPERTY

7.1 Content

- (a) In consideration of the Company's agreement to pay the amounts set out in this Agreement, the Contractor hereby:
- (i) assigns to the Company unconditionally all right, title and interest in all Assigned Content and all other results and proceeds of the services of the Contractor provided pursuant to this Agreement whether existing as at the Commencement Date or arising at some point in the future.
 - (ii) grants to the Company an irrevocable perpetual worldwide licence to:
 - (A) publish and/or broadcast the Licensed Content in any and all media;
 - (B) transmit the Licensed Content by any means;
 - (C) redistribute and/or sub-licence the Licensed Content as part of the Contract Website or an amended Contract Website worldwide;
 - (D) incorporate the Licensed Content into other Websites on the Network so long as it does not sell the Licensed Content as a separate product; and
 - (E) amend the Licensed Content at any time and by any means.
 - (iii) waives irrevocably and unconditionally in favour of the Company and any person taking rights through the Company, all moral rights and any similar rights in any jurisdiction which the Contractor may have or hereafter acquire in respect of the Content and all other results and proceeds of the services of the Contractor provided pursuant to this Agreement.
- (b) The Contractor represents that each Licensed Content List contains a complete list of all Licensed Content which has been or will be supplied in respect of the relevant Project. The Contractor acknowledges and agrees that any Content supplied under the terms of this Agreement which is not expressly set out in a Licensed Content List approved by the Company will be deemed to be Assigned Content.
- (c) The Contractor acknowledges and agrees that nothing in this Agreement gives the Contractor any right, title or interest in any Existing Content.

- (d) The Contractor must not attempt to challenge or revoke any of the rights granted by this clause 7.1 in any way whatsoever.

7.2 Promotion and Use of the Contractor's Name and Logo

At its discretion, the Company may use the Contractor's name and logo in connection with the publication of the Content and the Contract Website, and in any packaging, advertising and publicity efforts. The Contractor grants to the Company a perpetual, non-exclusive right to use its name and logo for such purposes.

7.3 Third Party Contracts and Content

- (a) The Contractor will obtain the Company's written approval before executing any documents or entering into any agreement in relation to any Content or the Contract Website which provides:
 - (i) for the remuneration of any third party who is not an employee of the Contractor; or
 - (ii) that any third party other than an employee of the Contractor will create or provide any content or services in respect of the Contract Website or any content which the Contractor intends to on-supply to the Company.
- (b) In the event any agreement between the Contractor and a third party falls within clause 7.3(a) or (ii), then the Contractor must incorporate into the relevant agreement standard provisions provided by the Company or, if no such standard provisions are available, obtain the Company's approval before execution.
- (c) The Contractor acknowledges and agrees that the approval of any such agreement by the Company under clause 7.3(b) will not:
 - (i) release the Contractor from any of its obligations under this Agreement;
 - (ii) subject the Company to any liability in respect of its approval or reduce its rights under this Agreement or at law whatsoever; or
 - (iii) release the Contractor from its duty to obtain in respect of the relevant agreement proper legal advice which is competent, independent and objective.
- (d) Following any termination or expiration of this agreement and/or on request by the Company at any time, the Contractor must assign to the Company or any Affiliate designated by the Company any or all of the rights and benefits obtained under third party agreements relating to the Contract Website.
- (e) In respect of any contracts into which the Contractor enters with any third party (except employment agreements or other agreements in which the value of the goods and/or services specified in the agreement is less than \$5,000, the Contractor must reserve for itself a right of termination consistent with the Company's rights set out in clause 6.2.

7.4 Use of Content by the Contractor

- (a) The Contractor must not use or display any Content or the Contract Website for any purpose other than to fulfil its obligations under this Agreement unless the Contractor obtains the Company's express written authorisation. The prohibition in this clause 7.4 expressly includes but is not limited to the Contractor showing any Content or the Contract Website whatsoever to any existing or prospective client before such Content or the Contract Website is published by the Company on the Web. Until the Content and the

Contract Website is published by the Company on the Web it will be deemed to be Confidential Information and must be treated as such by the Contractor.

- (b) If the client wishes to display any Content or the Contract Website to any third party after it is published by the Company on the Web, the only means which the Contractor may use to link to the published Content or Contract Website on the Network. The Contractor must not maintain or use any mirrored Website or Contract Website for the purpose of displaying Content or the Contract Website to any third party.
- (c) If the Company ceases to display the relevant Content or the Contract Website on the Network, the Contractor must obtain from the Company its authorisation (which the Company may withhold in its absolute discretion) before the Contractor may show such Content or the Contract Website to any third party for any purpose.

7.5 Confidentiality

The Contractor's obligations in respect of Confidentiality are contained in the document in Schedule 5, and the Contractor must comply with all of its obligations in that Schedule whether the document has been signed by the parties as a separate agreement or not.

7.6 Documentation

On termination, expiration or completion of each Project, or at any time on request by the Company, the Contractor will execute and deliver to the Company such instruments and take such other actions as may be required by the Company to carry out all grants of right or other provisions in this clause 7.

8. WARRANTIES AND INDEMNITIES, LIMITATIONS OF LIABILITY AND INSURANCE

8.1 Warranties

- (a) Each party represents and warrants to the other party that:
 - (...)
- (b) The Contractor warrants that:
 - (i) it will perform all services and supply the Content in a proper workmanlike manner;
 - (ii) the performance by the Contractor of its obligations herein will not infringe any rights of any party;
 - (iii) any publication, broadcast, transmission or other use of any Content by the Company, an Affiliate or other person authorised by the Company will not infringe any right of any party or breach any applicable law or relevant industry code;
 - (iv) the Contract Website, including all Content:
 - (A) will conform to its description as set out in the relevant Website Specification and will be delivered in accordance with the Production Schedule;
 - (B) will comply with all applicable laws and industry codes;

- (C) will be in compliance with the Company's published rules, policies, procedures and technical specifications as notified by the Company to the Contractor from time to time,
 - (D) will be true, accurate and correct (ie will not be misleading or deceptive);
 - (E) will not contain anything which is defamatory; and
- (vi) it will comply with all insurance requirements in clause 8.4.

8.2 Indemnities

The Contractor indemnifies the Company and its Affiliates against all losses, damages, liabilities, claims and expenses suffered or incurred by the Company arising directly out of, or in connection with, any act or omission on the part of the Contractor (including but not limited to injury to persons, any loss or damage to real or personal property of the Company and any breach by the Contractor of its warranties in this Agreement), except to the extent that the Contractor can show that the relevant loss or liability is directly attributable to an act or omission of the Company.

8.3 Limitation of Liability

(...)

8.4 Insurance

(...)

11.2 Governing Law and Venue

(...)

11.3 Relationship of Parties

(...)

11.4 Assignment or Transfer of Control

(...)

11.5 Time and Performance

(...)

11.6 Entire Agreement

(...)