

# **APM Consulting Agreement**

Mitchell Stores ("Client") and The Speedshop Kabushiki Kaisha ("Speedshop" and collectively the "Parties" and individually as a "Party") enter into this APM Consulting Agreement (the "Agreement") as follows:

## **Article 1 (Purpose)**

Client requires consulting services related to application performance issues (the "Services") of their application coded with Ruby on Rails (the "Application") and Speedshop agrees to provide the Services.

## **Article 2 (Services)**

1. The contents of the Services are as follows and Speedshop shall implement the Services subject to the terms and conditions in this Agreement:
  - (1) to conduct a comprehensive performance audit of Client's Ruby on Rails application, with particular focus on Core Web Vital scores;
  - (2) to analyze the application's current performance metrics, database queries, caching implementation, and scaling architecture;
  - (3) to identify critical performance bottlenecks and scalability constraints;
  - (4) to review existing monitoring and alerting systems;
  - (5) to deliver a detailed report containing:
    1. Analysis of current performance issues
    2. Recommendations for architectural improvements
    3. Specific code-level optimization suggestions
    4. A 6-month implementation roadmap prioritized by impact

## **Article 3 (Implementation and Time)**

1. Speedshop will provide all of the Services remotely to Clients.
2. The audit and delivery of the final report shall be completed within 30 calendar days from the effective date of this Agreement.
3. Speedshop shall make reasonable efforts to timely respond to Client's inquiries, provided, however, that Speedshop does not provide any guarantee with respect to the time it takes to respond to each Client's inquiry.

## **Article 4 (Fees)**

1. Client shall pay 16,000 US Dollars (exclusive of consumption tax) to Speedshop as consideration for the Services (the "Fees").
2. 100% of the Fees shall be due upon delivery of the final report and roadmap.
3. The Fees and Expenses (as defined in Article 5) shall be paid by telegraphic transfer to a bank account designated by Speedshop within 30 days of Client's receipt of invoice issued by Speedshop.

## **Article 5 (Costs)**

Client shall reimburse all Client authorized out-of-pocket expenses incurred by Speedshop in connection with performing the Services ("Expenses").

## **Article 6 (Delay Damages)**

If Client does not fulfill its payment obligations (excluding disputed payments, if any) on the payment due date as stipulated in paragraph 2 Article 4, 14.6% per annum of the total payment due and payable shall accrue as the delay damages, calculated from the day after the payment date until the completion of the full payment.

## **Article 7 (Obligations)**

1. In connection with the performance of the Services, Client shall provide Speedshop with all such cooperation and assistance as Speedshop reasonably requests, or otherwise may reasonably be required, to enable Speedshop to perform its obligations (including the provision of the Services), and exercise its rights, under and in accordance with the terms and conditions of this Agreement.
2. If any materials, information or data (collectively "Materials") are necessary for the performance of the Services, Speedshop may request Client to provide such Materials and Client shall provide such Materials without delay to Speedshop.
3. Client agrees to back up all data, files, and information prior to the performance of any Services and hereby assumes sole responsibility for any lost or altered data, files, or information.

#### **Article 8 (Subcontracting)**

Speedshop may subcontract any part or all of the Services to a third party as Speedshop deems necessary for the performance of the Services, provided, however, that Speedshop shall ensure that such third party fully complies with the terms and conditions set forth in this Agreement and assumes all responsibility and liability for the actions any such third party.

#### **Article 9 (Confidentiality)**

1. Neither Party shall disclose or divulge to a third party any information of the other Party, including business or technical information obtained through the performance of the Services ("Confidential Information"), without the prior written consent of the other Party. For the avoidance of doubt, Materials are included in Client's Confidential Information. The Parties shall use Confidential Information solely for the performance of the Services and shall not use it for any purpose other than purposes contemplated herein. Confidential Information shall not be disclosed to any third party by any way including in writing, orally, or through electro-magnetic media.
2. Notwithstanding the preceding paragraph 1 of this Article 9, the following items do not fall under Confidential Information:
  - (a) information that is in the public domain at the time of the disclosure;
  - (b) information already in possession of the recipient at the time of the disclosure;
  - (c) information that enters into the public domain for reasons not attributable to the recipient after the disclosure;
  - (d) information duly obtained from a duly authorized third party without any obligation of confidentiality; or
  - (e) information independently developed without reference to Confidential Information of other party.
4. Notwithstanding paragraph 1 of this Article 9, Speedshop may disclose Confidential Information without the prior written consent of Client in any of the following events:
  - (a) Speedshop may disclose Confidential Information to its officers or employees or to its affiliates, or experts such as lawyers, accountants, or tax accountants within the scope necessary for the performance of the Services; provided that the person to whom the disclosure is to be made is held to at least the same confidentiality obligations as those set forth in this Agreement in accordance with any applicable laws, regulations, or other agreements where it is a party; and
  - (b) if Speedshop is required or requested to disclose Confidential Information by the government, any competent authorities, regulatory authorities, courts, or financial instruments exchange pursuant to applicable laws and regulations (including the rules of financial instruments exchanges), Speedshop may disclose Confidential Information, provided that Speedshop shall notify Client of the content of such disclosure in advance (in the event such notification in advance is not permissible by law, as soon as possible after such disclosure).

#### **Article 10 (Compensation for Damage)**

1. If a Party is obliged to pay damages, regardless of the legal grounds, including liability for non-performance, tort, statutory liabilities, or attorneys' fee to the other Party in connection with this Agreement, such Party shall compensate the other Party only for direct and actual damages.
2. Except in the case of gross negligence or willful misconduct, in no event shall either party's liability to the other or any third party exceed the Fees paid by Client to Speedshop for the three-month period preceding the date of the claim arose.

#### **Article 11 (Force Majeure)**

1. Force Majeure means, in this Agreement, circumstances beyond its reasonable control, including, without limitation, earthquake, typhoon, tsunami and other acts of God, wars, civil disturbances, riot, acts of terrorism, unexpected accident, strike, lockout, occurrence of serious disease or infectious disease, change in laws or regulations, and acts of any governmental body.
2. Neither Party shall be liable for any failure of or delay in performance of its obligation under this Agreement, except for its obligation to pay money due and payable, to the extent such failure or delay is due to Force Majeure or disease or injury of narrators.

#### **Article 12 (Termination for Cause)**

1. Either Party may unilaterally terminate this Agreement if the other Party breaches any provision of this Agreement and does not cure such breach within 30 days; provided, however, that the right to terminate this Agreement does not apply if the degree of such breach when such period lapses is minor in light of this Agreement and common sense of the transaction.
2. Either Party may unilaterally terminate all or a part of this Agreement immediately without prior written notice to the other Party if any of the following events applies to the other Party (unless such event is attributable to the terminating Party):
  - (a) if the other Party commits any material breach of this Agreement or is in breach of good faith;
  - (b) if the other Party become subject of a voluntary or involuntary bankruptcy procedure, civil rehabilitation procedure, corporate reorganization procedure, or any other liquidation procedure;
  - (c) if the other Party becomes insolvent;
  - (d) if a note or cheque issued or underwritten by the other Party is dishonored; or
  - (e) if the other Party dissolves itself or abolishes its businesses.
3. If this Agreement is terminated in accordance with paragraph 1 or 2 of this Article 12, the breaching Party's obligations under this Agreement will be accelerated and become immediately due and payable, and such Party shall forthwith fulfill all of its obligations to the terminating Party.
4. Termination as set forth in paragraph 1 or 2 of this Article 12 will not preclude the terminating Party from making a claim for damages against the other Party.

#### **Article 13 (Term)**

1. The term of this Agreement is for 6 months from February 1st, 2025 until the end of that month.
2. Notwithstanding paragraph 1 of this Article 13, unless either Party notifies the other Party in writing of its intention to amend or terminate this Agreement no later than 1 months before the expiration date, this Agreement will be automatically renewed for 6 months, and the same terms and conditions will apply to other subsequent renewals.

#### **Article 14 (Prohibition of Assignment)**

Except in the event of merger or acquisition, neither Party may assign any of the rights or delegate any of its obligations under this Agreement except without obtaining the prior written consent of the other Party. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

**Article 15 (Entire Agreement)**

This Agreement constitutes the entire agreement between the Parties regarding the subject matter of this Agreement and merges and supersedes all previous discussion, negotiations and agreements, either oral or written, with respect to the subject matter hereof, and no addition to or modification of this Agreement shall be binding on either Party hereto unless reduced to writing and agreed upon by each of the Parties hereto.

**Article 16 (Governing Law and Jurisdiction)**

1. This Agreement will be governed by and construed in accordance with the laws of Japan.
2. The Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of Tokyo District Courts.

**Article 17 (Survival)**

The provisions of Article 9 (Confidentiality) will survive the termination of this Agreement for the period of 3 years. The provisions of Article 10 (Compensation for Damage), Article 11 (Force Majeure), paragraph 3 and 4 of Article 12 (Termination for Cause), Article 14 (Prohibition of Assignment), Article 15 (Entire Agreement), Article 16 (Governing Law and Jurisdiction), and this Article 17 (Survival) will survive the termination of this Agreement and will remain in full force and effect after the termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and each Party shall retain one (1) copy each, duly signed and sealed by each Party, respectively.

January 22nd, 2025

**Client:**



Address: 670 Post Rd E, Westport CT 06880

Entity name: Mitchell Stores

Title and Name of Representative: Eric Kurzenberger, Director of Engineering

**Speedshop**



1-1-30-1 Hamatake, Chigasaki, Japan, 253-0021  
The Speedshop KK  
Nathan Berkopec, Director