

THIS MASTER SERVICES AGREEMENT (this “**Agreement**”), is entered into this **16th day of December, 2022** (the “**Effective Date**”) between **WDD Software Solutions, LLC dba Counterpart**, an Indiana limited liability company with its principal place of business at 12115 Visionary Way, Ste 185, Fishers, IN 46038 (“**WDD Software Solutions**”) and _____, an Indiana limited liability company with its principal place of business located at _____ (“**Customer**”).

WHEREAS, Customer desires to engage WDD Software Solutions to provide certain Services and Deliverables (as defined herein) to Customer, subject to the terms and conditions set forth in this Agreement and the attached Statement(s) of Work.

WHEREAS, WDD Software Solutions possesses expertise in the provision of such Services and Deliverables and desires to provide such Services and Deliverables to Customer in accordance with the requirements in the Statement(s) of Work and the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, WDD Software Solutions and Customer agree as follows:

1. DEFINITIONS

“**Customer Confidential Information**” shall mean all business, financial, engineering and/or technical information belonging to or properly in the possession of Customer, or to which WDD Software Solutions has access during its performance of the Services, regardless of form or medium (including, without limitation, information and tangible and intangible property which may relate to proprietary products, concepts, marketing information, trade secrets, technology, processes, drawings, specifications, programs, models, financial information and projections, formulae, data, know-how, developments, designs, improvements, software programs,

marketing materials, plans and strategies, customer and supplier lists, and other valuable business information and products), and such other information marked or otherwise explicitly identified by Customer as being confidential.

“**Deliverable**” shall mean a tangible output resulting from performance of the Services, all Works and Inventions and all material documentation and records related thereto and created during the performance of the Services, and all patent, copyright, trade secret, trademark, service mark, and other Intellectual Property Rights therein.

“**Intellectual Property Rights**” means all copyrights, trademarks, trade secrets, patents, mask works, and other intellectual property rights recognized in any jurisdiction worldwide, including all applications and registrations with respect thereto.

“**Project Manager**” means the person who is designated by each party as the single point of contact with respect to the particular Statement of Work in which that Project Manager is designated.

“**Services**” shall mean the services provided to Customer under this Agreement and as further described in an applicable Statement of Work.

“**Sprint**” a segment of the Services to be rendered and the Deliverables to be delivered pursuant to a Statement of Work. The Services and Deliverables will be divided into multiple Sprints for each Statement of Work.

“**Statement of Work**” shall mean a written description of Sprints to be performed by WDD Software Solutions under this Agreement, as signed and agreed to by Customer and WDD Software Solutions pursuant to Section 2.1 below.

“**Term**” shall have the meaning set forth in Section 7.1 below.

“**Third Party Materials**” means hardware or software created or manufactured by a third party that WDD Software Solutions does not control, and which hardware or software WDD Software Solutions is authorized to license or transfer to Customer.

2. STATEMENTS OF WORK

2.1 Statements of Work. WDD Software Solutions shall provide Services and Deliverables in accordance with the terms of this Agreement and any Statement of Work that is mutually agreed to by the parties in writing from time to time during the term of this Agreement, each of which shall be attached hereto as part of Exhibit A and incorporated herein by reference. The Statement of Work shall include an initial estimated schedule of Sprints to be completed in order to render the Services and deliver the Deliverables and an estimate of the fees due in connection with each Sprint, which will be updated during the course of the work as provided herein. Prior to commencement of the first Sprint and upon completion of each Sprint, WDD and Customer will meet to discuss the most recently completed Sprint and the upcoming Sprint (a “**Sprint Delivery Meeting**”). WDD will provide Customer with a Sprint schedule (a “**Sprint Schedule**”) for the upcoming Sprint setting forth the Services that will be rendered and the Deliverables that will be delivered during such Sprint, and the amount of fees that will be due for such Services and Deliverables. In the event

Customer does not provide written notice to WDD Software Solutions within forty-eight (48) hours after delivery of the Sprint Schedule to Customer of any objection Customer has to the Sprint Schedule, including the fees due for the Services and Deliverables set forth in such Sprint Schedule, then Customer shall be deemed to have approved such Sprint Schedule and the work to be performed thereunder, and such Sprint Schedule shall become part of and be incorporated into the Statement of Work. No Statement of Work shall be effective unless and until signed by both parties.

