

# Confidentiality Agreement

THIS AGREEMENT is made Tuesday 5 August 2008

PARTIES to the agreement:

- (1) [Name], of [address] ("the First Party") of the one part; and
- (2) [Name], of [address] ("the Second Party") of the other part;

together referred to as "the parties"

WHEREAS the parties, for their mutual benefit, may already have exchanged and wish further to exchange certain information of a confidential nature and wish to protect such information in the manner set out in this Agreement

NOW IT IS HEREBY AGREED as follows :-

## 1. Definitions

1.1 "Business Propositions" shall mean the proposed involvement of the Second Party in the development of any new websites;

1.2 "Purpose" shall mean discussions and negotiations with a view to concluding an agreement for the joint development of the Business Propositions;

1.3 "Confidential Information" shall mean:

- the identity of the First Party;
- the existence of this Agreement and/or the Purpose;
- the fact that the First Party has disclosed to the Second Party the Business Propositions;
- any information and data disclosed to the Second Party by the First Party whether in writing, orally or in any other form or media concerning the Business Propositions (including without limitation the concept, the business methods and financial statistical and other information concerning the same) and the First Party's recommendations and conclusions and all information and data derived or developed by the Second Party from or embodying any of the forgoing;
- any other information or data relating to the Purpose and or the Business Propositions disclosed whether in writing, orally or by any other means to one party (hereinafter referred to as the "receiving party") by the other party (hereinafter referred to as "the disclosing party") or by a third party on behalf of the disclosing party, whether before or after the date of this Agreement;
- but shall exclude the Excluded Information

1.4 "Excluded Information" shall mean such disclosed information or data which:

- is in or comes into the public domain in any way without breach of this Agreement by the receiving party provided that such disclosed information shall not be deemed to be

- generally available to the public by reason only that it is known to only a few of those people to whom it might be of commercial interest, and a combination of two or more portions of the Confidential Information shall not be deemed to be generally available to the public by reason only of each separate portion being so available; or
- the receiving party can show :-
    - a) was in its files or computers or other recording media prior to receipt from the disclosing party and was not previously acquired by the receiving party from the disclosing party under an obligation of confidence; or
    - b) to have been developed by or for the receiving party at any time independently of any Confidential Information disclosed to it by the disclosing party; or
  - the receiving party obtains or has available from a source other than the disclosing party without breach by the receiving party or such source of any obligation of confidentiality or non-use towards the disclosing party; or
  - is hereafter furnished by the disclosing party to a third party without restriction on disclosure or use; or
  - is disclosed by the receiving party :-
    - a) with the prior written approval of the disclosing party; or
    - b) without such approval, after a period of seven years from the date of receipt thereof;

#### 1.5 Disclosure of Exclusion:

- the Second Party should immediately cease discussions regarding the Confidential Information at such a point that it becomes apparent that this is subject to exclusion by prior knowledge from another source;
- the Second Party is required to disclose that knowledge in as much as is required to inform the third party that this exclusion exists;

## **2. Handling of Confidential Information**

2.1 The receiving party shall maintain the disclosing party's Confidential Information in confidence and shall exercise in relation thereto no lesser security measures and degree of care than those which the receiving party applies to its own Confidential Information which the receiving party warrants as providing adequate protection against unauthorised disclosure, copying or use. Without affecting the generality of this obligation the receiving party shall keep separate all Confidential Information and all information generated by the receiving party based thereon from all documents and other records of the receiving party and not use, reproduce, transform, or store any of the Confidential Information in an externally accessible computer or electronic information retrieval system or in any form which would allow any person not authorised to do so to have access to the Confidential Information or transmit it in any form or by any means whatsoever outside of its usual place of business;

2.2 The parties shall ensure that disclosure of such Confidential Information is restricted to those of its employees, directors or professional advisers having the need to know the same for the Purpose;

2.3 Copies or reproductions shall not be made except to the extent reasonably necessary for the Purpose and all copies made shall be the property of the disclosing party.

2.4 All Confidential Information and copies thereof which is in a physical form shall be returned to the disclosing party (and all other information and data and other records in a machine readable

form shall be deleted or destroyed) within thirty days of receipt of a written request from the disclosing party.

### **3. Limitations and Warranty**

3.1 The receiving party shall:

3.1.1 not divulge the disclosing party's Confidential Information, in whole or in part to any third party;

3.1.2 use the same only for the Purpose; and

3.1.3 make no commercial use of the same or any part thereof either directly or indirectly nor use the Confidential Information to obtain any commercial advantage or otherwise to exploit the same without the prior written consent of the disclosing party.

Notwithstanding the foregoing, the receiving party shall be entitled to make any disclosure to the minimum extent required by law of the disclosing party's Confidential Information provided that it gives the disclosing party not less than two business' days notice of such disclosure accompanied by a legal opinion confirming that such disclosure is necessary.

3.2 The disclosing party warrants its right to disclose its Confidential Information to the receiving party and to authorise the receiving party to use the same for the Purpose.

### **4. Disclaimer**

4.1 All rights in Confidential Information are reserved by the disclosing party and no rights or obligations other than those expressly recited herein are granted or to be implied from this Agreement. In particular, no licence is hereby granted directly or indirectly under any invention, discovery, patent, copyright or other industrial property right now or in the future held, made, obtained or licensable by either party.

4.2 Nothing in this Agreement or its operation shall constitute an obligation on either party to enter into the aforesaid business relationship or shall preclude, impair or restrict either party from continuing to engage in its business otherwise than in breach of the terms of this Agreement.

### **5. Indemnity**

5.1 If either party shall break any of the terms of this agreement the party in default shall indemnify and keep indemnified the other from and against all costs, claims, demands, liabilities, expenses, damages or losses, (including without limitation consequential losses and loss of profit, and all interest, penalties and legal and other professional costs and expenses) incurred or suffered by them by reason of or in connection with any such breach;

5.2 The parties acknowledge that damages alone would not be an adequate remedy for any breach of the provisions of this agreement and, accordingly, without prejudice to any and all other rights or remedies, both acknowledge that the other shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this agreement.

### **6. Notices**

All notices under this Agreement shall be in writing, sent by email, facsimile or first-class registered or recorded delivery post to the party being served at its address specified above or at such other address of which such party shall have given notice as aforesaid, and marked for the attention of that party's signatory of this Agreement. The date of service shall be deemed to be

the day following the day on which the notice was transmitted or posted as the case may be.

### **7. Termination**

This Agreement shall continue in force from the date hereof until termination by mutual consent or by either party by giving to the other not less than one month's prior notice. The provisions in Clause 1, 2 and 3 shall survive any such termination.

### **8. Non-Assignment**

This Agreement is personal to the parties and shall not be assigned or otherwise transferred in whole or in part by either party without the prior written consent of the other party.

### **9. Entire Agreement Governing Law and Jurisdiction**

This Agreement constitutes the entire agreement and understanding between the parties in respect of Confidential Information and supersedes all previous agreements, understandings and undertakings in such respect. This Agreement cannot be amended except by written agreement signed by all parties or by their authorised signatories. The interpretation construction and effect of this Agreement shall be governed and construed in all respects in accordance with the laws of New South Wales, Australia, and the parties hereby submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia.

AS WITNESS this Agreement has been signed on behalf of each party by its duly authorised representative as on the date of the year first above written.

Name and address of Witness to the First Party	_____
Signature of Witness	_____
Date	_____
SIGNED by the said First Party	_____
Name and address of Witness to the First Party	_____
Signature of Witness	_____
Date	_____
SIGNED by the said Second Party	_____