

## MASTER SERVICES AGREEMENT

This Master Services Agreement (the “*Agreement*”) is made effective as of \_\_\_\_\_ (the “*Effective Date*”), by and between Solution Zero, LLC, a Texas limited liability company, Doing Business As (DBA) Caprock Custom Applications at 5280 34<sup>th</sup> Street, Lubbock, TX 79407 (the “*Consultant*”) and \_\_\_\_\_ (the “*Customer*”) (each a “*Party*” and collectively, the “*Parties*”).

**WHEREAS**, Consultant is engaged in the business of providing software development and related services and work product; and

**WHEREAS**, Customer wishes to retain Consultant to provide the software development and related services and work product described herein, and Consultant wishes to provide the same to Customer, each on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Customer and Consultant agree as follows:

1. Description of the Services. The Consultant will provide services for the Customer by timely providing the services listed on Schedule A (the “*Services*”) in a professional and timely manner in accordance with industry standards and practices for similar services, using personnel with the requisite skill, experience, and qualifications, and shall devote adequate resources to meet its obligations under this Agreement. All programming and documentation shall comply with standards currently employed by the Customer. The parties may at any time modify the scope of the Services by including desired changes in a written “change order” that explains the changes and the adjustment to the payment for the Services that will result from such changes. Such change order shall become effective when signed and dated by both parties. This Agreement shall apply to the delivery of software development services, support, and functions as further described in Statements of Work (SOW) that may be proposed and mutually agreed in writing by the parties. Any such approved SOW shall be incorporated herein by reference (the services and functions described in any SOW are hereafter referred to as the “*Services*”). The Customer will have two opportunities (“*Revision Cycles*”) per feature or milestone to bring necessary in-scope changes to the attention of the Contractor. Once a feature or milestone has been reviewed twice by the Customer any changes to that feature or milestone will be considered out-of-scope and require a change order, regardless of whether the changes would initially have been considered in-scope or not. Also, once a feature or milestone has been accepted by the Customer, any additional changes will be considered out-of-scope and require a change order, regardless of whether the changes would initially have been considered in-scope or not. In the event that the scope of the Services is expanded, revised, or modified, for any SOW incorporated herein, the parties shall prepare and sign an amended or new SOW (or change order), which likewise shall be attached hereto and incorporated herein by reference. Absent the execution of a mutually signed SOW, this Agreement does not, in and of itself, represent a commitment by Customer to receive any Services from Consultant or pay Consultant any fees. The Consultant will begin the Services on the designated date and continue until the satisfactory completion of the Services. The term “satisfactory

completion” of the Services means when the service and documentation developed for the service performs to the specifications set forth in the applicable SOW.

2. Programming Team. The Consultant will use only qualified personnel to provide the Services (the “*Programming Team*”). The Consultant reserves the right to make changes to the Programming Team in its sole discretion. Orientation of replacement personnel shall be at the Consultant’s expense. The Consultant will assign a Project Manager to interface with the Customer.

3. Term. The term of this Agreement will commence on the Effective Date set forth above and will continue for one (1) year thereafter, (“Term”), unless terminated earlier by either party as provided under this Agreement. In the event that a SOW provides for a different Term, the SOW Term will control for that specific SOW only.

4. Payments. In consideration for the Services performed by Consultant, as set forth in any SOW, Customer agrees to pay the Consultant in accordance with the rates and payment schedule set forth in the applicable SOW. Unless otherwise stated in the applicable SOW, such rates are exclusive of any federal, state, or local sales or use taxes, or any other taxes or fees assessed on, or in connection with any of the Services rendered herein.

4.1. Customer agrees to pay Consultant according to the rates and fee schedule set forth in the applicable SOW for fixed price and per hour services for all time expended in the project outlined in this agreement. Consultant will provide the Customer with milestone statements for services rendered or time spent for the preceding milestone. For all SOWs billed hourly the Customer will pay all invoices by the Due Date specified on the invoice (generally thirty (30) calendar days). In the event a Customer’s invoice remains unpaid beyond the due date, Consultant may terminate the agreement and discontinue providing service.

4.2. Customer shall be responsible for any costs incurred by Consultant in the collection of unpaid invoices including, but not limited to, collection and filing costs and reasonable attorney’s fees.

4.3 For per hour services, the tasks completed by Consultant will be itemized in each billing statement. Services include, unless otherwise provided herein, all document preparation, telephone calls, travel time, meetings, consultations, technical research, office visits and other services that may be necessary to develop the solution.