2.2 Controlling Provisions. In the event that there is any conflict or inconsistency between a term in any Statement of Work and this Agreement, the terms set forth in this Agreement shall control unless the parties expressly agree otherwise in the applicable Statement of Work or another writing signed by both parties.

2.3 Changes. All changes to a Statement of Work shall be mutually agreed upon by the parties and shall be reflected in the Sprint Schedules prepared during the course of performing the Services under the applicable Statement of Work.

3. OBLIGATIONS OF CUSTOMER

3.1 Content and Accuracy of Information. Customer shall be solely responsible for the content, accuracy and completeness of all information and documentation provided by Customer to WDD Software Solutions, and for any impact or effect on the Services performed hereunder or the time or expense required to render the Services that is caused by the inaccuracy, or incompleteness of such information and documentation.

3.2 Required Consents. Customer agrees to obtain from its vendors or licensors any

consents relating to applicable third party software and hardware that may be necessary to allow WDD Software Solutions to access, review and use such third party software and hardware for purposes of performing the Services hereunder. Customer shall bear all costs, if any, for obtaining such consents.

3.3 Customer's Personnel, Equipment and Facilities. At all times, Customer shall remain responsible for supervising its employees and maintaining its equipment and facilities to enable WDD Software Solutions to perform the Services. Customer shall provide WDD Software Solutions with safe access to Customer's personnel, equipment and premises as needed to perform the Services.

3.4 Cooperation. Customer shall ensure, as applicable, that its personnel and any outside contractors cooperate with WDD Software Solutions as reasonably required in order to facilitate the completion of Services. Customer shall comply with all requests reasonably made by WDD Software Solutions in order to promote the completion of Services or the safety of each party's personnel, equipment and facilities.

3.5 Payment. Customer shall pay for the Services and Deliverables in accordance with the terms of this Agreement and each Statement of Work.

4. WDD SOFTWARE SOLUTIONS PERFORMANCE OF SERVICES

4.1 Quality. WDD Software Solutions shall perform the Services in a professional manner consistent with WDD Software Solutions prevailing industry standards.

4.2 Compliance with Customer's Policies. WDD Software Solutions shall comply in all respects with Customer's posted business hours, security policies and regulations while

working on Customer's premises. If WDD Software Solutions is given access, whether on-site or through remote facilities, to any of Customer's computer or electronic data storage systems, WDD Software Solutions shall limit such access to its personnel involved with the Services and will use it solely to perform the Services. WDD Software Solutions will not knowingly access or attempt to access any computer system, electronic file, software or other electronic services other than those specifically required to be accessed to fulfill WDD Software Solutions obligations under this Agreement. Any user identification numbers or passwords that are disclosed to WDD Software Solutions by Customer shall be treated as Customer Confidential Information.

4.3 Personnel; Use of Subcontractors. Subject to the provisions below and unless otherwise specified in the applicable Statement of Work, WDD Software Solutions shall supply all materials, equipment and qualified personnel necessary to perform its obligations under this Agreement.

(a) WDD Software Solutions shall be solely responsible for ensuring that it's hiring and use of employees and any subcontractors complies with all applicable labor, employment, immigration, and export control laws, rules and regulations.

(b) WDD Software Solutions shall be fully responsible for all acts and omissions of its employees and any subcontractors, and shall indemnify Customer for any losses (including reasonable attorneys' fees) attributable to such acts or omissions.

