

Intellectual Property Terms and Conditions

Foreword

The Academy of Interactive Entertainment Pty Ltd (ACN 084 159 437) (**AIE**) is Australia's leading educator for computer game development and 3D digital industries. As such, AIE recognises the importance and value of intellectual property in those industries, and for those who create it.

AIE promotes and encourages all students to innovate and create new ideas. During your time with AIE, you will inevitably create or develop intellectual property, including work or material which attract copyrights (for example, source and object codes, 3D models, textures and animations), patents (in relation to any inventions), and confidential information (for example, know-how and trade secrets).

However, due to the nature of AIE's programs, and the structure of projects that you will undertake, it is likely that you, together with a number of other students, will create intellectual property for any particular project. This poses significant practical and legal difficulties regarding the ownership and management of intellectual property by the students.

Consequently, as a condition of AIE's offer of enrolment to you, and your acceptance of such offer, you agree to be bound by the terms of the Intellectual Property Terms and Conditions (**Agreement**).

However, AIE will not seek to commercialise any intellectual property created by you. Upon the successful completion of an AIE Graduate Diploma Program, or if any intellectual property you have developed is not incorporated in works or projects accepted into a AIE Graduate Diploma Program, AIE will transfer the intellectual property back to you or a business of your choosing, if appropriate, and at AIE's sole discretion.

1 Assignment of Intellectual Property

At AIE, most projects will involve or utilise Intellectual Property created by a number of Students.

This leads to the potential problem where a Student, or group of Students, wish to commercialise the Intellectual Property existing in a particular project, but another Student which contributed to the original project, but who is no longer involved, may Claim that they still own a part of that Intellectual Property.

To address this issue, and to facilitate the identification, protection and management of Intellectual Property, the ownership of Student-created Intellectual Property is consolidated under one entity – AIE.

1.1 If you are (or will be) enrolled in any of AIE's Advanced Diploma, Bachelor's Degree, or Graduate Diploma programs, from your Enrolment Date, you permanently assign and transfer to AIE all rights in any Intellectual Property you create, develop, discover or otherwise produce through your participation in your Program (**Assigned IP**):

- (a) if such Intellectual Property is created or developed prior to you executing this Agreement, but after your Enrolment Date, on the date of this Agreement; or
- (b) if such Intellectual Property is created or developed after you execute this Agreement, from and immediate upon, the creation, development, discovery or other production of such Intellectual Property.

2 Moral Rights

The Australian *Copyright Act 1968* (Cth) also provides for the protection of:

- the ‘moral rights’ of the author of particular works to be recognised as the author of such works;
- the right for authorship not to be attributed to someone else; and
- the right to object to derogatory treatment of such works.

These rights cannot be assigned or licensed. While AIE will endeavour to attribute the appropriate authorship to any works you produce, given the difficulties in doing this when commercialising works where a number of students may have such Moral Rights, you are required to waive all such Moral Rights.

2.1 You hereby permanently waive all Moral Rights you may have in any Intellectual Property or other works you create, develop, discover or otherwise produce, arising out of, or otherwise related to, your participation in your Program, from, and immediately upon, the later of:

- (a) the creation, development, discovery or other production of such Intellectual Property; or
- (b) the date of this Agreement.

2.2 You agree and acknowledge that AIE may use any Intellectual Property or works that you create, develop, discover or otherwise produce, arising out of, or otherwise in related to, your participation in your Program, consistent with AIE’s rights to such Intellectual Property or works pursuant to this Agreement or otherwise, even if such use would otherwise infringe, breach, or be contrary to your Moral Rights in such Intellectual Property or works.

3 Warranty as to Authorship and Ownership

It is extremely important that any work you create or produce in the course of your Program is your own original work, not only in respect of academic integrity, but also in relation to the ownership of, or rights in, any Intellectual Property you may generate. Failing to do so could result in third parties making a Claim over such Intellectual Property. Consequently, you make the following promises to AIE:

3.1 As at the date that you assign or transfer any Intellectual Property pursuant to this Agreement to AIE in accordance with clause 1, you represent and warrant to AIE, on the date of such assignment or transfer:

- (a) that Intellectual Property, or the works in which such Intellectual Property subsists, is your own work and does not include any Intellectual Property, or work, or part thereof, of any other person or entity;
- (b) you are the sole legal and beneficial owner of the Intellectual Property to be assigned or transferred to AIE pursuant to the terms of this Agreement;
- (c) you have not knowingly granted, or disposed of, any rights in relation to that Intellectual Property, including but not limited to, granting a licence, or encumbering your right, title or interest, in such Intellectual Property, except in accordance with this Agreement;

- (d) you have all rights to deal with that Intellectual Property pursuant to the terms of this Agreement; and
- (e) to the best of your knowledge, the use or dealing of that Intellectual Property, or the works in which such Intellectual Property subsists, whether under this Agreement, by AIE following the operation of this Agreement, or by any person or entity established from the AIE Graduate Diploma Program, will not infringe the Intellectual Property Rights, or Moral Rights, of any person or entity.

