

MASTER SERVICE AGREEMENT

PARTIES

This Master Service Agreement, (the "Agreement") is by and between Mark's Pro FM, LLC, a Texas Limited Liability Company ("MPFM"), and

_____ (the "Customer"), and has an effective date of _____ (the "Effective Date").

RECITALS

WHEREAS, MPFM provides consulting and software development services; and

WHEREAS, Customer desires to obtain consulting and/or software development services from MPFM; and

WHEREAS, Customer has rights to certain confidential information and trade secrets relating to its business and clients (the "Confidential Information"); and

WHEREAS, in the course of providing the services to Customer, MPFM may gain access to the Customer's Confidential Information and may gain access to other intellectual property of the Customer; and

NOW, THEREFORE, in consideration of the monetary compensation and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Customer and MPFM hereby agree as follows.

SECTION 1

CUSTOMER'S OBLIGATIONS

1.1 Customer agrees to pay MPFM for work performed pursuant to the attached Scope of Work (the "Services") at a rate of \$125 per hour. MPFM will submit an invoice periodically for work performed. Payment is due upon receipt. Customer will reimburse MPFM for all reasonable expenses incurred in accordance with provisions of this Agreement, provided that: (i) MPFM will have obtained Customer's prior written approval for individual expenses exceeding \$50; and (ii) MPFM furnishes to Customer, upon request, receipts evidencing such expenses for each invoicing period. Unless agreed to in writing, chargeable travel expenses will not be paid for travel to and from the principal work site under this Agreement.

1.2 Tax Forms. Customer will issue a 1099 Tax Form to MPFM for the Services rendered to Customer.

SECTION 2

MPFM'S OBLIGATIONS

2.1 Duties of MPFM. MPFM will perform its assignments in accordance with the directions of the Customer and the attached Scope of Work. While MPFM is on Customer's premises in connection with the performance of any assignment, MPFM will comply with all of Customer's company rules, regulations, and policies concerning such matters as working hours, and its customary computer security measures.

2.2 Reports. Upon Customer's request, MPFM will furnish to Customer periodic written reports in such form and covering such matters as Customer may require.

2.3 MPFM Employees. The employees furnished by MPFM (the "Employees") will continue to be MPFM's employees or agents and will not for any purpose be considered Customer's employees. MPFM will be solely responsible for the payment of the compensation and withholding and/or payment of all Federal, State, and Local income and other payroll taxes and any applicable employment benefits to the Employees.

2.4 No Violations of Prior Agreements. While providing the Services to Customer, MPFM will not violate any noncompetition, nondisclosure, or other agreement with any prior customer, employer, or third party.

2.5 Confidential Information. For purposes of this Agreement, Confidential Information means all information conveyed orally or in writing by one party to the other, which is not generally known in the industry, which the disclosing party makes reasonable efforts to keep confidential, and which the receiving party knows or reasonably should know the disclosing party regards as confidential and proprietary to it, provided, however, Confidential Information shall not include any information that: (i) is in the public domain at the time of disclosure, or later enters the public domain through no wrongful act by the receiving party; (ii) was already known or was lawfully in the possession of the receiving party prior to disclosure; (iii) is rightfully disclosed to the receiving party by another person; or (iv) is independently learned or developed by the receiving party.

2.6 Use of Confidential Information. MPFM agrees to hold Confidential Information in confidence, and may only use the Confidential Information in connection with performing its obligations under this Agreement; provided, however, MPFM may disclose Confidential Information to its legal, financial, or tax advisors, or otherwise as required by law.

2.7 No Use of Prior Confidential Information. While providing the Services to Customer, MPFM will not bring, refer to, use, or disclose confidential information or trade secrets of any prior customer, employer, or third party.

2.8 Non-Solicitation and Non-Competition with Customer by MPFM. MPFM will not, during the term of this Agreement and for 6 months thereafter, directly or indirectly provide employees for, solicit or otherwise approach the customers of Customer served by this Agreement for the purpose of doing business, or by providing employees to such customers to perform services similar to the Services provided under this Agreement.

SECTION 3 **OWNERSHIP AND RIGHTS**

3.1 Intellectual Property. MPFM acknowledges that all patents, copyrights, trademarks, trade secrets, know-how, and other proprietary property of Customer (the “Intellectual Property”) is the property of Customer, and that MPFM has no rights to such property, despite its relationship with Customer.

a. Assignment of Inventions. During the course of MPFM’s relationship with Customer, MPFM will promptly disclose to Customer all inventions, discoveries, improvements, developments, and innovations (the “Inventions”) whether patentable or not, conceived in whole or in part by MPFM in the course of providing the Services. MPFM agrees to assign and hereby assigns to Customer, its successors and assigns, all right, title, and interest to any such Inventions, including the right to sue for past infringement, and will execute, acknowledge, and deliver such documents as are necessary to obtain patents in any country and to assist, at the Customer's expense, in the defense and prosecution of any such patents during the term of MPFM's business relationship with Customer or thereafter.

b. Assignment of Copyrights. MPFM acknowledges that a work-made-for-hire relationship exists between Customer and MPFM. However, to the extent that doctrine may not be applicable or effective to assign all copyrights created by MPFM in the course of its employment, MPFM hereby assigns, transfers, and conveys unto Customer, its successors and assigns, all right, title, and interest in and to the copyright in any software, documentation, or other materials and creative works designed, developed, or authored by MPFM, individually or with other independent contractors, employees, or consultants of Customer, in connection with any work performed by MPFM on behalf of Customer, and MPFM hereby transfers and conveys to Customer the right to recover for past and future infringement of the copyrights assigned herein.

3.2 No Affect on Validity. MPFM agrees that any subsequent change or changes in the duties, or compensation, will not affect the validity of this Agreement, and the termination of MPFM's services by Customer will not release MPFM from the obligations imposed under this Agreement.

3.3 Return of Company Property. Upon termination of this Agreement, MPFM will return all property of Customer or the Customer's customers, including but limited to any documents, electronic files, and other materials created by MPFM in the course of providing the Services.

3.4 Methods and Processes. Notwithstanding the foregoing, any software methods, functions, practices, or procedures relating to MPFM's development or creation of software for its customers, will not become the property of Customer under any circumstances.

SECTION 4 **TERMINATION**

4.1 Suspension of Work. MPFM or Customer may for any reason at any time or no reason at their sole discretion, by providing written notice to the other, suspend or terminate the work to be performed under this Agreement. Customer will be obligated to pay MPFM for all services performed and out-of-pocket expenses incurred under this Agreement.

4.2 Termination. This Agreement will terminate: (i) upon the completion of work to be performed in the Scope of Work; (ii) at the time specified in the Scope of Work, including any extension of the Scope of Work; or (iii) in accordance with Section 4.1, above. In addition, either party may terminate this Agreement: (i) immediately in the event the other party breaches its material obligations and fails to cure such breach within 30 days of notice describing such breach, or (ii) immediately, upon any breach of any representation or warranty contained in the Scope of Work. In the event of termination of this Agreement, Customer will be obligated only to pay MPFM for services performed and expenses incurred by MPFM prior to the effective date of termination.

SECTION 5 **WARRANTIES AND LIMITATIONS OF LIABILITY**

5.1 Warranties. The parties hereby represent and warrant to each other that each has the right to enter into this Agreement and that the execution and delivery of same does not and will not breach or violate any agreement to which such party is bound. Customer acknowledges that no software is bug-free or entirely free from error, and that this limited warranty applies only to issues causing material problems with the intended purposes of the Services performed by MPFM. MPFM MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO THE SERVICES OR SOFTWARE PROVIDED OR CREATED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR AS TO THIRD PARTY PRODUCTS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. MPFM MAKES NO WARRANTY THAT SOFTWARE CREATED UNDER THIS AGREEMENT WILL BE "BUG FREE" OR PROTECTED FROM INTERFERENCE BY THIRD PARTIES. CUSTOMER WILL BE RESPONSIBLE FOR ITS OWN VIRUS PROTECTION AND OTHER SECURITY SYSTEMS

AND PROCEDURES.

5.2 Limitation of Liability. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, MPFM's MAXIMUM LIABILITY TO CUSTOMER UNDER THIS AGREEMENT AND/OR ANY AMENDMENT TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF PAYMENTS MADE BY CUSTOMER TO MPFM IN THE THREE (3) CALENDAR MONTH PERIOD IMMEDIATELY PRECEDING THE DATE FOR WHICH ANY CLAIM OF LIABILITY IS MADE. NOTWITHSTANDING THE FOREGOING, IN NO EVENT WILL MPFM BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING OUT OF LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF ENTERPRISE, OR LOSS OF OPPORTUNITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, CONSEQUENCES OF ERRORS, DOWNTIME, WHETHER SCHEDULED OR UNSCHEDULED, OR FAULTY TRANSMISSION.

5.3 Indemnification. Customer agrees, at its sole cost and expense, to defend, indemnify, and hold MPFM harmless against any third-party claims, actions or proceedings, damage, losses, costs and expenses (including reasonable attorneys' fees) arising in connection with (i) any breach or default of this Agreement; (ii) a violation of law relating to Customer's use of the Services or Software provided under this Agreement; or (iii) Customer's negligent acts or omissions and/or willful misconduct.

SECTION 6 **MISCELLANEOUS**

6.1 Governing Law/Forum Selection. This Agreement will be construed and governed in accordance with the laws of the State of Texas without application of choice-of-law provisions that would require application of the laws of another jurisdiction. By entering into this Agreement, all parties irrevocably submit themselves to the exclusive venue and jurisdiction of the state and federal courts in Dallas County, Texas with regard to any dispute related to this Agreement and its enforcement. The parties also hereby waive any challenge to venue they may have to a lawsuit filed in a state or federal court in Dallas County, Texas, relating to a dispute between the parties as to any term of this Agreement.

6.2 Statute of Limitations. Neither Customer nor MPFM may commence an action under this Agreement more than one year after the expiration of its term, or, in the event of default, more than one year after the occurrence of such default.

6.3 Remedies. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder now or hereafter existing in law or in equity or by statute or otherwise. The election of any one or more remedies

by either party will not constitute a waiver of the right to pursue other available remedies.

6.4 Severability. If any provision of this Agreement is held to be unenforceable, this Agreement will be considered divisible and such provision will be deemed inoperative to the extent it is deemed unenforceable, and in all other respects, this Agreement will remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision will be deemed to be so limited and will be enforceable to the maximum extent permitted by applicable law.

6.5 No Waiver. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder will not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

6.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous agreements. This Agreement may not be modified or otherwise amended except by an instrument in writing signed by the party against which enforcement is sought. In entering into this Agreement, all parties represent and warrant that they did not rely upon any prior representations, discussions, agreements, or negotiations not contained in this Agreement, and that this Agreement constitutes the entire agreement between the parties.

6.7 Binding Effect. This Agreement is intended to benefit and be binding upon the parties, and their agents, employees, officers, directors, attorneys, legal representatives, beneficiaries, estates, predecessors, successors, parent corporations, subsidiaries, shareholders, branches, and assigns.

6.8 Authority to Sign. Each party represents and warrants that the person signing this Agreement on its behalf has the authority to bind that party to this Agreement.

6.9 No Joint Venture. Nothing in this Agreement will be construed to place the parties in the relationship of agent, employee, franchisee, officer, partners, or joint ventures. Neither party may create or assume any obligation on behalf of the other.

6.10 Non-Transferrable. This Agreement for the Services, being personal in nature, is not assignable or transferable by MPFM or Customer

6.11 Execution in Counterparts. This Agreement may be executed in counterparts.

[Remainder intentionally blank, signature page follows]

MPFM and Customer hereby attest that they accept and agree to abide by the terms set forth in this Agreement and all Exhibits and Appendices hereto, and that the below signatories are authorized to bind the companies and to execute this Agreement on behalf of the respective companies.

MARK'S PRO FM, LLC

CUSTOMER: _____

BY: _____

BY: _____

NAME: MARK JEFFORDS

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____