

## **INDEPENDENT CONTRACTOR AGREEMENT**

THIS INDEPENDENT CONTRACTOR AGREEMENT (“Agreement”), is made by and between Telecommute Pros (Mark My Words, LLC), an Arizona Limited Liability Company, having a place of business at 325 E. Southern Ave., Ste. 105, Tempe, AZ 85282, (the “Company”), and \_\_\_\_\_, an independent contractor (“Contractor”), having a place of business at \_\_\_\_\_

\_\_\_\_\_ (the Company and the Contractor shall be referred to as the “Parties”).

In consideration of the mutual covenants and agreements contained in this Agreement, the Parties mutually agree as follows:

1. Purpose. The purpose of this Agreement is to define the relationship between the Company and the Contractor as an independent contractor relationship and to establish the rights and obligations of each of the Parties for services provided to each other and to or for the benefit of third parties. The Company hereby engages the Contractor and the Contractor hereby agrees to such engagement according to the terms and conditions set forth in this Agreement and as may be set forth from time to time for future engagements in any Statement(s) of Work accepted by the Parties and attached as Exhibit A.

2. Contractor as Independent Contractor. Contractor is an independent contractor of the Company and Contractor shall not be deemed to be an employee of the Company. It is the Parties’ intention that the Contractor will be an independent contractor and not a Company employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Arizona state revenue and taxation law, Arizona Workers’ Compensation law, and Arizona state unemployment insurance law. Accordingly, the Company shall not be responsible for withholding any amounts for social security, state or federal unemployment insurance, worker's compensation insurance, or any other expenses with respect to the Contractor's compensation. Because Contractor is engaged in Contractor’s own independent business, Contractor acknowledges that it is not eligible for, and shall not participate in, any of the Company’s pension, health, or fringe benefit plans or any benefits accruing to the Company’s employees.

The Contractor will retain sole and absolute discretion and judgment in the manner and means of carrying out the Contractor’s activities and responsibilities under this Agreement. The Company’s sole input regarding the Contractor's work is in regard to the result that must be accomplished by the Contractor. The Contractor agrees that it is a separate and independent enterprise from the Company; that it has a full opportunity to find other business, subject to the confidentiality provisions of this Agreement; that it has made its own investment in its business; and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any partnership, joint venture or joint employment relationship between the Contractor and the Company and the Company shall not be liable for any obligation incurred by the Contractor.

3. Services and Payment to the Contractor. Contractor shall provide the services as are more fully described in the Statement of Work (the “Work”), attached as Exhibit A. The Company shall pay Contractor as set forth in each Statement of Work. Any expenses reimbursed to the Contractor for reasonable project related expenses, as set forth in each Statement of Work, must be pre-approved by the Company in writing prior Contractor incurring them. The Company shall not be liable to the Contractor for any other expenses incurred by the Contractor except as may be specifically

authorized in writing by the Company.

4. Term. The terms and conditions contained within this Agreement shall govern the Parties for a term which will commence on \_\_\_\_\_, 200\_ and will continue until \_\_\_\_\_, 200\_. The Parties acknowledge that the nature of the work that the Contractor will perform for the Company will be described and updated as necessary in the Statement of Work which will be attached as an Exhibit or multiple Exhibits to this Agreement. At the conclusion of the twelve (12) month term, the Company and Contractor can enter into a new contract for future services.

5. Termination of Agreement. This Agreement may be terminated by a 30-day written notice by either Party at any time during the Agreement term.

6. Confidentiality Restrictions.

(a) Client Information. Contractor acknowledges that it may receive information from the Company or the Company's Clients which identifies, among other things, information about the identity of the Company's Clients and prospective Clients; the Clients' needs and Clients' purchase and/or contracting histories. The Company has gone to great lengths to protect this information and retain its confidential nature. The Parties acknowledge that all of this information (referred to as the "Client Information") has great value to the Company and is to be protected in the same manner as all Company Information and to the fullest extent allowed by law.

