

Member Art Provider Agreement

The following agreement between Stratagem Corporation (SC) and _____ (Art Provider), dated _____, describes a formal relationship between the two parties wherein Art Provider agrees to provide original artwork to SC, specifically for use in SC's virtual worlds and associated promotional materials.

Recitals

1. Art Provider agrees to provide original artwork to SC in an acceptable form which complies with the published "How to" document, published by SC.
2. SC agrees to pay Art Provider a commission on the sales of artwork provided by Art Provider under the VZones Avatarwares program.
3. Art Provider agrees to transfer all rights and ownership of any art provided to SC.
4. Art Provider agrees not to sell, gift or license to any third party whatsoever, any art provided to SC by Art Provider.
5. SC agrees to use any art provided by Art Provider solely in SC's virtual worlds and associated promotional materials.
6. SC has the full, complete and final right to establish the pricing, limitations on the number sold, and sales mechanism used in relation to any art provided to SC by Art Provider.
7. SC has the right to provide staff members with copies of the art provided by Art Provider for promotional purposes. The use of the art for such purposes can be for any duration. Art Provider will not be compensated for the use of the art in this context.

Commissions

1. SC agrees to provide Art Provider a commission of 15% of all revenue generated from the sale of artwork provided by Art Provider, for the term of this agreement.
2. All payments will be made to Art Provider in US dollars not later than the 15th of the month following the month in which the commission was earned.
3. Payments to Art Provider will be made via PayPal. Art Provider agrees to establish a PayPal account in his or her name to facilitate payment.

Approval

1. SC has full and final rights to approve or disapprove any artwork provided by Art Provider.
2. Art Provider acknowledges SC's rights of approval and agrees to be bound by them.
3. SC has the full, complete and final right to establish the pricing, limitations on the number sold, and sales mechanism used in relation to any art provided to SC by Art Provider.
4. Art Provider acknowledges SC's rights to establish the pricing, limitations on the number sold, and sales mechanism and agrees to be bound by them.

Term and Termination

1. This agreement shall be for a term of one (1) year from the date of signing by both parties, and will automatically renew for one (1) year increments if not terminated in writing.
2. This agreement may be terminated earlier by SC for cause, upon ninety (5) days written notice to Art Provider. "Cause" means breach of a material obligation by Art Provider as described herein.
3. In the event of termination of this agreement, neither party will be liable to the other party for any incidental, consequential or other damages arising out of the termination or breach, including loss of business opportunity, lost profits etc.
4. In the event of termination of this agreement for any reason, SC agrees to pay all commissions due on art provided by Art Provider prior to termination.

Copyright and Intellectual Property infringement

Art Provider hereby affirms that any and all art provided to SC by Art Provider is original in nature and does not infringe any third party Copyright and Intellectual Property rights.

Taxes

Any and all international, federal, state and local sales, use, excise, privilege, and similar taxes imposed on Art Provider will be paid by Art Provider who shall also defend and indemnify the SC from any liability for such taxes. This provision shall survive the termination of this Agreement.

No obligation

Under this agreement, SC is under no obligation to sell any art provided by Art Provider. Likewise, under this agreement, Art Provider is under no obligation to provide SC any artwork.

Limitation of Liability

In no event shall either party be liable for damages based upon any theory of being a publisher of information or the first sale doctrine, or related to any infringement (including contributory Infringement) or misappropriation of any copyright or other intellectual property right or damages arising out of or related to the content of the on-line information, or omissions of any person accessing the Internet communities, or for either party's failure to monitor the content of the information on the Internet communities.

Indemnification

Art Provider agrees to indemnify SC against any claims or costs associated with Art Provider's infringement of any third party copyright or intellectual property rights in relation to any art provided to SC by Art Provider.

Confidential Information

During this Agreement, the parties shall have the opportunity to acquire and/or obtain access to confidential and proprietary information and trade secrets of the other party and its affiliates, including but not limited to marketing strategies, technical information, product development and pricing, personnel information, and financial information (“Confidential Information”). Both parties acknowledge that the disclosure of such Confidential Information would harm the other party and/or its affiliates. Both parties agree to maintain the Confidential Information in strictest confidence and to not disclose or permit it to be disclosed to any employees of the parties, except those with a need to know, or to any third party without the other party’s prior permission in writing. Both parties will protect the confidentiality of such Confidential Information consistent with the efforts exercised by it with respect to its own confidential business information or required by due care. The covenants of this provision shall not apply to information that is publicly available, which is rightfully acquired by the other party from another source without restriction, or which is in or enters the public domain. Both parties shall take whatever actions are necessary to ensure that its employees and associates are advised of and bound by the terms of this provision. Both parties’ obligations hereunder shall survive the termination of this Agreement.

Waiver

The failure of either party to enforce at any time any provision of these terms and conditions shall not be construed to be a waiver of such provision or the right thereafter to enforce each and every provision. No waiver by either party, either expressed or implied of any breach of any of these terms and conditions, shall be construed as a waiver of any other breach of such term or condition.

Assignment

Neither party may assign or otherwise transfer its rights or obligations hereunder without the prior written consent of the other party except that either party may transfer to a subsidiary or an affiliated company.

Governing law

The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California reference to provisions concerning conflicts of law.

Severability.

If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

Notices

All notices required or authorized by these terms and conditions shall be given in writing and shall be deemed effective upon receipt.

Resolution of Disputes

Any dispute or claim arising out of or related to this Agreement shall be settled by binding arbitration in San Francisco, California, in accordance with the Commercial Rules of the American Arbitration Association (“AAA”). Any such matter shall be submitted to arbitration within twelve (12) months after the dispute or claim arises, and the failure to institute arbitration proceedings within such period shall constitute an absolute bar to the institution of any proceedings and a waiver of all such claims. Arbitration determinations shall be binding upon and enforceable against the parties without any claim for defense, setoff, counterclaim and the like except to the extent validly asserted in the arbitration proceedings. Judgment as to any award, determination, or other relief, made in such arbitration may be entered and enforced in any court of competent jurisdiction. The prevailing party in any such arbitration shall be entitled to its attorneys’ fees and other costs of suit including fees for expert witnesses, unless the arbitrators otherwise so decide.

Amendment

This agreement can be amended or supplemented only in writing signed by both parties. No terms of any purchase order, invoice or similar contract/document will amend or supplement this agreement even if it is accepted or signed by the receiving party.

IN WITNESS WHEREOF, the parties have executed this Agreement, as of the date referred to above.

Stratagem Corporation

Art Provider

Name:

Name:

Title:

Address:

Date:

Phone:

Fax:

Email:

Avatar name:

SSN (for US participating members only):

Signature:

Signature:

Updated: Thursday, October 31, 2002.