5. CONFIDENTIAL INFORMATION

5.1 Restrictions on Use. WDD Software Solutions acknowledges and agrees that Customer Confidential Information shall at all times remain the property of Customer, and that Customer shall have free and unlimited access at all times to all materials containing Customer Confidential Information and shall have the right to claim and take possession of such materials on demand; provided, however, that WDD Software Solutions shall not be accountable or liable for any delay in its performance of Services dependent upon such materials should they be withheld from WDD Software Solutions. WDD Software Solutions shall hold the Customer Confidential Information in strict confidence. WDD Software Solutions shall not make any disclosure of the Customer Confidential Information (including methods or concepts utilized in the Customer Confidential Information) to anyone without the express written consent of Customer, except to employees or agents of WDD Software Solutions to whom disclosure is necessary for the performance of this Agreement and the provision of the services. WDD Software Solutions shall use the Customer Confidential Information only for purposes contemplated by this Agreement, and shall not use the Customer Confidential Information to compete or assist any person in competing with Customer. In order to comply with its obligations under this Section 5.1, WDD Software Solutions shall require all of its officers, employees, agents, subcontractors, and the like who might reasonably be expected to assist in the performance of WDD Software Solutions's obligations hereunder to comply with the terms of this Section 5.1. Notwithstanding the foregoing, WDD Software Solutions may disclose Customer Confidential Information without breaching this Section 5.1, if such disclosure is pursuant to the final order or

requirement of a court, administrative agency, or other governmental body; provided that WDD Software Solutions: (i) shall provide prompt notice of such court order or requirement to Customer to enable Customer to seek a protective order or otherwise prevent or restrict such disclosure; (ii) shall cooperate with Customer in connection therewith at Customer's reasonable request and expense; and (iii) does not in any event disclose more Customer Confidential Information than is necessary to comply with such final order or requirement.

5.2 Exceptions. Customer Confidential Information shall not include any of the following: (i) information that is independently developed by WDD Software Solutions without any use of and/or access to the Customer Confidential Information; (ii) information that is lawfully received by WDD Software Solutions free of restriction from a third party having the right as of the date of such disclosure to so furnish such Customer Confidential Information without breach of any confidentiality obligation owed to Customer; (iii) information that is in the public domain at the time of disclosure or which thereafter becomes part of the public domain through no wrongful act of WDD Software Solutions; (iv) information that, at the time of disclosure to WDD Software Solutions, was known to WDD Software Solutions free of restriction; and (v) information that Customer agrees in writing is free of such restrictions.

5.3 Return of Information. Within fifteen (15) days after the termination or expiration of this Agreement, WDD Software Solutions shall return all originals and copies of all Customer Confidential Information originally disclosed by Customer or which has been fixed into any tangible means of expression by WDD Software Solutions.

5.4 Term, Survival of Obligations. The obligation set forth in this Section 5 to safeguard and maintain the secrecy of the Customer Confidential Information shall commence on the Effective Date (or the date upon which the Customer Confidential Information was first disclosed, if prior to the Effective Date) and shall continue indefinitely.

6. FEES; PAYMENT TERMS; TAXES

6.1 Fees. In consideration for the Services rendered and the Deliverables delivered by WDD Software Solutions hereunder, Customer shall pay to WDD Software Solutions the fees stated in the applicable Sprint Schedules. In addition, documented out-of-pocket costs and travel expenses, if any, shall be itemized and invoiced to Customer pursuant to the schedule set forth herein or in the applicable Statement of Work.

6.2 Annual Fees Increase. Fees shall be increased at a rate of three percent (3%) per calendar year.

6.3 Payment Terms. Except as otherwise agreed in a Statement of Work, WDD Software Solutions will invoice Customer at the end of each Sprint, and Customer will pay each undisputed invoice in full within thirty (30) calendar days of its receipt of the invoice. Customer shall notify WDD Software Solutions in writing of any disputes relating to the quality of Services rendered and Deliverables delivered in the Sprint covered by an applicable invoice on or before the earlier of (i) fifteen (15) business days after Customer's receipt of an invoice, or (ii) the date of the next Sprint Delivery Meeting. Such written notice shall specifically identify the Services performed or the Deliverables delivered by WDD in the applicable Sprint that Customer alleges are not in compliance

with the Statement of Work and detail how such Services or Deliverables fail to comply with the Statement of Work. In the event Customer does not dispute an invoice within the timeframe set forth above, then such invoice shall be deemed undisputed. Any invoices not in dispute that are not paid in full within sixty (60) days from the invoice date shall accrue interest at a rate of one and a half percent (1.5%) per month, beginning thirty (30) days after invoice date, and shall incur a late fee equivalent to the lesser of (i) \$500.00, or (ii) 5% of the amount of the applicable invoice; provided, however in no event shall Customer be obligated to pay a sum of late charge and interest higher than the maximum legal rate then in effect.