(b) Company Information. Contractor acknowledges that the Company, in the operation of its business, has developed and employed and may hereafter develop and employ novel, unique and original methods, procedures, processes, techniques, programs, applications, systems and forms which are and shall be of a confidential, secret and/or proprietary nature and the Company has and shall have other trade secrets, proprietary and confidential information relating to those matters. Contractor also acknowledges that financial, statistical, personal, or other information relating to the business of the Company, its employees, its subcontractors, or its Clients may be disclosed to or discovered by the Contractor in the course of the performance of services under this Agreement. (All of the above information shall be referred to as the "Company Information"). The Parties acknowledge that the Company Information has great value to the Company and is to be protected to the fullest extent allowed by law.

All Company and Client Information shall be treated by the Contractor as secret and confidential, and the Contractor shall not disclose any portion of it to others. The Contractor shall not, without the written permission of the Company, use the Company Information for any reason other than to enable Contractor to properly and completely perform the Work.

Contractor shall not reproduce or make copies, electronic or hard copy, of the Company or Client Information, except as required in the performance of the Work. Upon termination of this Agreement or completion of the Statement of Work for a project, the Contractor shall promptly deliver to Company all Company and Client Information and together with any and all copies or other reproductions made by Contractor or in the possession or control of Contractor. Contractor recognizes that all Company and Client Information, whether developed by Contractor or others, are and shall remain the property of the Company and Contractor shall not retain any copies in any format, electronic or otherwise.

Except as may be required by the Work performed under this Agreement, Contractor shall not, during or at any time subsequent to the termination of this Agreement unless Company has given prior written consent, disclose or use the Company or Client Information or engage in or refrain

from any action, where such action or inaction may result in either the unauthorized disclosure of any or all such Company or Client Information to any person or entity, or the infringement of any or all such rights.

Contractor shall immediately notify Company of any information which comes to Contractor's attention which does or might indicate that there has been any loss of confidentiality of such Company or Client Information or a breach of such rights.

(c) Enforcement Rights. The Contractor acknowledges that it is responsible for any breach of this Agreement by itself, its employees and/or agents. The Contractor agrees that any breach of its obligations contained in this Section 6 shall cause the Company irreparable harm and that the Company's remedy at law for such breach shall be wholly inadequate. Accordingly, in the event of the breach or threatened breach of this Section 6 by the Contractor or its employees or agents, the Company shall be entitled to temporary and permanent injunctive relief to prevent such breach or threatened breach without being required to post bond for that relief. The agreements made by the Contractor in this Section 6 shall survive the termination of this Agreement.

(d) Client Definition. In this Agreement, the Company's "Clients" shall mean any person or entity for whom the Contractor has performed any services or Work under this Agreement or any Statement of Work accepted by the Contractor. Clients shall also include actively sought, prospective Clients of the Company. All Clients are Clients of the Company and not Clients of the Contractor.

7. Non-Solicitation of Company Employees and Clients. During this Agreement and for a period of one (1) year following the termination date of this Agreement (the "Non-Solicitation Period"), the Contractor shall not directly or indirectly, for itself or any other party, employ, hire, contract or solicit for employment, any employee of the Company, any Client or any other person performing consulting or contracting services under written agreement with the Company, without the prior written consent of the Company. Contractor shall not provide its business card, other marketing material or contact information to the Client. All additional leads or contacts should be referred to the Company.

8. Rights to Development. Any and all tangible work products (including, without limitation, any graphics, logos, literary works, pictorial, works of visual art, advertising and marketing concepts, designs, models, drawings, and any work that may be the subject matter of copyright protection of any kind) conceived or produced by the Contractor, its employees or agents, whether alone or with others, arising out of the performance of services for the Company hereunder, whether in whole or in part (such work product referred to as the "Products"), shall be the sole and exclusive property of the Company (the "Owner") or the Company's clients. To the extent that any of the Products is copyrightable under federal law, the Contractor and its employees and agents agree that such work is "work made for hire" as that term is defined in 11 U.S.C. Section 101. As such, the Company or the Company's Client shall be the sole and exclusive owner of such work. Contractor agrees to place notices of copyright and ownership on all such Products in such form as the Company may designate and agrees not to remove any such notice from any such copies of the Products. Contractor shall execute any assignments necessary to comply with the requirements in this Paragraph 8.