4.4. In addition to the service fees, for per hour services, Customer will pay, or reimburse Consultant, as the case may be, all costs and out-of-pocket expenses reasonably incurred by Consultant in connection with the performance of the Services. These costs and expenses must have Customer’s prior written approval, which approval shall not be unreasonably withheld, denied or delayed. Costs include long distance telephone charges, express mail costs, and Consultant’s out-of-town automobile mileage at the then-current published IRS standard business mileage rates, which for 2019 is \$0.58 per mile, and any other travel and lodging expenses that may be necessary to complete the assignment. Consultant has the option to require that costs be paid directly to third parties by Customer, or may advance such cost on behalf of Customer, in which case the cost will be itemized on the billing statements and reimbursed to Consultant.

Additional expenses for materials, services, training, and hardware may only be incurred by Consultant and charged to Customer if prior written approval from Customer has been obtained, which approval shall not be unreasonably withheld, denied, or delayed.

4.5. For fixed bid projects, for each Milestone within a Project Amendment, Customer agrees to pay 50% of the Milestone payment up front before the Consultant begins work on the Milestone. All previous Milestones must be paid fully before any subsequent Milestones are worked on.

4.6. Customer agrees to provide a valid credit card to be associated with each fixed SOW. Once each Milestone is completed the Consultant will immediately charge the associated credit card for the Milestone payment amount. With the Customer's prior written approval, which approval shall not be unreasonably withheld, denied or delayed, Consultant may charge the associated credit card 50% of the next Milestone payment prior to beginning work on the next Milestone.

4.7. Customer agrees to provide a valid credit card to be associated with each hourly SOW. For invoices that remain unpaid beyond the invoice due date, Consultant will charge the associated credit card.

5. Ownership Rights. All materials, including, but not limited to, software, programs, source code and object code, comments to the source or object code, specifications, documents, abstracts and summaries thereof (collectively, the "Deliverable") developed by Consultant in connection with the provision of the Services to Customer, or developed by Consultant pursuant to specifications or instructions provided by Customer, shall belong exclusively to Customer. Consultant acknowledges that the Deliverables shall be deemed "works made for hire" by Consultant for Customer, and, therefore, shall be the exclusive property of Customer. To the extent the Deliverables are not deemed "works made for hire" under applicable law, Consultant hereby irrevocably assigns and transfers to Customer all right, title and interest in and to the Deliverables, including, without limitation, all patent and copyright interests, and agrees to execute all documents reasonably requested by Customer for the purpose of applying for and obtaining domestic and foreign patent and copyright registrations.

Notwithstanding any provision of this Agreement to the contrary, any routines, methodologies, processes, libraries, tools or technologies created, adapted or used by Consultant in its business generally, including all associated intellectual property rights (collectively, the "Development Tools"), shall be and remain the sole property of Consultant, and Customer shall have no interest in or claim to the Development Tools, except as necessary to exercise its rights in the Deliverables. In addition, notwithstanding any provision of this Agreement to the contrary, Consultant shall be free to use any ideas, concepts, or know-how developed or acquired by Consultant during the performance of this Agreement to the extent obtained and retained by Consultant's personnel as impression and general learning. Subject to and limited by Customer's intellectual property rights described in Sections 5 and 6, nothing in this Agreement shall be construed to preclude Consultant from using the Development Tools for use with third parties for the benefit of Consultant.

6. Pre-Existing Materials. To the extent that any of Consultant's pre-existing materials are contained in the Deliverables, Consultant retains ownership of such preexisting materials and hereby grants to the Customer an irrevocable, worldwide, unlimited, transferrable, sublicensable,

royalty-free license to use, publish, reproduce, display, distribute copies of, and prepare derivative works based upon, such preexisting materials and derivative works thereof. If such pre-existing materials is utilized, the Consultant will notify the Customer to receive consent before implementing the Consultant's pre-existing materials.

7. Confidentiality. This Agreement, as it may be amended, and its SOWs are subject to terms and conditions of that certain \_\_\_\_\_ executed by and between the parties on \_\_\_\_\_, 20\_\_ and it is incorporated herein and attached hereto for all purposes, as Exhibit B.

8. Working Hours, Office Space and Testing Time. The Consultant's normal working hours are 8AM to 6PM CST Monday – Friday, excluding Federal and State holidays. The Consultant's employees, when working on the premises of the Customer, shall observe the Customer's working rules and policies, and the Customer shall provide adequate office space and testing time for the Consultant's employees.

9. Independent Contractor. The Consultant is an independent contractor with respect to its relationship to the Customer. This Agreement shall not be construed to create any association, partnership, joint venture, employee, or agency relationship between Consultant and the Customer for any purpose. Consultant shall have no authority (and shall not hold itself out as having authority) to bind the Customer and shall not make any agreements or representations on the Customer's behalf without the Customer's prior written consent. Neither the Consultant nor the Consultant's employees are or shall be deemed for any purpose to be employees of the Customer. The Customer shall not be responsible to the Consultant, the Consultant's employees, or any governing body for any payroll taxes related to the performance of the Services. Without limiting foregoing, neither the Consultant nor the Consultant's employees will be eligible to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits, or any other fringe benefits or benefit plans offered by the Customer to its employees, and the Customer will not be responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes, making any insurance contributions, including for unemployment or disability, or obtaining worker's compensation insurance on your behalf. Consultant shall be responsible for, and shall indemnify the Customer against, all such taxes or contributions. Any persons employed or engaged by Consultant in connection with the performance of the Services shall be Consultant's employees or contractors and Consultant shall be fully responsible for them and indemnify the Customer against any claims made by or on behalf of any such employee or contractor in the course and scope of their performance of the Services under this Agreement.

10. Promotion. Customer hereby grants Consultant the right to use the name, logo, and service marks of Customer on Consultant's website, as well as its marketing materials or other oral, electronic, or written promotions, which shall include naming Customer as a Customer of Consultant and a brief scope of services provided. Customer also hereby grants Consultant the right to place "Built by Caprock Custom Applications in Lubbock Texas" or similar wording and the Consultant's logo on the Deliverables in a discreet manner.

11. Warranty - Consultant. CONSULTANT SHALL PERFORM THE SERVICES PROVIDED UNDER THE APPLICABLE SOW IN A WORKMAN LIKE MANNER. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY WILL BE, AT CONSULTANT'S SOLE OPTION, i) RE-PERFORMANCE OF THE SERVICES OR ii) TERMINATION OF THE SOW OR THE APPLICABLE SERVICE AND REIMBURSEMENT BY CONSULTANT TO CUSTOMER OF THE PORTION OF THE SERVICE FEES PAID TO CONSULTANT BY CUSTOMER FOR SUCH NONCONFORMING SERVICE(S).

12. Intellectual Property Rights Warranty. CONSULTANT WARRANTS, TO THE BEST OF ITS KNOWLEDGE, THAT THE SOFTWARE WILL NOT INFRINGE UPON ANY U.S. COPYRIGHT, PATENT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY INTEREST OF ANY THIRD PARTY IN THE U.S. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS INTELLECTUAL PROPERTY WARRANTY IS INDEMNIFICATION PURSUANT TO THE INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY SET FORTH IN SECTION 16 (INDEMNITY), BELOW, OF THIS AGREEMENT.

13. Warranty - Customer. THE CUSTOMER REPRESENTS AND WARRANTS TO THE CONSULTANT THAT THE CUSTOMER OWNS (OR HAS A LEGAL LICENSE TO USE) ALL PHOTOS, TEXT, ARTWORK, GRAPHICS, DESIGNS, TRADEMARKS, AND OTHER MATERIALS PROVIDED BY THE CUSTOMER FOR INCLUSION IN THE SERVICES, AND THAT THE CUSTOMER HAS OBTAINED ALL WAIVERS, AUTHORIZATIONS, AND OTHER DOCUMENTATION THAT MAY BE APPROPRIATE TO EVIDENCE.

14. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND TO THE EXTENT ALLOWED BY LAW, THE PARTIES HEREBY SPECIFICALLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

15. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND, (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM ANY PROVISION OF THIS AGREEMENT OR OTHERWISE, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFIT OR LOST BUSINESS, LOSS OF DATA, LOSS OF USE, INTERRUPTION OF BUSINESS COSTS OF DELAY OR FAILURE OF DELIVERY, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE. IN NO EVENT SHALL CONSULTANT BE LIABLE TO CUSTOMER FOR ANY AMOUNT IN EXCESS OF THE FEES ACTUALLY PAID BY CUSTOMER TO CONSULTANT FOR SERVICES AND CONSULTANT SOFTWARE PROVIDED UNDER THE APPLICABLE SOW. CUSTOMER AGREES THAT ANY EFFORTS BY CONSULTANT TO MODIFY ITS SERVICES OR SOFTWARE SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS, AND THAT ANY CONSULTANT WARRANTIES SHALL NOT BE

DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. MODIFICATIONS MADE TO THE DELIVERABLES OR SERVICES BY CUSTOMER OR ANY THIRD-PARTY VOIDS ANY REMAINING EXPRESS OR IMPLIED WARRANTIES. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, AND, AS SUCH, SOME PORTION OF THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. IN SUCH JURISDICTIONS, CONSULTANT'S LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

16. Indemnity. Third-Party Infringement Claims. Consultant will defend at its expense or settle any third-party claim against Customer alleging that Deliverables provided under this Agreement infringe a U.S. patent, trademark, copyright or other intellectual property right in the U.S. Consultant will pay infringement claim defense costs, Consultant-negotiated settlement amounts, and direct damages finally awarded by a court. Consultant has no obligation to indemnify Customer for any claim of infringement arising from, and Customer will indemnify, defend, and hold harmless Consultant against any third-party claim arising from: (i) Customer or third-party provided designs, specifications, instructions, technical information, or other materials provided for inclusion in the Deliverables; (ii) derivative works of the Deliverables created by Customer; (iii) modifications or maintenance of a Product, Services, or Deliverables by any party other than Consultant; (iv) Customer's non-compliance with applicable instruction or documentation; (v) use of Deliverables for purposes not contemplated by this Agreement or applicable Documentation (including distribution to third parties); (vi) use of the Deliverables in combination with products, software, or services, including hardware and software, that are not provided or pre-approved in writing by Consultant; (vii) a Deliverable that is not at the most current release level if the most current release level is non-infringing, (viii) misuse of the Deliverable; (ix) Customer's continued use of the Product, Services, or Deliverable, after Customer becomes aware, by any means, that such Deliverables, are allegedly infringing, or (x) Customer's continued use of Deliverables after Customer's use of the Deliverables has been enjoined. Consultant shall have no obligation to indemnify the indemnified party under any settlement made without Consultant's prior written consent.

**Bodily Injury Cross-Indemnity.** Customer and Consultant will each defend and indemnify the other and the other's employees, officers, directors and agents against all damages for bodily injury, including death, or damage to real or tangible personal property to the extent such death, injury or damages are directly and solely caused by the indemnifying party in the course of performing this Agreement.

**Conditions.** Each party's indemnification obligations under this Agreement are conditioned upon the indemnified party: (i) promptly notifying the indemnifying party of any claim in writing; (ii) cooperating with the indemnifying party in the defense of the claim; and (iii) granting the indemnifying party sole control of the defense or settlement of the claim. The indemnifying party shall have no obligation to indemnify the indemnified party under any settlement made without the indemnifying party's prior written consent, which shall not be unreasonably withheld, denied, or delayed. Each party's indemnification obligations under this Agreement are subject to the terms of Section 15, above.

17. Assignment. The Consultant may freely assign its rights and obligations under this Agreement at any time. This Agreement is not assignable, in whole or in part, by Customer without the prior written consent of the Consultant. Any attempt to make such assignment shall be void. Subject to the limits on assignment stated above, this Agreement will inure to the benefit of, be binding on, and be enforceable against each of the parties hereto and their respective successors and assigns.

18. Attorney's Fees. In any legal action between the parties concerning this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

19. Termination. Unless otherwise terminated in accordance with this Section 19, this Agreement will terminate the Term end date set forth in Section 3 and each SOW will terminate upon completion of the Services. Termination of this Agreement also terminates all current SOWs. Termination of a SOW will not terminate this Agreement or any other SOW. Either party may terminate this Agreement, SOW, at any time, for convenience, by providing 14 days advance written notice. In the event of such termination, the Customer shall be obligated to pay only for actual services provided by the Consultant and for expenditures incurred with the Customer's prior written approval, which approval shall not be unreasonably withheld, denied or delayed. Either party may terminate this Agreement or any SOW, for cause, effective immediately upon notice if a party defaults by failing to substantially perform any provision, term or condition of this Agreement (including without limitation the failure to make a monetary payment when due). The notice shall describe with sufficient detail the nature of the default.

20. Survival. The terms and conditions of Sections 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 18, 20, 21, 23, and 24 shall survive the expiration or termination of this Agreement.

