

## SEO/SEM AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the "Effective Date") by and between Ishbel M. Lane ("Consultant") and \_\_\_\_\_ ("Customer").

WHEREAS, the Customer wishes to engage the Consultant to provide the search engine optimization and marketing services ordered by Customer and Consultant agrees to provide the services for the compensation and otherwise in accordance with the terms and conditions contained in this Agreement.

1. **TERM AND TERMINATION.** This Agreement shall be effective as of the time frame set forth on the Order Form. This Agreement may be terminated by either party upon written notice to the other, if the other party breaches any material obligation provided hereunder and the breaching party fails to cure such breach within thirty (30) days of receipt of the notice. This Agreement may be terminated by Consultant (i) immediately if Customer fails to pay any fees hereunder; or (ii) if Customer fails to cooperate with Consultant or hinders Consultant's ability to perform the SEO Services hereunder.
2. **SERVICES.** Consultant agrees to provide Customer with SEO Services as described in the Order Form and this Agreement. Consultant is authorized to use the specific keywords and/or phases set forth in the Order Form for development, improving the ranking of, and/or positioning the contents of the Customer's URL(s) (as set forth in the Order Form) in search engines and/or directories. SEO Services are intended to provide the Customer with preferential positioning in selected search engines and report results on an ongoing and timely basis.
3. **FEES.** Customer agrees to pay Consultant the fee(s) as stated in Order Form. Project fees are due in 2 installments, 50% up front and 50% upon delivery. Monthly fees are due on the 1<sup>st</sup> of each month. Payments received after the 5<sup>th</sup> of the month will include a 10% late fee. Hourly consulting fees are due upon receipt of invoice. All late payments subject to a 10% late fee.
4. **CUSTOMER RESPONSIBILITIES.** For the purposes of providing these services, Customer agrees:
  - To provide Consultant with FTP access to its web sites for uploading new pages, and making changes for the purpose of SEO Services.
  - To authorize Consultant use of all Customer's logos, trademarks, Web site images, etc., for use in creating informational pages and any other uses as deemed necessary by Consultant for search engine optimization.
  - That if Customer's web site(s) is light in textual content, Customer will provide additional content in electronic format for the purpose of creating additional web pages. Customer agrees to provide content.

5. **SEARCH ENGINES.** Selected search engine submissions include:

- AOL
- Alta Vista
- About
- Google
- All The Web
- Excite
- Hot Bot
- Looksmart
- MSN
- Lycos
- Yahoo
- Netscape

*\*Top Major SE and SE names may change without notice*

**CUSTOMER ACKNOWLEDGEMENTS.** Customer understands, acknowledges and agrees that:

- Consultant has no control over the policies of search engines or directories with respect to the type of sites and/or content that they accept now or in the future. Customer's web site(s) may be excluded from any search engine or directory at any time at the sole discretion of the search engine or directory entity.
- Some search engines and directories may take as long as two (2) to four (4) months, and in some cases longer, after submission to list Customer's web site(s).
- Occasionally, search engines and directories will stop accepting submissions for an indefinite period of time.
- Some search engines and directories offer expedited listing services for a fee. Consultant encourages Customer to take advantage of these expedited services. Customer is responsible for all expedited service fees unless otherwise noted in the Order Form.

**WEB SITE CHANGES.** Consultant is not responsible for changes made to Customer's web site(s) by other parties that adversely affect the search engine or directory rankings of Customer's web site(s).

**ADDITIONAL SERVICES.** Additional services not listed herein or in Order Form will be provided for up to \$60.00 per hour. Consultant is not responsible for Customer's overwriting SEO Services work to Customer's web site(s). Customer will be charged an additional fee for re-constructing meta-tags, keywords, content, etc based on the hourly rate of up to \$60.00 per hour.

**DISCLAIMER OF ALL OTHER WARRANTIES.** CONSULTANT DOES NOT WARRANT THAT THE SEO SERVICES WILL MEET THE CUSTOMER'S EXPECTATIONS OR REQUIREMENTS. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE IS WITH CUSTOMER. EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT, CONSULTANT PROVIDES ITS SERVICES "AS IS" AND WITHOUT WARRANTY OF ANY KIND. THE PARTIES AGREE THAT (A) THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED BY EACH PARTY, AND (B) EACH PARTY

DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THIS AGREEMENT, PERFORMANCE OR INABILITY TO PERFORM UNDER THIS AGREEMENT, THE CONTENT, AND EACH PARTY'S COMPUTING AND DISTRIBUTION SYSTEM. IF ANY PROVISION OF THIS AGREEMENT SHALL BE UNLAWFUL, VOID, OR FOR ANY REASON UNENFORCEABLE, THEN THAT PROVISION SHALL BE DEEMED SEVERABLE FROM THIS AGREEMENT AND SHALL NOT AFFECT THE VALIDITY AND ENFORCEABILITY OF ANY REMAINING PROVISIONS.