4 Your Use of Intellectual Property

During your program, you will, of course, continue to work on, develop, and improve any works and Intellectual Property you have produced, and therefore assigned or transferred to AIE. As a legal technicality, AIE licences any Intellectual Property assigned or transferred by you pursuant to this Agreement, back to you, for no cost, so you may continue to use, and improve, such Intellectual Property for the purposes of your Program and for use in your Portfolio.

- 4.1 In respect of any Assigned IP, AIE irrevocably licences such Intellectual Property, or the works in which such Assigned Intellectual Property subsists, to you:
- (a) commencing on the date such Assigned IP is assigned or transferred to AIE;
 - (b) for no consideration or payment;
 - (c) ending on the earlier of:
 - (I) the date that you cease to be enrolled as a student of AIE; or
 - (II) the date upon which AIE ceases to own such Intellectual Property; and
 - (d) only for the purposes of:
 - (I) participating in, or generating work for, your Program; or
 - (II) including and using the works or projects in which such Assigned IP subsists in your Portfolio.

5 AIE's Restricted Use of Intellectual Property

AIE will not seek to commercialise the Intellectual Property you assign to it. If any Intellectual Property you create or develop is not used in a Graduate Diploma Project within a certain period of time, or, if it is used in an Graduate Diploma Project which is then discontinued by AIE or the student or students managing such a Graduate Diploma Project, then you may request that AIE return such Intellectual Property to you.

Restrictions on Use by AIE

- 5.1 You acknowledge that AIE may assign, transfer, license, or otherwise deal with any Assigned IP at AIE's absolute discretion, subject to the terms of this clause 5.
- 5.2 Subject to this clause 5, AIE agrees that it will not sell, license, or otherwise dispose of any Assigned IP except:

- (a) assigning, transferring, licensing or otherwise disposing of Assigned IP from AIE to the students involved in a Graduate Diploma Project in which such Assigned IP, or any part of it, is used or incorporated, or to the nominated company, partnership, joint venture, or other entity of such students;
- (b) to a student who requests that the Assigned IP they have created or developed be returned to them, subject to clause 5.4 – 5.6; or
- (c) to any Associate or Related Party of any of (a) – (b) above.

5.3 AIE has full discretion to do, or not do, any of the things in clause 5.2 at any time whatsoever, subject to clauses 5.4 – 5.6 below.

Return of Intellectual Property

5.4 If you have developed or created any Assigned IP that:

- (a) is not used or incorporated, in full or in part, in any Graduate Diploma Project; or
- (b) is used or incorporated, in full or in part, in any Graduate Diploma Project, but such Graduate Diploma Project is discontinued prior to the assignment, transfer, license, or other disposal by AIE to the students involved, or their nominated company or entity, of that Assigned IP pursuant to clause 5.2(a);

then you may request, in writing, that AIE assign or transfer such Assigned IP back to you.

5.5 AIE will use all reasonable efforts to comply with a request under clause 5.3, if AIE decides that it is appropriate to do so in all the circumstances, including whether or not AIE reasonably believes that such Assigned IP, subject to a request under clause 5.4, is likely to be used or incorporated in any current or future Graduate Diploma Projects, and such decision will not be unreasonably withheld.

5.6 If AIE decides to return any Assigned IP to you pursuant to clauses 5.4 and 5.5, and such Assigned IP is jointly created or developed by you and any number of other students, such Assigned IP will be assigned, transferred or otherwise disposed:

- (a) to you and all those other students jointly;
- (b) to you; or
- (c) to you and any combination of those other students jointly;

if AIE determines it would be reasonable to do so.

5.7 For the avoidance of doubt, if any Assigned IP you create or develop is assigned, transferred or otherwise disposed of by AIE in favour of any other person in accordance with the terms of this Agreement, you will not have any rights or interest, whether existing under contract, equity, statute or common law, whatsoever in any such Assigned IP.