21. Taxes. All the Services provided and Products sold are subject to Texas state sales and use taxes at the current rate of 8.25%. If the Customer possesses tax-exempt status, Customer shall provide the Consultant with the necessary documentation and the aforementioned taxes will be voided. If the Customer does not have exemption status but believes such exemptions should be allowed, the Customer will need to contact the Texas Comptroller to gain the proper documentation.

22. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall remain in full force and effect and construed so as to best effectuate the original intent and purpose of this Agreement.

23. Governing Law / Forum. This Agreement shall be construed in accordance with the internal laws of the State of Texas, without regard to conflict of laws rules. Venue shall be in a court of competent jurisdiction in the State of Texas, and both parties expressly consent to jurisdiction in such courts.

24. Complete Agreement. This Agreement supersedes all prior agreements and understandings between the parties for performance of the Services, and constitutes the complete agreement and understanding between the parties. The parties may amend this Agreement in a written document signed by both parties.

25. Notices. All notices required under or regarding this Agreement will be in writing and will be considered if delivered personally, mailed via registered or certified mail (return receipt requested and postage prepaid), given by facsimile (confirmed by certification of receipt) or sent by courier (confirmed by receipt) addressed to the following designated parties:

If to Consultant:

Caprock Custom Application

Attention:

5280 34<sup>th</sup> Street,

Lubbock, TX 79407

If to Customer:

Customer Name

Attention:

Street Address

City, State Zip

26. Force Majeure. Neither party will be liable to the other for failure to perform its obligations (other than to make payments when due) hereunder if and to the extent that such failure to perform results from causes beyond its control, including and without limitation: strikes, lockouts, or other industrial disturbances; civil disturbances; fires; acts of God; acts of a public enemy; compliance with any regulations, order, or requirement of any governmental body or agency; or inability to obtain transportation or necessary materials in the open market.

27. Purchase Orders. The Parties expressly agree that the use of purchase orders or similar documents are for the convenience of the parties only and any pre-printed terms and conditions contained on them do not revise, amend, or in any way change the terms of this Agreement or any SOW.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

**CUSTOMER:** \_\_\_\_\_

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

Name: \_\_\_\_\_

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

**CONSULTANT:** Solution Zero, LLC DBA Caprock Custom Applications

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

Name: \_\_\_\_\_

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



## Schedule A

This Statement of Work NO. \_\_\_\_\_ (“SOW”) is entered into on \_\_\_\_\_ by Solution Zero, LLC, (DBA) Caprock Custom Applications (“*Consultant*”) and \_\_\_\_\_ (“*Customer*”) and is governed by the Master Services Agreement by and between Consultant and Customer, dated \_\_\_\_\_, 20\_\_, (the “Agreement”) and the Agreement is herein incorporated. This SOW and the Agreement constitute the complete agreement regarding services and deliverables provided under this SOW. The terms and conditions of this SOW shall prevail over any conflicting terms or conditions of the Agreement.

1. Engagement Details
  - a. Project Name/Background:
  - b. Purpose:
  - c. Start date
  - d. Completion Date
  - e. Extensions, if applicable
  - f. Project Managers
2. Description of Work Performed by Consultant
  - a. Services to be Provided Generally:
  - b. Initial Scope of Assignment:
  - c. Services to be Supported:
  - d. Progress Reporting and Communications:
  - e. Consultant Personnel:
  - f. Location:
3. Deliverables
4. Consultant Responsibilities
  - a. Qualifications:
  - b. Materials:
  - c. Methods/Tools:
  - d. Support Services:
5. Customer Responsibilities

- a. Deliverables:
- 6. Performance Criteria and Final Acceptance
  - a. Deliverable Acceptance Criteria:
  - b. Quality Assurance Plan/Service Level Agreement
  - c. Non-Performance and Rejection:
  - d. Final Acceptance:
- 7. Pricing and Payment
  - a. Professional Fees and Expenses:
  - b. Total SOW Amount:
  - c. Invoice Schedule:
- 8. Additional provisions

**IN WITNESS WHEREOF**, the parties have executed this SOW NO. \_\_\_\_\_ as of the Effective Date.

**CUSTOMER:** \_\_\_\_\_

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

Name: \_\_\_\_\_

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

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

**CONSULTANT:** Solution Zero, LLC DBA Caprock Custom Applications

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

Name: \_\_\_\_\_

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

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

**Schedule B**