**LIMITED LIABILITY.** IN NO EVENT SHALL CONSULTANT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, LOST PROFITS, WHETHER OR NOT FORESEEABLE OR ALLEGED TO BE BASED ON BREACH OF WARRANTY, CONTRACT, NEGLIGENCE OR STRICT LIABILITY, ARISING UNDER THIS AGREEMENT, LOSS OF DATA, OR ANY PERFORMANCE UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. THERE SHALL BE NO REFUNDS. CONSULTANT MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD PARTY PRODUCTS, THIRD PARTY CONTENT OR ANY SOFTWARE, EQUIPMENT, OR HARDWARE OBTAINED FROM THIRD PARTIES.

**CUSTOMER REPRESENTATIONS.** Customer makes the following representations and warranties for the benefit of Consultant:

- a. Customer represents to Consultant and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to Consultant are owned by Customer, or that Customer has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend Consultant and its subcontractors.
- b. Customer guarantees any elements of text, graphics, photos, designs, trademarks, or other artwork provided to Consultant for inclusion on the website above are owned by Customer, or that Customer has received permission from the rightful owner(s) to use each of the elements, and will hold harmless, protect, and defend Consultant and its subcontractors from any liability or suit arising from the use of such elements.
- c. From time to time governments enact laws and levy taxes and tariffs affecting Internet electronic commerce. Customer agrees that the client is solely responsible for complying with such laws, taxes, and tariffs, and will hold harmless, protect, and defend Consultant and its subcontractors.

**CONFIDENTIALITY.** The parties agree to hold each other's Proprietary or Confidential Information in strict confidence. "Proprietary or Confidential Information" shall include, but is not limited to, written or oral contracts, trade secrets, know-how, business methods, business policies, memoranda, reports, records, computer retained information, notes, or financial information. Proprietary or Confidential Information shall not include any information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is

independently developed by the receiving party; or (iv) is subject to disclosure under court order or other lawful process. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in this Agreement. Each party's proprietary or confidential information shall remain the sole and exclusive property of that party. The parties agree that in the event of use or disclosure by the other party other than as specifically provided for in this Agreement, the non-disclosing party may be entitled to equitable relief. Notwithstanding termination or expiration of this Agreement, Consultant and Customer acknowledge and agree that their obligations of confidentiality with respect to Proprietary or Confidential Information shall continue in effect for a total period of three (3) years from the effective date.

**FORCE MAJEURE.** Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

**RELATIONSHIP OF PARTIES.** Consultant, in rendering performance under this Agreement, shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership.

**NOTICE AND PAYMENT.** Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party at the addresses listed in the Order Form mailed by certified, registered or Express mail, return receipt requested or by Federal Express. Either party may change its address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

**SUCCESSORS & ASSIGNABILITY.** Customer may not assign this Agreement or the rights and obligations to any third party without the prior express written approval of Consultant. Consultant reserves the right to assign subcontractors as needed to this project to ensure on-time completion.

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators and successors.

**SEVERABILITY.** If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

**INTEGRATION.** This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.

**DISPUTES.** Customer and Consultant agree to make a good-faith effort to resolve any disagreement arising out of, or in connection with, this Agreement through negotiation.

Should the parties fail to resolve any such disagreement within ten (10) days, any controversy or claim arising out of or relating to this Agreement, including, without limitation, the interpretation or breach thereof, shall be submitted by either party to arbitration in Lane County, Oregon and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted by one arbitrator, who shall be selected in the sole discretion of the American Arbitration Association administrator and a licensed attorney with at least five (5) years experience in the negotiation of technology contracts or litigation of technology disputes. The arbitrator shall have the power to enter any award that could be entered by a judge of the state courts of Oregon sitting without a jury, and only such power, except that the arbitrator shall not have the power to award punitive damages, treble damages, or any other damages which are not compensatory, even if permitted under the laws of the State of Oregon or any other applicable law. The arbitrator must issue his or her resolution of any dispute within thirty (30) days of the date the dispute is submitted for arbitration. The written decision of the arbitrator shall be final and binding and enforceable in any court.

**DULY AUTHORIZED REPRESENTATIVE.** Each Party warrants that their representative whose signature appears below is duly authorized by all necessary and appropriate corporate actions to execute this Agreement. Each Party acknowledges that it has read and understands this Agreement and agrees to be bound by its terms and conditions.

By: \_\_\_\_\_

[Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Company Name]

\_\_\_\_\_  
[Date]

And: ISHBEL M. LANE

\_\_\_\_\_  
[Signature]

Principal  
\_\_\_\_\_  
[Title]

Emerge Web Design  
\_\_\_\_\_  
[Company Name]

\_\_\_\_\_  
[Date]