9. Warranties. Contractor warrants that the Contractor's agreement to perform the Work pursuant to this Agreement does not violate any agreement or obligation between Contractor and any third party; that the Work as delivered to the Company shall be an original work and shall not

plagiarize or infringe any copyright, patent, trademark, trade secret, or other proprietary right held by any third party; and that the services provided by Contractor shall be performed in a professional manner, and shall be of a high grade, nature, and quality. The services shall be performed in a timely manner and shall meet deadlines agreed between Contractor and the Company.

10. Indemnification. Contractor understands that if Contractor fails to perform as specified in this Agreement, Contractor may be subject to legal action by the Company. Contractor shall indemnify, defend, and hold the Company and its successors, officers, directors, members, clients, agents and employees harmless from any and all actions, causes of action, claims, demands, cost, liabilities, expenses and damages (including attorneys' fees) arising out of, or in connection with any breach of this Agreement by Contractor or in any way connected with the services rendered under the terms of this Agreement.

11. Other Activities and Client Satisfaction. Contractor is free to engage in other independent contracting activities, provided that Contractor does not engage in any such activities which are inconsistent with or in conflict with any provisions of this Agreement, or that so occupy Contractor's time as to interfere with the proper and efficient performance of Contractor's services to the Company.

12. Miscellaneous.

(a) Attorneys' Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees as determined by the Court in the same action.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without regard to conflict of law principles.

(c) Entire Agreement. This Agreement contains a complete agreement between the parties and shall supercede and revoke all other agreements, whether written or oral. Parties stipulate that neither of them has made any representations except as are specifically set forth in this Agreement and each of the parties acknowledges that they have relied on his/her own judgment in entering into this Agreement.

(d) Amendment. This Agreement may be amended only by a writing signed by Contractor and by a duly authorized representative of the Company.

(e) Effective Partial Invalidity. The invalidity of any portion of this Agreement shall not affect the validity of any other provision. In the event that any provision in this Agreement is held to be invalid, the parties agree that the remaining provisions shall remain in full force and effect.

(f) Construction. The headings and captions of this Agreement are provided for convenience only and are intended to have no effect in construing or interpreting this Agreement. The language in all parts of this Agreement shall be in all cases construed according to its fair meaning and not strictly for or against either party.

(g) Rights Cumulative. The rights and remedies provided by this Agreement are cumulative, and the exercise of any right or remedy by either Party hereto (or by its successor), whether pursuant to this Agreement, to any other agreement, or to law, shall not preclude or waive its right to exercise any or all other rights and remedies.

(h) Nonwaiver. The failure of either Party to exercise any of its rights under this Agreement for breach shall not be deemed a waiver of such rights or a waiver of any subsequent breach. All waivers must be in writing by a duly authorized representative of the Party.

(i) Remedy for Breach. The Parties agree that, in the event of breach or threatened breach of this Agreement by the Contractor, the damage or imminent damage to the value and the goodwill of the Company's business shall be inestimable, and, therefore, any remedy at law or in damages shall be inadequate. Accordingly, the Parties agree that the Company shall be entitled to injunctive relief against Contractor in addition to any other relief (including damages) available to the Company under this Agreement or under law.

(j) Notices. All notices, requests, demands, and other communications shall be in writing and shall be delivered by either facsimile correspondence, followed up by US Mail, overnight mail, or hand-delivery to the parties address stated herein.

(k) Assignment. Contractor may not assign its rights or obligations under this Agreement without Company's prior written consent. Company may assign its rights and obligations under this Agreement.

(l) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile signature shall be deemed legally binding.

**IN WITNESS WHEREOF**, the parties hereto have executed this Independent Contractor Agreement as of the date first written above.

**Mark My Words, LLC**

**Contractor**

\_\_\_\_\_  
Susan F. Walker – Manager

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By:  
Its: