



1099 CONTRACTOR AGREEMENT

AGREEMENT made as of _____, between Eastmark Consulting, Inc., a Massachusetts Corporation with its principal office at 44 School Street, Boston, MA 02108 ("Eastmark"), and _____ ("Contractor"), Federal Identification (or Social Security) _____

WHEREAS, Eastmark is in the business of providing software support and consulting services to its customers ("Clients"); and

WHEREAS, the parties desire to establish an arrangement under which Contractor may be engaged by Eastmark to perform services in connection with projects undertaken for Clients by Eastmark ("Projects"), in accordance with the terms set forth in this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby

AGREED:

1. **Scope of Services.** The services to be performed by Contractor ("Services") will be identified for each Project by the execution by Eastmark and Contractor of a Work Order in the form attached to this Agreement as **Appendix A**, setting forth: (a) a description of the Services to be performed, and Project milestones; (b) the Client for whom the Services are to be performed and the location of performance; (c) the timing of performance, (d) provisions for Contractor's compensation and expense reimbursement; and (e) any other terms and conditions applicable to the Services in question.
2. **Independent Contractor.** The relationship between Contractor and Eastmark is that of an independent contractor. No employer/employee relationship is created, and neither party is authorized to bind the other in any way. Contractor is obligated to comply with all requirements (including without limitation those relating to tax withholding and workers' compensation insurance,) applicable to employers, and to maintain in effect general liability insurance coverage of at least \$1,000,000.

3. **Ownership of Rights.** Except as otherwise expressly agreed in writing, all rights in and to ideas, inventions, code and other tangible work resulting from the performance of Services shall be the property of Eastmark. All such results consisting of original works of authorship (including software) shall be deemed to be "works made for hire" of which Eastmark shall be deemed the author under United States copyright laws. To the extent necessary to effectuate the foregoing, Contractor hereby assigns and agrees to assign to Eastmark all of such rights and agrees to provide such reasonable assistance as may be necessary (at Eastmark's expense) to perfect Eastmark's rights hereunder. Contractor also grants to Eastmark a perpetual, fully paid license to use and grant third parties rights to use any ideas, inventions, code and other tangible work provided by Contractor as part of Services delivered hereunder, even if not developed in the performance of Services. Contractor agrees to promptly provide Eastmark with the current versions of the source code of all software provided as part of the Services. It is understood that Eastmark may assign some or all of the rights set forth above to its Clients. Nothing in the Agreement shall be construed as preventing Contractor from using programming ideas, techniques or algorithms developed by Contractor in the performance of services for third parties other than Clients, or from developing software for such third parties which is similar in design and/or functionality to software developed for Clients.

4. **Confidentiality.** In the course of performing Services, Contractor may acquire confidential information regarding trade secrets, hardware, software and mask work development plans and techniques, business plans, customer lists, prospects and other matters which are not generally known relating to Eastmark or its Clients or prospective Clients (collectively referred to as "Confidential Information"). It is agreed that all Confidential Information, whether produced by Contractor or by others, is and shall remain the property of the disclosing party. Contractor agrees that it will hold all material that is identified as Confidential Information in strict confidence and will not use such material for its own benefit; **provided**, that the Contractor's obligations of confidentiality will not apply to information which:
 - a. is known to the Contractor prior to disclosure hereunder;
 - b. is or comes to be in the public domain (other than as a result of the Contractor's breach of its obligations hereunder);
 - c. is disclosed to the Contractor by a third party without restriction on use or disclosure;
 - d. is independently developed by the Contractor without reference to the disclosing party's information; or
 - e. the Contractor is required to disclose by lawful order of a court or governmental agency in which case, prompt notice of such order will be provided to the disclosing party).

5. **Warranties.** Contractor represents and warrants that it has the right to perform the Services, that the Services will be of good quality, that the results of Services delivered hereunder will not infringe the copyright, patent, trade secret or other proprietary rights of any third party, and that the performance of the Services will not violate the provisions of any agreement to which Contractor is a party.

6. **Prohibition Against Hiring; Non-Compete.** During the term of this Agreement and for a period of one year thereafter, neither party will hire or attempt to hire any person who is or was an employee of the other party during the term hereof. During the performance of Services as part of a Project, and for a period or one year after the completion of the Project, Contractor will not solicit or accept work from the business unit of the Client for which the Services were performed. In addition, Contractor agrees not to exploit any prospective business opportunity to which Contractor is introduced by Eastmark, other than pursuant to this Agreement. In the event that Contractor performs services for a Client or prospective Client in violation of the foregoing prohibitions, Contractor agrees to pay Eastmark a finder's fee of 20% of the gross fees received by Contractor for such services. Contractor may only be released from such prohibitions against performing services upon payment to Eastmark of a fee to be negotiated by the parties under a separate agreement.

7. **Term and Termination.** This Agreement will remain in effect until terminated by either party effective upon 60 days' prior written notice; **provided,** that neither party may terminate this Agreement or a Project without cause during the course of the performance of Services under a signed Work Order, unless the Project is terminated by the Client (it being understood that a Client will always have the right to terminate a Project unless otherwise expressly agreed). Either party may terminate this Agreement for a material breach of this Agreement which is not cured within 30 days after written notice thereof. Upon termination of this Agreement, all Confidential Information in tangible form shall be returned immediately to the disclosing party. Following the termination of this Agreement, no further Services shall be provided hereunder. All other provisions of this Agreement shall remain in full force and effect.

8. **General.**
 - a. Contractor agrees to comply with all reasonable recordkeeping and reporting requirements established by Eastmark in connection with Services provided hereunder.
 - b. Except as otherwise provided in **Appendix B** to this Agreement, Contractor authorizes Eastmark to use any of Contractor's resumes, credentials or other promotional materials that are provided to Eastmark, or any other information therefrom or portions thereof in the solicitation of prospective Clients. Contractor will participate in presentations to prospective Clients upon mutual agreement of the parties.
 - c. This Agreement is the entire agreement of the parties on the subject matter hereof. Its provisions may be waived or modified only by a written instrument signed by the party against whom such waiver or modification is sought to be enforced.
 - d. The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties have duly executed this Agreement, effective as of the date set forth above.

04/27/04

CONTRACTOR

DATE

EASTMARK

DATE

APPENDIX A WORK ORDER

This Work Order is entered into as of [REDACTED], between Eastmark Consulting, Inc. (“Eastmark”) and _____ (“Contractor”) pursuant to the Contractor Agreement between the parties dated [REDACTED], and shall be in all respects subject to the terms and conditions of said Contractor Agreement, which are incorporated herein by reference.

DESCRIPTION OF SERVICES AND PROJECT MILESTONES

The Services to be performed by Contractor are as follows:

Satisfactory Completion of assignments as given by Client.

CLIENT AND LOCATION(S) OF PERFORMANCE

The Services are to be performed for the following Client at the following location:

Federal Home Loan Bank of Boston, Boston, Massachusetts

TIMING OF PERFORMANCE

The Services are to be performed within the following timeframe:

[REDACTED] *thru* [REDACTED] *(with possible extension)*

COMPENSATION AND EXPENSE REIMBURSEMENT

Contractor will be compensated for the performance of Services and reimbursed for expenses as follows:

\$ [REDACTED] per day. Expenses paid only with prior approval of CLIENT

OTHER

Other terms and conditions applicable to this Project are as follows:

None

Contractor

Eastmark Consulting, Inc.