

## Professional Services Agreement: MarkWorks LLC - <<The Client>> <<date>>

This agreement between **Mark Sealey and Roberta Lannes-Sealey** ("MarkWorks"), located at <<MarkWorks\_address>>, and <<The Client>>, located at <<client address>>, establishes an independent *contractor relationship* between <<The Client>> and MarkWorks, subject to the Terms and Conditions hereof.

**1. Description of Services.** <<The Client>> hereby purchases from MarkWorks and MarkWorks hereby sells to <<The Client>> professional services as follows:

*Website design and development for <<The Client>> as described in the Proposal document of <<Proposal Date>>.*

**2. Term.** This agreement is effective from the date fully executed until <<validity\_end\_date>>. The period of time allowed for completion of the services contemplated hereunder may be extended by agreement between <<The Client>> and MarkWorks. The scope of work shall be completed within the year <<year>>.

**3. Payment.** Upon receipt of a written invoice as described below, <<The Client>> shall remunerate MarkWorks fees not to exceed \$<<\$\_max>> for the services performed hereunder according to the following schedule:

- 25% (\$\_amount) of minimum project estimates due upon acceptance of this Agreement
- 50% ( $\$_{amount}/2 = \$amount$ ) on completion of first build subject to approval by <<The Client>>
- 25% (\$\_amount) on site launch

MarkWorks shall submit a written invoice upon the completion of each step above. Such invoice shall state the tasks performed and amount payable by <<The Client>> to MarkWorks for said services.

<<The Client>> shall make full payment to MarkWorks within 21 (twenty-one) calendar days after receipt of MarkWorks written invoices.

Should <<The Client>> find it necessary to terminate the project for any reason, the first payment will be non-refundable. Once initial creative concept comps have been delivered, client has approved a design direction, and site build has begun, if project is terminated an invoice will be generated for work completed and becomes due and payable. All graphics and/or HTML files generated up to date of termination will be delivered by MarkWorks to <<The Client>> on CD-ROM.

### **4. MarkWorks' Obligations.**

- **Due Diligence.** MarkWorks shall carry out the Services with due diligence, care and efficiency in a workpersonlike manner so as to promote the purpose of this Agreement, including performance of joint activities required to be performed under this Agreement. MarkWorks shall, in all professional matters relating to MarkWorks' duties hereunder, act as a faithful adviser to <<The Client>>.
- **Conformity to Local Laws.** MarkWorks shall conform in all respects with provisions of any regulation, law or ordinance of any local or duly constituted authority in the country or countries where the Services are to be performed. Likewise, MarkWorks shall refrain during the term of this Agreement from engaging in any activity that may adversely affect, impede or impair in any way and to any extent whatsoever the progress of the Services and their final completion in the country where they are to be performed.
- **Confidentiality.** MarkWorks, its employees, subcontractors and agents, shall hold in strict confidence all information obtained in connection with this Agreement and shall convey only so much of such information to its individual employees, subcontractors and agents as such persons must know to fulfill the purposes of this Agreement.

## Professional Services Agreement: MarkWorks LLC - <<The Client>> <<date>>

**5. Law Governing.** This Agreement is governed by the laws of the State of California, USA. In the event of a dispute between the parties, the parties agree that such dispute shall be resolved according to California law, in California.

**6. No Assignment.** This Agreement is personal in nature and neither party shall assign this Agreement.

**7. Intellectual Property.** Any works created by or inventions of MarkWorks, its agents or employees, during the term of this Agreement and within the scope of Services belong to <<The Client>> together with all associated copyrights and patents in all media now known or to be developed in the future. MarkWorks does hereby transfer and assign to <<The Client>> all such patents and copyrights and MarkWorks agrees to execute any necessary documents pertaining to such patents and copyrights.

**8. Independent Contractor.** MarkWorks acknowledges and agrees that no person working for, contracted by or otherwise employed by MarkWorks is an employee of <<The Client>> and that there is no intention to create an employer-employee relationship by this Agreement. All of the terms and conditions of this Agreement will be interpreted in light of the relationship between MarkWorks and <<The Client>>. MarkWorks will not have the power or authority to bind or commit <<The Client>> in any manner. MarkWorks will not be entitled to participate in any insurance, retirement or other benefit plans of <<The Client>>.