6.4 Taxes. Customer shall pay all present or future sales, excise, use, value-added or other similar taxes (not including taxes on the income of WDD Software Solutions) based upon the Services or Deliverables, or upon payments made by Customer pursuant to this Agreement.

7. TERM AND TERMINATION

7.1 Term. Unless earlier terminated as set forth in this Section 7, this Agreement shall have an initial term of one (1) year, commencing on the Effective Date. Thereafter, this Agreement shall renew for successive periods of one (1) year each, or such other period that the parties may agree upon in writing.

7.2 Termination for Breach. WDD Software Solutions may terminate this Agreement and/or any Statements of Work entered into under this Agreement in its sole discretion and without penalty in the event that Customer materially breaches this Agreement or its obligations under a Statement of Work and has not corrected, or taken reasonable steps to correct, the breach

within thirty (30) calendar days after receipt of written notice from WDD Software Solutions identifying such breach. Customer may terminate this Agreement and/or any Statements of Work entered into under this Agreement in its sole discretion and without penalty in the event that WDD Software Solutions materially breaches this Agreement or its obligations under a Statement of Work and has not corrected, or taken reasonable steps to correct, the breach within thirty (30) calendar days after receipt of written notice from Customer identifying such breach.

7.3 Effect of Termination. Any Services in process at the time of termination of this Agreement or the applicable Statement of Work WDD Software Solutions shall cease unless the parties otherwise mutually agree. Customer shall be responsible for the payment of all fees associated with Services completed by WDD Software Solutions up to the date of termination of the Agreement or the applicable Statement of Work. Customer shall be responsible for the payment of all fees associated with any Services performed and Deliverables delivered after the date of termination if the parties so agree.

7.4 Survival. Section 1 (Definitions), Section 5 (Confidential Information), Section 7.3 (Effect of Termination), Section 7.4 (Survival), Section 8 (Ownership and Proprietary Rights), Section 9 (Limited Warranties; Disclaimer), Section 10 (Indemnification), Section 11 (Limitation of Liability), Section 12 (General Provisions) shall survive termination or expiration of this Agreement for any reason.

8. OWNERSHIP AND PROPRIETARY RIGHTS

8.1 Ownership of Work Product. Unless otherwise agreed in a Statement of Work signed by both parties and incorporated

herein, only upon Customer's full payment of all fees and costs pursuant to each Sprint, Customer shall have exclusive ownership of all software, copyrights, patents, trade secrets and other Intellectual Property Rights created or developed by WDD Software Solutions for Customer under such Sprint ("**Work Product**") created during such Sprint and all such Work Product shall be deemed a "Work Made for Hire" as such term is defined by applicable law. To the extent any or all of the Work Product is not deemed a "Work Made for Hire," WDD Software Solutions hereby irrevocably assigns and transfers to Customer all right, title and interest in and to the Work Product, including, without limitation, all software and Intellectual Property Rights including, but not limited, to domestic and foreign patent and copyright registrations. Notwithstanding the foregoing, Work Product does not include ("**Work Product Exclusions**"): (i) any work of authorship that was fixed in a tangible medium of expression by WDD Software Solutions prior to the Effective Date; (ii) any discovery, concept, or idea conceived, created, or acquired by WDD Software Solutions prior to the Effective Date; (iii) working documents prepared by WDD Software Solutions in the course of performing the Services, including but not limited to schedules, analyses, transcripts, memorandums and working notes; or (iv) Third Party Materials that are validly licensed and included within the Services and/or Deliverables. WDD Software Solutions irrevocably grants to Customer a perpetual, world-wide, non-exclusive, non-transferable, non-sublicensable and royalty-free license to the Work Product Exceptions, but only to the extent that such Work Product Exceptions are incorporated into a Deliverable. By way of explanation, the foregoing license does not include the right for Customer to use, in any manner, the Work Product Exclusions separate and apart from the Deliverable.

