

## SOFTWARE DEVELOPMENT, CONSULTING AND TRAINING AGREEMENT

This SOFTWARE DEVELOPMENT, CONSULTING AND TRAINING AGREEMENT (the "Agreement") is made and entered into as of the date set forth on the signature page hereof by and between \_\_\_\_\_, with a business address at \_\_\_\_\_ ("Client") and RIVELLO MULTIMEDIA CONSULTING, with a business address at P.O. Box 515381 #68361, Los Angeles, California 90051-6681, U.S.A. ("Developer").

### 1. CERTAIN DEFINITIONS:

Unless the context otherwise requires, as used herein the following terms have the meaning specified below:

(a) "Design Specifications" means the detailed Design Specifications for the product attached hereto as Schedule 1.

(b) "Software" means the Source Code and object code developed to implement the Design Specifications for the Product, including any corrections, improvements, enhancements and Derivatives, whether prepared by Developer or Client or third parties.

(c) "Documentation" means all written materials developed pursuant to the Design Specifications in connection with the Product, including, without limitation, specifications, programmers' notes, documentation, and other materials incorporated in or related to the Product.

(d) "Ancillary Materials" means the packaging, labeling, and other materials relating to the Product that are packaged with the Product, including, without limitation, user manuals, promotional and sales brochures, catalogs, sell sheets and advertising copy.

(e) "Product" means that certain custom software program and related materials developed pursuant to this Agreement based on the Design Specifications, including, without limitation, all existing and hereafter developed Design Specifications, Software, Documentation, Ancillary Materials, Work Product and Derivatives.

(f) "Intellectual Property Rights" means all copyrights (including, without limitation, the exclusive right to reproduce, distribute copies of, display and perform the copyrighted work and to prepare derivative works), copyright registrations and applications, trademark rights (including, without limitation, registrations and applications), patent rights, trade names, mask-work rights, trade secrets, moral rights, author's rights, algorithms, rights in packaging, goodwill and other intellectual property rights, and all renewals and extensions thereof, regardless of whether any such rights arise under the laws of the United States or any other state, country or jurisdiction, and all Derivatives of any of the forgoing.

(g) "Work Product" means any and all existing or to-be-developed parts, components or aspects of the Product, including its Source Code and object code, that are developed, created or

contributed to by Developer.

(h) "Derivative" means: (i) any Software, work, product, service, improvement, modification, alteration, enhancement, new version, sequel, translation, adaptation, design, concept, audiovisual display, materials and documentation, in any medium, format or form whatsoever that is derived in any manner, directly or indirectly, from the Product or any part or aspect thereof or that uses or incorporates the Product or any part or aspect thereof; (ii) all "derivative works" of the Product as defined in the Copyright Law of the United States, Title 17 U.S.C. § 101 *et. seq.* ("Copyright Law"); and (iii) all materials and documentation related to each of the foregoing.

(i) "Developer's Preexisting Intellectual Property Rights" means all Intellectual Proprietary Rights which Developer can document that it owned or rightfully used prior to the date of this Agreement, including, but not limited to, complete projects, partial projects, demos, prototypes, templates, designs, and other similar items.

(j) "Field of Use" means the intended use of the Product by Client.

(k) "Software Devices" means any device, on or by which computer software and its associated visual images, with or without sound, may be embodied or recorded for later operation, manipulation or communication to users, including, without limitation, semiconductor devices, magnetic disks (compact or otherwise), tapes, cartridges, boards, cassettes, or other prerecorded devices by which computer programs can be perceived, reproduced or otherwise communicated, directly or with the aid of a machine.

(l) "Source Code" means the computer program language(s) used by Developer to write the Software.

## 2. DEVELOPMENT; DELIVERIES:

(a) Development: In consideration of the payment by Client to Developer of a non-refundable **commencement fee** of \$\_\_\_\_\_ and Client's further agreement to pay fees to Developer in accordance with Clause 3 below, Developer agrees to perform such services as are necessary to use the Design Specifications to develop Software, Documentation and Ancillary Materials for the Product in conformity with the Design Specifications. Developer acknowledges that amendments to the Design Specifications may be made from time to time by Client subject to the approval of Developer, not to be unreasonably withheld or delayed. Developer will develop Software, Documentation and Ancillary Materials for the Product diligently and in a first-class and professional manner. Developer will provide or obtain at its sole cost and expense all necessary programming and other production (including art work and music and sound effects) in order to implement the Design Specifications into a working, useable Product. Unless otherwise agreed by Client in writing, all programming and development work performed by Developer will be exclusively done by the persons specified in Schedule 2(a) attached hereto, on a non-exclusive basis. Developer shall consult with Client upon request by Client during the

development of the Product.

(b) Deliveries: Developer will deliver Work Product in accordance with, and on or before the dates specified on, Schedule 2(b) ("Delivery Schedule"), as such Delivery Schedule may be amended in writing from time to time by mutual agreement. Deliverable items will conform to the Design Specifications and/or any other written specifications signed by both parties. Developer shall consult with Client during the development of the Product. Developer shall make available to Client all of Work Product upon request. Developer shall not be responsible for delays resulting from instructions from a designated representative of Client inconsistent with the content of materials previously approved by Client. Delivery of Work Product to Client will not be considered complete until Client has received notice of completion and the entire Work Product required to be provided by Developer hereunder and Client has affirmatively indicated that the services are complete.

(c) Product Content; Modification: Client shall have the sole right to determine, approve and disapprove the content of the Product, including but not limited to text, graphics, characters, music, banners, screens, etc. Client may also modify, change or alter the Product in any respect at any time.

### 3. PROJECT FEES; EXPENSE REIMBURSEMENT:

(a) In consideration for the satisfactory and complete performance by Developer of the Services described in the Design Specifications and the delivery of all Work Product, Client agrees to pay Developer the amounts (the "Project Fees") specified in Schedule 2(b) ("Delivery Schedule") as full payment for the rendition of Developer's services thereunder (as that amount may be adjusted by any executed Change Orders agreed upon by and between the parties from time to time) subject to the other terms and conditions of this Agreement.

(b) Client will reimburse Developer for any expenses incurred by Developer in connection with the performance of Developer's services hereunder, as more fully set forth on Schedule 2(c) hereof, promptly upon presentation of Developer's invoice therefore.

(c) Method of Payment: Unless another account or method of payment has been specified in the schedules hereto, all amounts payable to Developer hereunder will be payable in U.S. dollars in the United States, by wire transfer to such account as Developer will designate by written notice.

(d) Late Payments: All sums owed or otherwise payable to Developer hereunder which remain unpaid on the date due, will bear interest at the rate of one and one-half percent (1½%) per month, or such lower rate as may be the maximum rate permissible under applicable law, from such due date until the date of payment in full, whether before or after judgment.

### 4. CONSULTING & TRAINING:

(a) Consulting Obligation: As a material inducement to Client to enter into this Agreement, Developer hereby agrees to provide to Client and its personnel, at Client's request, reasonable consultation services, on a non-exclusive basis, during the period beginning on the date of this Agreement and ending one (1) year after Client's first use of the Product, at rates per hour to be agreed-upon by Client and Developer from time-to-time, including travel time when necessary. During such period, Developer will use its best efforts to correct any errors in the Product of which Client notifies Developer in writing during the consulting period and to provide reasonable enhancement or modifications to the Product requested by Client from time-to-time. Developer will provide such consulting services at times and at places reasonably requested by Client. Client has no obligation to use Developer's services to develop any such enhancements or modifications to the Product.

(b) Training Obligation: As a material inducement to Client to enter into this Agreement, Developer hereby agrees to provide to Client and its personnel, at Client's request, reasonable training services, on a non-exclusive basis, during the period beginning on the date of this Agreement and ending one (1) year after Client's first use of the Product, at rates per hour, per person trained, to be agreed-upon by Client and Developer from time-to-time. Developer will provide such training services at times and at places reasonably requested by Client.

(c) No Rights in Work Product: Client shall be the sole and exclusive owner of any and all right, title and interest in or to any Work Product that may be created, developed, contributed or provided by Developer in the course of providing such consulting and/or training services.

## 5. PROPRIETARY RIGHTS:

(a) Ownership by Client: Subject only to the provisions of Clause 5(b) below, Developer hereby irrevocably assigns, transfers, releases and conveys to Client, from the inception of the development efforts engaged in pursuant to this Agreement, all right, title and interest of Developer in and to the Product, as well as all Intellectual Property Rights embodied in or pertaining in any way to any of the foregoing, free and clear of any and all rights and claims whatsoever by Developer or any other person, firm or corporation. Accordingly, Client shall have the sole and exclusive right to do and authorize any and all of the acts set forth in Section 106 of the Copyright Law, including, without limitation, to copyright in its name, as the owner and author thereof, the Product and any Derivative, and to secure any and all renewals and extensions of such copyrights. For purposes of this Agreement, the Developer and persons rendering services to Developer in connection with the development of the Product shall be deemed to work under the direct supervision and control of Client and shall be deemed to be Client's employees for hire within the meaning of the Copyright Law. Nevertheless, Developer shall, upon Client's request, execute and deliver any and all further assignments of the Product, as well as all Intellectual Property Rights embodied in or pertaining in any way to any of the foregoing, as Client deems necessary or appropriate, and hereby designates Client as its attorney-in-fact for the purpose of executing such assignments in the name of Developer. Developer also waives and agrees never to assert any moral rights against Client with respect to any of the foregoing enumerated property rights.

(b) Developer's Rights: Nothing in this Agreement shall be interpreted to provide for the transfer or conveyance by Developer to Client of any of the Developer's Preexisting Intellectual Property Rights. However, to the extent that the Product incorporates or embodies any of Developer's Preexisting Intellectual Property Rights, Developer hereby grants Client a nonexclusive, world-wide perpetual right and license to exploit the Developer's Preexisting Intellectual Property Rights in the designated Field of Use in connection with the Product and Derivatives, without any royalty or other payment obligation to Developer.

## 6. REPRESENTATIONS AND WARRANTIES:

(a) Developer's Warranties: Developer represents and warrants that:

(i) It has all necessary rights and authorization to enter into and perform this Agreement, to provide all scheduled deliverables and to grant to Client all rights purported to be granted herein, and nothing contained in this Agreement or in the performance of the Agreement will place Developer in breach of any other contract or obligation.

(ii) Nothing that Developer provides that is or will be contained in the Product does or will violate or infringe any Intellectual Property Right of any third party.

(iii) Developer has not sold, assigned, leased, license or in any other way disposed of or encumbered the rights granted to Client hereunder, and Developer will not sell, assign, lease, license or in any other way dispose of or encumber any of such rights.

(iv) Developer is solely responsible for and shall pay all sums due any and all parties engaged by Developer in connection with the development of the Product who are entitled to receive compensation in respect of the development or sale of the Product.

(v) There is no demand, claim, suit, action, arbitration or other proceeding pending or threatened which questions or challenges the ability or right of Developer to enter into this Agreement or to perform any of its obligations hereunder, nor does there exist any reasonable basis for any such demand, claim, suit, action, arbitration or other proceeding.

(b) Client's Warranties: Client represents and warrants that it has all necessary rights and authorization to enter into and perform this Agreement, and that nothing contained in this Agreement or in the performance of the Agreement will place Client in breach of any other contract or obligation.

## 7. TERMINATION OF CLIENT'S OBLIGATIONS.

(a) Termination: Subject to the provisions of Clause 7(b), Client may terminate all of its duties and obligations under this Agreement without any further liability whatsoever to Developer if:

(i) Client notifies Developer prior to the first payment of the final Milestone payment under Clause 3(b) that either (A) in Client's good faith judgment, artistic, creative, technical and/or qualitative aspects of the services or Work Product provided by Developer are unsatisfactory to Client; or (B) Client has elected to discontinue, terminate or abandon the Product;

(ii) Client is prevented from using the Product by law or as a result of a suit, claim or proceeding (including settlement thereof) brought by a third party against Client; or

(iii) Developer breaches any material obligation under this Agreement and fails to cure such breach within twenty (20) days after Client gives written notice of the breach (which notice shall specify the nature of the breach in reasonable detail). For purposes of this Agreement, a breach of a material provision of this Agreement by Developer would include, without limitation, (1) failure to perform services or provide Work Product to Client in accordance with any delivery or completion schedule specified by Client; (2) abandoning work; (3) failure to communicate regularly with Client regarding the progress of the development efforts; (4) the assertion by Developer of any right of ownership or any other interest in and to the Product, or any Intellectual Property Rights in and to any of the foregoing; or (v) any violation of Clause 11 below.

(b) Effect of Termination.

(i) In the event Client terminates this Agreement pursuant to Clause 7(a) above, then Client shall be relieved of and released from all its duties and obligations under this Agreement and shall have no liability or duty whatsoever to Developer, except that if such termination is pursuant to Clause 7(a)(i), then Client will pay Developer, promptly after such termination, a **one-time lump sum fee** equal to the amount obtained by multiplying \$\_\_\_\_\_ by the number of months that Developer worked full-time on the Product after the date of this Agreement less an amount equal to any Milestone payments previously made to Developer under Clause 3(b).

(ii) No termination by Client of its duties and obligations under this Agreement in accordance with this Section shall confer on Developer any right to damages or any other rights or remedies nor shall it vest in Developer any right, title or interest in and to any Design Specifications, Work Product or any other rights assigned by Developer to Client under this Agreement. The rights and remedies provided to Client in this Section will not be exclusive and will be in addition to all other rights and remedies available at law or in equity. The provisions of Clauses 1, 6, 7, 8, 9, 11, and 12 shall survive termination of this Agreement.

8. TERMINATION OF DEVELOPER'S OBLIGATIONS: If Client breaches any material provision of this Agreement and such breach is not remedied within thirty (30) days after written notice thereof has been given by Developer to Client, then Developer shall be excused from providing further development services, Work Product Services or Consulting Services and shall be entitled to seek recovery from Client for any actual direct damages suffered or incurred by

Developer arising out of Client's breach. The rights and remedies provided to Developer in this section are non-exclusive.

9. INDEMNIFICATION: Each party (the "Indemnifying Party") will indemnify, defend and hold harmless the other party and its officers, directors, employees and agents (the "Indemnified Party") from and against any and all losses, liabilities, claims, obligations, costs and expenses (including reasonable attorneys' fees), which result from, arise in connection with or are related in any way to any breach by the Indemnifying Party of any of its representations and warranties set forth herein. If a third party asserts any claim or allegation which, if proven, would constitute a breach by the Indemnifying Party of any of its representations and warranties set forth in this Agreement, the Indemnifying Party shall be promptly notified of such claim by the Indemnified Party and given control of the defense and/or settlement thereof. The foregoing (as limited by Clause 12(a) of this Agreement) states the entirety of the parties' obligations (contractual, common-law or otherwise) with respect to any claim by any third-party; however, nothing in this section shall limit any party's rights in case of any breach of any covenant contained in this Agreement.

10. THIRD-PARTY INFRINGEMENT: Any amounts recovered by judgment or settlement against third-party infringers of any intellectual property rights in or to the Product will, after recoupment of the expenses of litigation, be treated as the property of Client; provided that, in the event Client declines to enforce its rights against a third-party infringer after written notice by Developer, then Developer may do so, in its own name and/or in the name of Client, if necessary, and treat the proceeds of such suit (if any) as its property.

#### 11. CONFIDENTIALITY.

(a) Disclosure of Information: Client either has provided or will provide to Developer certain information necessary for Developer to perform its obligations under this Agreement. Such information (together with the terms of this Agreement) will be deemed "Confidential Information" of Client. Notwithstanding the foregoing, information (other than information relating to the Product and the terms of this Agreement) will not be deemed Confidential Information if and to the extent: (i) it was already known to Developer prior to the date of this Agreement as established by documentary evidence; (ii) it is in or has entered the public domain through no breach of this Agreement or other wrongful act of Developer; (iii) it has been rightfully received by Developer from a third party and without breach of any obligation of confidentiality of such third party to Client; (iv) it has been approved for release by written authorization of Client; or (v) it is required to be disclosed pursuant to final binding order of a governmental agency or court of competent jurisdiction, provided that Client has been given reasonable notice of the pendency of such an order and the opportunity to contest it.

(b) **Obligation of Confidentiality:** Developer understands and agrees that it will be deemed in a fiduciary relationship of confidence and trust with respect to the Confidential Information. Developer agrees to hold the Confidential Information in strict confidence and not to disclose such Confidential Information to any third party or to use it for any purpose other than the purposes described herein. Developer agrees that it will employ all reasonable steps to protect the Confidential Information from unauthorized or inadvertent disclosure or use, including without limitation all steps that it takes to protect its own information that it considers proprietary and trade secret. Developer may disclose Confidential Information to its responsible employees but only to the extent necessary for the purposes described herein, and Developer agrees to instruct all such employees not to disclose such Confidential Information to third parties, including consultants, and not to use it for any purpose, except as herein authorized, without the prior written permission of Client.

(c) **Return of Confidential Information:** In the event of any termination or expiration of the Agreement, Developer shall promptly return to the Client all Confidential Information of the Client in tangible form, including without limitation all copies thereof and photographs, videotapes, printouts, notes and working papers created by or for the Developer in connection therewith, including all such items, materials and information in its possession or control or in the possession or control of any person permitted access to the Confidential Information. Alternatively, Developer shall certify in a writing signed by an authorized officer or representative that the foregoing have been shredded and disposed of in a secure manner.

## 12. GENERAL PROVISIONS:

(a) **Limitation of liability:** Neither party will be liable to the other under or in connection with this Agreement for special, incidental, consequential or punitive damages of any nature, for any reason, including, without limitation, the breach of this Agreement or any termination of this Agreement, whether such liability is asserted on the basis of contract, tort (including negligence or strict liability) or otherwise, even if the other party has been warned of the possibility of such damages.

(b) **Non-Solicitation:** So long as Product is being used by Client, or for three (3) years from the date of first use by Client of the Product hereunder, whichever period lasts longer, neither party, directly or indirectly, will hire, offer to hire, solicit, suggest or provide information whereby one might reasonably infer that a position may be available or have as a consultant any employee, shareholder or partner of the other party.

(c) **Injunctive Relief:** The parties hereby acknowledge that (i) the unauthorized disclosure, use or disposition of any Confidential Information under Clause 11; (ii) "raiding" in violation of Clause 12(b); or (iii) use of the Design Specifications and/or Work Product in violation of Clause 7, could cause irreparable harm and significant injury to the party so aggrieved which may be difficult to limit or quantify. Accordingly, the parties agree that such aggrieved party will have the right to seek an immediate injunction due to any such breach of this Agreement, without posting any bond therefore, in addition to any other remedies that may be available to such party.



at law or in equity.

(d) Attorneys' Fees: In the event of any legal action to enforce this Agreement, the party that prevails in such action will be entitled, in addition to any other relief granted, to recover from the other party the costs and expenses of such enforcement, including reasonable attorneys' fees and the fees and expenses of expert witnesses.

(e) Force Majeure: Neither party will be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, sabotage of material or supplies or any other cause beyond the control of such party ("Force Majeure"), provided that such party gives the other party written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof. In the event of such a Force Majeure, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure but not in excess of six (6) months.

(f) Governing Law: This Agreement will be governed and construed in accordance with California law (excluding that body of law pertaining to conflicts of law). Each party irrevocably consents to the personal jurisdiction and placement of venue in the state and federal courts located within the City and County of Los Angeles for the purposes of enforcing this Agreement, and agrees that such courts will exclusively constitute the permitted forums for resolving disputes under or in connection with this Agreement.

(g) Publicity: Neither party may issue any publicity releases using the name of the other party in any way or form without such other party's prior review and approval, which approval will be in the approving party's absolute discretion.

(h) Assignment: This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns. Developer shall have no right to assign any of its rights or obligations hereunder. Client may assign any of its rights or obligations, provided that no such assignment shall relieve Client of its obligations to make the payments to Developer provided for in Clause 3.

(i) Severability: If any provision of this Agreement or portion of any such provision is held invalid or unenforceable as written by a court of competent jurisdiction, such provision or portion thereof affected by such holding will be modified, to the extent possible, by reducing its scope or duration so that it is enforceable to the maximum extent permissible. If such modification is not possible, the affected provision or portion thereof will be stricken, and all remaining provisions of this Agreement will continue in full force and effect.

(j) Independent Contractors: The parties are independent contractors, and nothing in this Agreement will be deemed to place the parties in the relationship of employer-employee, principal-agent, or partners or joint venturers. Neither party will under any circumstances be liable for any withholding taxes, payroll taxes, disability insurance payments, unemployment taxes, and other similar taxes or charges on the payments made by the other party to such other

party's personnel.

(k) Notices: All notices required or permitted hereunder will be in writing, will be addressed to the receiving party as set forth on the first pages of this Agreement (or as otherwise has been specified by the receiving party by written notice), will be sent by certified mail, return receipt requested, U.S. Express Mail, overnight courier or by facsimile, and will be effective on receipt.

(l) Entire Agreement: This Agreement constitutes the entire contract between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous contracts, negotiations and understandings, oral or written. This Agreement may be modified only by an instrument in writing duly executed by both parties.

*(Client)*

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*(Developer)* RIVELLO MULTIMEDIA CONSULTING

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Schedule 1

### DESIGN SPECIFICATIONS

"Design Specifications" would include basic specifications for the Product, including functional capabilities, operating system and language specifications, hardware platforms, intended Software Devices, data structures, memory requirements, program designs, computer processes and algorithms and related code and code libraries, graphics specifications, user control and interface features, expansion characteristics, and all concepts relating to the Product.

Schedule 2(a)

*(Persons Specified to Perform Development Work)*

Schedule 2(b)

DELIVERY SCHEDULE

Deliverable Item ..... Milestone Date ..... Payment

Schedule 2(c)

EXPENSE REIMBURSEMENT

Airfare

Other transportation

Hotel

*Per Diem*