- **Taxes.** MarkWorks will be solely responsible for the payment of any and all state and federal taxes, contributions, and similar payments attributable to its engagement hereunder, including without limitation income and payroll taxes. MarkWorks agrees to comply with all legal and administrative regulations respecting the assumption of liability for all such taxes, contributions, and similar payments. MarkWorks agrees that <<The Client>> will have no responsibility or liability on account of any obligations of an employer with respect to MarkWorks or its services hereunder, including but not limited to the withholding and/or payment of any sums required to be withheld and/or paid to any governmental authority or union or guild.
- **Subcontractors.** MarkWorks will select and will have full and complete control of and responsibility and liability for all agents, employees, and subcontractors, if any, employed or used by MarkWorks in the conduct of its independent business. None of said agents, employees, or subcontractors will be, or be deemed to be, the agent, employee or subcontractor of <<The Client>> for any purpose whatsoever. <<The Client>> will have no duty, liability, or responsibility of any kind to or for the acts or omissions of such agents, employees, or subcontractors, or any of them. MarkWorks agrees to accept exclusive liability for the payment of any payroll taxes or contributions for unemployment insurance, old-age pensions, annuities or Social Security payments that are measured by the wages, salaries, or other remuneration paid to its agents, employees or subcontractors. MarkWorks further agrees to comply with all legal and administrative regulations respecting the assumption of liability for such taxes and contributions.

**9. Amendment.** This Agreement shall not be amended or modified except by a prior written agreement signed by both <<The Client>> and MarkWorks.

**10. Termination.** This Agreement may be terminated by mutual written agreement at any time during the term of the Agreement. Either party may unilaterally terminate this Agreement at any time by giving 21 (twenty-one) calendar days prior written notice to the other party.

### **11. Limitation of Liability**

Under no circumstances and under no legal theory, tort, contract, or otherwise, shall MarkWorks be liable to <<The Client>> or any other person for any indirect, special, incidental, or consequential damages of any character including, without limitation, damages for loss of goodwill, work stoppage, computer failure of malfunction, or any and all other commercial damages or losses. In no event will MarkWorks be liable for any damages in excess of fees for services rendered, even if <<The Client>> was informed of the possibility of such damages, or for any claim by any other party.

**Professional Services Agreement: MarkWorks LLC - <<The Client>> <<date>>**

**12. Entire Agreement.** This is the entire agreement between parties. If any part of this Agreement is held void, the remainder of this Agreement shall remain in full force and effect.

**13. Dispute Resolution.** In the event of a dispute between MarkWorks and <<The Client>> which cannot be resolved by the parties, MarkWorks and the <<The Client>> each agree to submit the matter to non-binding mediation or arbitration prior to bringing any legal action against the other.

**14. Copyright.** By signing this contract you state that, all content of the documents referred to in this Agreement, comply with any and all copyright laws and do not infringe these laws in any way. It is understood that upon approval and full payment by <<The Client>> that the copyright for the website shall belong to <<The Client>> and any and all components thereof including, but not limited to, images, features, HTML, CGI programming, code and any and all other work performed by MarkWorks hereunder. NOTE: If material is submitted carrying copyright notification, documentation must be presented giving authorization to reproduce the items. All work performed hereunder by MarkWorks is 'work for hire' to the extent <<The Client>> is not deemed the exclusive owner of the proceeds of all work performed hereunder by MarkWorks, MarkWorks hereby grants <<The Client>> an exclusive, irrevocable license as to all work produced and performed hereunder, tangible and intangible.

**15. Notice.** Any notice required by this Agreement shall be deemed properly given if sent by certified mail, postage prepaid, as follows:

if to <<The Client>>  
<<Client Address>>

if to MarkWorks:  
<<MarkWorks Address>>

If the foregoing correctly reflects the agreement between <<The Client>> and MarkWorks LLC, please sign and return the original of this Agreement and retain one copy for your records.

Signed:

\_\_\_\_\_  
<<Client person>>,  
<<The Client>>

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mark Sealey, Partner,  
MarkWorks LLC

\_\_\_\_\_  
Date