8.2 WDD Software Solutions Materials.

WDD Software Solutions owns or holds a license to use and sublicense various materials in existence before the Effective Date of this Agreement (including but not limited to WDD Software Solutions know-how, concepts, techniques, methodologies, ideas, templates, routines, sequences, software, hardware, application programs, operating systems, scripts, interfaces, programming code, executables, objects, formats, page descriptions, data, databases, computer architecture, files, utilities and tools) (“**WDD Software Solutions Materials**”), which WDD Software Solutions Materials may be incorporated into the Deliverables. If WDD Software Solutions Materials are incorporated into a Deliverable, with or without Customer’s consent, WDD Software Solutions hereby grants to Customer a royalty-free, perpetual, worldwide, non-exclusive, non-transferable and non-sublicensable license and right to use and modify the WDD Software Solutions Materials, but only to the extent that such WDD Software Solutions Materials are incorporated into the Deliverable. By way of explanation, the foregoing license does not include the right for Customer to use, in any manner, the WDD Software Solutions Materials separate and apart from the Deliverable. WDD Software Solutions represents and warrants to Customer that, as of the Effective Date, or at the time of delivery of a Deliverable to Customer, WDD Software Solutions does and shall own all right, title and interest in and to, or does and shall have a right and license to use and license or deliver to Customer in accordance with this Agreement, the WDD Software Solutions Materials, free and clear of all liens and encumbrances. WDD Software Solutions retains all right, title and interest, including all copyright, patent, trade secret

and other intellectual property rights in the WDD Software Solutions Materials.

**9. LIMITED WARRANTIES;
DISCLAIMER**

9.1 WDD Software Solutions Limited Warranties. WDD Software Solutions represents and warrants to Customer that:

(a) It will perform its obligations set forth herein and under each Statement of Work in a professional manner that conforms to generally accepted standards in the industry;

(b) Except as may otherwise be provided in this Agreement or in an SOW, (i) at the time of transfer of ownership to Customer, WDD Software Solutions will have good and valid title in and to all of the Deliverables (excluding any Third Party Materials for which WDD Software Solutions will have appropriate licenses to transfer to customer), free and clear of any liens or encumbrances; (ii) no other party owns or has any rights or interests in any of the Deliverables (excluding any Third Party Materials and Work Product Exceptions); and (iii) no Deliverable or portion thereof has been copied, used or obtained from any third party without such third party’s written permission.

9.2 Third Party Materials. All Third Party Materials are provided on an AS IS basis, without warranty from WDD Software Solutions of any kind, express or implied. WDD Software Solutions disclaims all implied warranties, including implied warranties of title, merchantability or fitness for a particular purpose with respect to third party Materials. WDD Software Solutions will assign and pass through to Customer any warranties offered by third party manufacturers, and Customer agrees to look

exclusively to such third party manufacturers for any warranty claims relating to Third Party Materials. Upon request, WDD Software Solutions shall furnish to Customer copies of licensing terms and conditions and warranty documentation applicable to such Third Party Materials. WDD Software Solutions will cooperate and assist Customer as may be reasonably necessary to secure proper redress from third party manufacturers.

9.3 Disclaimer. Except as expressly set forth in this agreement or in a Statement of Work, WDD Software Solutions makes no other warranties, whether written or oral, express or implied, including without limitation any implied warranties of fitness for a specific purpose, merchantability, title and non-infringement or any other representation or warranty with respect to the quality, accuracy, reliability or freedom from error or interruption of the operation, use, and function of the Services or Deliverables.