5.8 AIE retains the right to use any Assigned IP for the sole purpose of marketing, promotion and related activities.

6 Notice of Creation

- 6.1 You agree to use all reasonable efforts to immediately notify the Party that you are assigning Intellectual Property to pursuant to clause 1 (AIE), all details or information reasonably necessary for AIE to properly identify and record the creation or development of any Assigned IP, upon the creation or development of such Assigned IP.
- 6.2 The assignment and transfer of Intellectual Property from you to AIE pursuant to this Agreement is not prejudiced, affected, or otherwise impeded, by any failure or delay by you to notify AIE as required under clause 6.1.

7 Term

- 7.1 Subject to clause 7.2, this Agreement:
- (a) commences and comes into effect on the Enrolment Date whereby you execute this Agreement; and
 - (b) ends when you:
 - (I) graduate or otherwise complete your Program; or
 - (II) end or cease enrolment in your Program.
- 7.2 If you:
- (c) graduate or complete your Program, or otherwise end or cease enrolment in your Program; and
 - (d) commence another program offered by AIE;
- this Agreement will continue to have effect:
- (e) as an agreement between you and AIE during the period you are enrolled in your Program; and
 - (f) as a separate agreement between you and AIE during the period you are enrolled in that other AIE program.

8 Notices

- 8.1 Notices must be in writing and in English, and may be given by an authorised representative of the sender.
- 8.2 Notice may be given to a person:
- (a) personally;
 - (b) by leaving it at the person's address last notified;
 - (c) by sending it by mail to the person's address last notified;
 - (d) by sending it by facsimile to the person's facsimile number last notified; and

(e) by sending it by email to the person's email address last notified.

8.3 Notice is deemed to be received by a person:

- (a) when left at the person's address;
- (b) if sent by mail, 3 Business Days after posting;
- (c) if sent by facsimile or email, at the time and on the day shown in the sender's transmission report, if it shows that the whole notice was sent to the person's facsimile number or email address last notified.
- (d) If the notice is deemed to be received on a day which is not a Business Day or after 5pm, it is deemed to be received at 9am on the next Business Day.

8.4 If two or more people comprise a Party, notice to one is effective notice to all.

9 Jurisdiction

9.1 This Agreement is governed by the laws of the State of New South Wales.

9.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of the Jurisdiction.

9.3 No Party may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

10 Assurances

10.1 Each Party must:

- (a) do everything necessary or desirable to give full effect to this Agreement (such as registering transfer of ownership of registered trademarks); and
- (b) not do anything which might prevent full effect being given to this Agreement.

10.2 AIE will bear the costs of doing anything, including preparing any agreements, contracts of other documents, required to give effect to, and perfect, any assignment, transfer or disposal of Intellectual Property contemplated under this Agreement.

11 Whole Agreement

11.1 This Agreement embodies the whole Agreement between the Parties relating to the subject matter of this Agreement and supersedes any and all oral and written negotiations and communications by or on behalf of any of them.

11.2 Subject to clause 11.3, each Party:

- (a) has relied on their own enquiries in deciding to sign this Agreement; and
- (b) has not relied on any warranties, representations, or statements of any kind in deciding to sign this Agreement.

- 11.3 Clause 11.2 does not apply to the warranties and representations expressly given under this Agreement.
- 11.4 No variation to this Agreement is valid unless in writing and signed by all Parties.

12 Successors

- 12.1 This Agreement binds, or operates for the benefit of, you, your legal personal representatives, and any successors in title.
- 12.2 This Agreement binds, or operates for the benefit of, AIE, their assignees, and any successors in title.

13 Assignment

- 13.1 AIE may assign their rights or obligations under this Agreement at their absolute discretion.
- 13.2 You may not assign your rights or obligations under this Agreement except with the consent of AIE.

14 Survival of Certain Terms

- 14.1 The terms of this Agreement which are capable of having effect after this Agreement ends continue to have full effect, including clauses in relation to guarantees, warranties, indemnities and release.

15 Interpretation

- 15.1 In this Agreement, unless the contrary intention appears:
- (a) a reference to this Agreement, or any instrument includes any variation or replacement of any of them;
 - (b) a reference to a person includes a body corporate, joint venture, association, government body, firm and any other entity;
 - (c) a reference to legislation includes any amendments to it, any legislation substituted for it, and any subordinate legislation made under it;
 - (d) the singular includes the plural and vice versa;
 - (e) words of one gender include any gender;
 - (f) headings do not affect the interpretation of this Agreement;
 - (g) reference to a Party includes that Party's personal representatives, successors and permitted assigns;
 - (h) reference to a thing (including a right) includes a part of that thing;

- (i) if a Party comprises two or more persons:
 - (I) reference to a Party means each of the persons individually and any two or more of them jointly;
 - (II) a promise by that Party binds each of them individually and all of them jointly;
 - (III) a right given to that Party is given to each of them individually; and
 - (IV) a representative, warranty or undertaking by that Party is made by each of them individually;
- (j) a provision must not be construed against a Party only because that Party prepared it;
- (k) a provision must be read down to the extent necessary to be valid and if it cannot be read down to that extent, it must be severed;
- (l) if a thing is to be done on a day which is not a Business Day, it must be done on the Business Day before that day;
- (m) another grammatical form of a defined expression has a corresponding meaning;
- (n) the word “include” is used without any limitation;
- (o) the rights, duties and remedies in this Agreement operate to the extent that they are not excluded by law; and
- (p) examples are descriptive only and not exhaustive.

16 Definitions

16.1 Unless the contrary intention appears:

- (a) **Agreement** means this Intellectual Property Terms and Conditions, any schedules or annexures to it, or any variations or substitutions thereof from time to time.
- (b) **AIE** means the Academy of Interactive Entertainment Ltd (ACN 084 159 437) of Canberra Technology Park, 49 Phillip Avenue, Watson ACT 2602.
- (c) **Assigned IP** means any Intellectual Property assigned to AIE pursuant to the provisions of this Agreement.
- (d) **Associate** has the same meaning as Part 8 of the *Superannuation Industry (Supervision) Act 1993* (Cth).
- (e) **Business Day** means a day except a Saturday or Sunday or other public holiday.
- (f) **Claim** means any claim, suit, action, demand, or right.
- (g) **Enrolment Date** means the date upon which you accept AIE’s offer of a position or enrolment in, your Program, and will be taken to be the first to occur of any of the following events:
 - (I) you notify AIE, in writing, that you are accepting such offer of position or enrolment;

- (II) you do anything, including electronically, to formally enrol in your Program; or
 - (III) you commence, or electronically access, and classes, tutorials, lectures, workshops or any other similar methods of teaching employed by AIE.
- (h) **Graduate Diploma Project** means a project or works which has been accepted by AIE at its sole discretion, into any AIE Graduate Diploma program.
- (i) **Intellectual Property** means all existing or future species of industrial and intellectual property, whether registered or unregistered, registrable or not:
- (I) as defined in Article 2 of the World Intellectual Property Organisation (WIPO) Convention; or
 - (II) recognised by any statute or any principle of law or equity,
- including copyrights, patents, designs, trademarks, circuit layout rights, confidential information, trade secrets and the right to register all such intellectual or industrial property rights.
- (j) **Intellectual Property Rights** means all rights arising from any statute, or principle of law or equity in relation to Intellectual Property.
- (k) **Jurisdiction** means the jurisdiction of New South Wales.
- (l) **Moral Rights** means any of the rights described in Article 6bis of the Berne Convention Protection of Literary and Artistic Works 1886 (as amended from time to time) and any other analogous rights arising under any statute including the *Copyright Act 1968* (Cth).
- (m) **Party** means a person or entity who executes this Agreement.
- (n) **Parties** mean all the persons or entities who execute this Agreement.
- (o) **Portfolio** means a portfolio or collection of works you have created or developed for the purposes of exhibiting your experience, skills and abilities to a third party.
- (p) **Program** in relation to you, means the relevant AIE program that you are seeking or enrolment in, or any program that you actually become enrolled in.
- (q) **Related Party** has the same meaning as given to that term in section 228 of the *Corporations Act 2001* (Cth), except that any reference to ‘public company’ is taken to include a reference to any individual or entity.

17 Execution Page – Student

By verifying that you have read, understood and agree with the Terms and Conditions of enrolment, you acknowledge and agree that:

- (a) You have read, and understand, the terms of this Agreement, being AIE’s Intellectual Property Terms and Conditions;
- (b) You accept and agree to be bound by the terms of this Agreement;
- (c) You have been given the opportunity to seek independent legal advice in relation to the terms of this Agreement, and you:
 - (I) have sought independent legal advice in relation to the terms of this Agreement; or
 - (II) agree to be bound by the terms of this Agreement without first obtaining independent legal advice in relation to its terms.