

MASTER SERVICES AGREEMENT

This Master Services Agreement (the “**Agreement**”) is made effective as of the _____ day of _____ in the year 20____ (the “**Effective Date**”), by and between Solution Zero, LLC, Doing Business As (DBA) Caprock Custom Applications (the “**Consultant**”) and _____ (the “**Customer**”).

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.

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 / Scheduling. 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 on Schedule A.

4. Payments. In consideration for the Services, the Customer will pay the Consultant in accordance with the terms set forth below and with the payment schedule set forth on Schedule B.

4.1. Customer agrees to pay Consultant according to the fee schedule set forth in Schedule B 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. Customer will pay all bills within thirty (30) calendar

days of receipt of same. Bills not paid within thirty (30) calendar days, as provided herein, shall accrue monthly compounding interest at the rate of 1½% per month (19.56% annual percentage rate), and in the event that a bill is unpaid beyond thirty (30) calendar days, Consultant may terminate the contract and discontinue providing service.

4.2 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.

4.3 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. These costs and expenses must have Customer's prior approval. Costs include long distance telephone charges, express mail costs, and Consultant's out-of-town automobile mileage at \$0.57 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.

5. Ownership Rights. The Customer is and shall be, the sole and exclusive owner of all right, title, and interest throughout the world in and to all results and proceeds of the Services performed under this Agreement, including but not limited to all work product and any deliverables specified in any statement of work, all source code, object code, screens, documentation, digital programming, operating instructions, design concepts, content, graphics, domain names, characters, systems, computer programs, operating instructions, unique design concepts, other documentation developed for or specifically relating to the Customer's information processing, all of the Customer's source documents, stored data and other information of any kind, and reports and notes prepared by the Consultant (collectively, the "**Deliverables**"), including all patents, copyrights, trademarks, trade secrets, and other intellectual property rights (collectively "**Intellectual Property Rights**") therein. Consultant agrees that the Deliverables are hereby deemed a "work made for hire" as defined in the United States Copyright Law, Title 17 of the United States Code, as applicable, for the Customer. Without limiting the foregoing, Consultant hereby irrevocably assigns to the Customer, in each case without additional consideration, all right, title, and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. Any assignment of copyrights under this Agreement includes all rights of paternity, integrity, disclosure, and withdrawal and any other rights that may be known as "moral rights" and Consultant hereby irrevocably waives, to the extent permitted by applicable law, any and all claims Consultant may now or hereafter have in any jurisdiction to any such moral rights with respect to the Deliverables. Upon the reasonable request of the Customer, Consultant shall promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist the Customer to prosecute, register, perfect, record, or enforce its rights in any Deliverables.

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. The Consultant will not at any time or in any manner, either directly or indirectly, use for the personal benefit of the Consultant, or divulge, disclose, or communicate in any manner any information that is proprietary to the Customer (e.g., trade secrets, know-how and confidential information). The Consultant will protect such information and treat it as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon termination of this Agreement, the Consultant will return to the Customer all records, notes, documentation and other items that were used, created, or controlled by the Consultant during the term of this Agreement. The Customer or may seek and obtain injunctive relief against the release or threatened release of such information in addition to any other legal remedies which may be available.

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, including penalties and interest. 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.

10. Promotion. The Consultant will not use the names, trademarks, service marks, symbols or any abbreviations of the Customer, without the prior written consent of the Customer.

11. Warranty - Consultant. While no design process is able to guarantee bug-free results, the Consultant warrants to the Customer that all Services will be provided in a workmanlike manner, within local industry standards and tolerances for commercial applications. This warranty does not cover items damaged, modified or misused after delivery to the Customer.

12. Warranty - Intellectual Property Rights. The Consultant represents and warrants that it has the unencumbered right and power to enter into and perform this Agreement and that the Consultant is not aware of any claims or basis for claims of infringement of any patent, trademark, copyright, trade secret, or contractual or other proprietary rights of third parties in or to any programming or materials included by the Consultant in the Services or trade names related to the Services. In the event of any claim, charge, suit or proceeding by any third party against the Customer alleging such infringement, the Consultant shall defend such claim, charge, suit or proceeding. The Consultant shall indemnify and hold the Customer harmless from and against any loss, cost, damage or expense (including attorney fees and legal expenses) incurred by the Customer that may result by reason of any such claim, charge, suit or proceeding. The Customer shall have the right, if it so desires, to be represented in any such claim, charge, suit or proceeding by counsel. If any of the programming or materials included by the Consultant in the Services becomes the subject of an infringement suit, the Customer may terminate this Agreement and shall be entitled to a refund of any payments that it has made to the Consultant under this Agreement. This indemnity shall not apply to materials provided by the Customer as contemplated by the following paragraph.

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. The Customer shall indemnify and hold the Consultant harmless from all losses and claims, including attorney fees and legal expenses that may result by reason of claims by third parties alleging infringement with respect to such materials

14. Disclaimer of Warranties. Except as expressly set forth in this agreement, 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 (even if that party has been advised of the possibility of such damages), arising from any provision of this agreement such as, but not limited to, loss of revenue or anticipated profit or lost business, costs of delay or failure of delivery, or liabilities to third parties arising from any source.

16. Indemnity. Each party agrees to defend, indemnify, and hold harmless the other party and its officers, directors, agents, affiliates, distributors, representatives, and employees from any and all third party claims, demands, liabilities, costs and expenses, including reasonable attorney's fees, costs and expenses resulting from the indemnifying party's material breach of any representation, or warranty under this Agreement.

17. Assignment. The Customer may freely assign its rights and obligations under this Agreement at any time. This Agreement is not assignable, in whole or in part, by Consultant without the prior written consent of the Customer. 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 upon completion of the Services. Either party may terminate this Agreement at any time 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 approval. 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 other party may terminate this Agreement by providing written notice to the defaulting party. The notice shall describe with sufficient detail the nature of the default. The party in default shall have 14 business days from the effective date of such notice to cure the default(s). Unless waived by the party providing the notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.

20. Survival. The terms and conditions of Sections 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 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, which can then be provided to the Consultant for tax-exempt invoicing.

22. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, 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 Contract / Amendment. 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. Scope of Work. The scope of work of the Services will be considered to have been met when the provided solution meets the minimum basic design and functionality set forth in the Schedule A. Any additions or modifications not contemplated by Schedule A will require a change order.

26. Revision Cycles. 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.

27. Miscellaneous Tasks Not Requiring a Change Order. For tasks not addressed in change orders, where the Contractor estimates the time for completion to be less than or equal to 5 hours, an emailed request by the Customer will be considered binding and have the same effect as if a change order had been generated for the request. Work performed under this clause will be billed at the agreed-upon hourly rate as opposed to an estimate included in a change order. If, during the course of the performing the work, the Contractor realizes that the work will exceed 5 hours then a change order will be required to complete the work.

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

Additional software development and associated activities as defined on change orders and subsequent amendments to the Agreement.

Schedule B

Payment Terms:

Activities like web hosting, web site enhancements, and office consultation services will be billed separately with payment due within 30 calendar days of receipt. Billing rate will be hourly using the Standard Fee Schedule listed below:

Standard Fee Schedule:

Per Hour Software Development – \$125.00 per hour

Fixed Price Software Development – See associated Amendment(s)

The prices listed on the Standard Fee Schedule are billing rates for services performed at the Consultant's offices during "Normal Working Hours" defined in Section 8. Time is billed in quarter hour increments. There is a one-hour minimum for all on-site service, and a quarter-hour minimum for telephone support. Services provided on-site will be billed at a rate 25% higher than services provided off-site. Travel time from the Consultant's office to the Customer's office is billable for "on call" (non-scheduled) and out-of-town assignments. Travel, lodging and meal expenses are extra and will be billed separately on out-of-town assignments. All services requested to be performed outside the Consultant's "Normal Working Hours" defined in Section 8 will have a 1 hour minimum and be billed at a rate 50% higher than the standard rate.