10. INDEMNIFICATION

10.1 WDD Software Solutions Indemnification Obligations. WDD Software Solutions shall indemnify, defend and hold Customer and its officers, directors, employees, agents and contractors (the “**Customer Indemnified Parties**”) harmless from and against any and all damages, costs and other liabilities and expenses (including reasonable attorneys’ fees and court costs) arising out of or in connection with: (a) a third party claim against the Customer Indemnified Parties that any Deliverable infringes the Intellectual Property Rights of such third party; or (b) the negligent or willful acts or omissions of WDD Software Solutions or WDD Software Solutions employees or agents. With respect to WDD Software Solutions indemnification obligations in subsection (a) above, WDD

Software Solutions shall have no obligation or liability to Customer if any such claim is based upon or results from: (i) Customer’s use of the Deliverable in a manner for which it was not designed or intended; (ii) modifications made to the Deliverable by Customer or a third party; (iii) the use, operation or combination of the Deliverable with other software or equipment not supplied or authorized by WDD Software Solutions, if such infringement claim would have been avoided but for such use, operation or combination; or (iv) specifications or content for the Deliverable provided by Customer.

10.2 Customer’s Indemnification Obligations. Customer shall indemnify, defend and hold WDD Software Solutions and its officers, directors, employees, agents and contractors (the “**WDD Software Solutions Indemnified Parties**”) harmless from and against any and all damages, costs and other liabilities and expenses (including reasonable attorneys’ fees and court costs) arising out of or in connection with: (a) a third party claim against the WDD Software Solutions Indemnified Parties described in Section 10.1 (i) through (iv); or (b) the negligent or willful acts or omissions of Customer or Customer’s employees or agents.

11. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS OR GOODWILL) ARISING FROM PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT REGARDLESS OF THE THEORY OF RECOVERY AND REGARDLESS OF

WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. GENERAL PROVISIONS

12.1 Assignment. Neither party shall assign or transfer this Agreement or all or any part of its rights or obligations under this Agreement or any applicable Statement of Work, by operation of law or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any unauthorized assignment or transfer shall be null and void. This Agreement shall be binding upon and inure solely to the benefit of each party and its successors and permitted assigns.

12.2 Severability. If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Agreement, and all provisions not affected by such invalidity shall remain in full force and effect.

12.3 Waiver. The waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

12.4 Relationship of the Parties. The relationship of Customer and WDD Software Solutions established by this Agreement is that of independent contractors, and nothing in this Agreement shall be construed: (a) to give either party the power to direct or control the daily activities of the other party; (b) to

constitute the parties as employer and employee, principal and agent, partners, joint ventures, co-owners or otherwise as participants in a joint undertaking; or (c) to allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

12.5 Attorney's Fees. In the event of a breach of this Agreement by either party, the breaching party shall pay all reasonable attorney's fees, collection fees and costs of the other party incident to any action brought to enforce this Agreement.

12.6 Multiple Counterparts. This Agreement and all Statements of Work may be executed in multiple counterparts, all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart signature page of this Agreement by facsimile, email, or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

12.7 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to conflicts of law principles. Neither party shall institute any legal or equitable proceeding against the other arising out of this Agreement except in and each hereby submits to the jurisdiction of, federal and state courts located in Marion County, Indiana. Each party irrevocably waives, to the fullest extent permitted by law, any and all objections that it may now or hereafter have to the venue of any such proceeding brought in such courts and any claim that any such proceeding brought in such courts has been brought in an inconvenient forum.

12.8 Entire Agreement. This Agreement and its exhibits constitute the entire

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understanding between the parties with respect to the subject matter hereof and supersede all prior agreements between the parties, whether written or oral, relating to the

same subject matter. No modification, amendment or supplement to this Agreement shall be effective for any purpose unless in writing and signed by both parties hereto.

IN WITNESS WHEREOF, authorized representatives of the parties to this Agreement have executed and delivered this Agreement, with the intent to be bound as of the Effective Date.

Date:

WDD Software Solutions, LLC

By: 

Name: Drew Linn

Title: Chief Strategy Officer

Date:

By: _____

Name:

Title: