

MASTER SERVICES AGREEMENT - ZENITH SOLUTIONS

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into as of June 27, 2022 ("Effective Date"), by and between Acme Corp, a Delaware corporation with its principal place of business at 123 Innovation Drive, Future City, DE 19901 ("Client"), and Zenith Solutions, a California corporation with its principal place of business at 789 Pinnacle Plaza, Tech Valley, CA 94043 ("Vendor").

RECITALS

WHEREAS, Vendor is in the business of providing professional technology consulting and development services;

WHEREAS, Client desires to engage Vendor to provide certain services as may be requested from time to time; and

WHEREAS, Vendor is willing to provide such services to Client, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. DEFINITIONS

1.1 "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.

1.2 "Confidential Information" has the meaning set forth in Section 7.

1.3 "Deliverables" means the specific work products, reports, software, or other materials to be created and delivered by Vendor to Client as described in a Statement of Work.

1.4 "Intellectual Property Rights" means all patents, copyrights, trademarks, trade secrets, and other proprietary rights.

1.5 "Services" means the professional services to be provided by Vendor to Client as described in a Statement of Work.

1.6 "Statement of Work" or "SOW" means a written document, mutually executed by the parties, that describes the specific Services and/or Deliverables to be provided by Vendor, including timelines, fees, and other project-specific details.

2. SCOPE OF SERVICES

2.1 Statements of Work. Vendor shall perform the Services and provide the Deliverables as described in one or more SOWs. Each SOW shall be mutually agreed upon and signed by both parties and will be incorporated into and form a part of this Agreement. In the event of a

conflict between the terms of this Agreement and an SOW, the terms of this Agreement shall prevail unless the SOW expressly states its intent to supersede a specific provision of this Agreement.

2.2 Change Orders. Any changes to an SOW must be documented in a written "Change Order" signed by authorized representatives of both parties.

3. FEES AND PAYMENT

3.1 Fees. Client shall pay Vendor the fees for the Services and Deliverables as set forth in the applicable SOW ("Fees").

3.2 Invoicing and Payment. Vendor shall invoice Client on a monthly basis, unless otherwise specified in an SOW. All invoices are due and payable within thirty (30) days of the invoice date ("Net 30").

3.3 Late Payments. Any amounts not paid when due will be subject to a late charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less.

3.4 Taxes. Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Client hereunder; provided, that, Client shall not be responsible for any taxes imposed on, or with respect to, Vendor's income, revenues, gross receipts, personnel or real or personal property or other assets.

4. TERM AND TERMINATION

4.1 Initial Term. This Agreement shall commence on the Effective Date and shall continue for an initial term of two (2) years (the "Initial Term").

4.2 Renewal. Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a "Renewal Term"), unless either party provides written notice of its intent not to renew at least sixty (60) days prior to the end of the then-current term. The Initial Term and any Renewal Terms are collectively referred to as the "Term."

4.3 Termination for Cause. Either party may terminate this Agreement or any SOW upon written notice if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof.

4.4 Termination for Convenience. Either party may terminate this Agreement for any reason upon ninety (90) days prior written notice to the other party.

4.5 Effect of Termination. Upon termination or expiration of this Agreement: (a) Client shall pay Vendor for all Services performed and expenses incurred up to the effective date of termination; and (b) each party shall promptly return or destroy all Confidential Information of the other party.

5. CONFIDENTIALITY

5.1 Definition. "Confidential Information" means any non-public information disclosed by one party ("Disclosing Party") to the other ("Receiving Party"), whether orally or in writing, that is

designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

5.2 Obligations. The Receiving Party agrees to: (a) use the Confidential Information solely for the purpose of performing its obligations under this Agreement; (b) not disclose the Confidential Information to any third party without the Disclosing Party's prior written consent; and (c) protect the Confidential Information with the same degree of care it uses to protect its own confidential information of like kind, but in no event less than a reasonable degree of care.

5.3 Exclusions. Confidential Information does not include information that: (a) is or becomes publicly known through no wrongful act of the Receiving Party; (b) was in the Receiving Party's possession prior to disclosure by the Disclosing Party; or (c) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

6. INTELLECTUAL PROPERTY

6.1 Client IP. Client shall retain all right, title, and interest in and to its own pre-existing materials, data, and Intellectual Property Rights ("Client IP").

6.2 Vendor IP. Vendor shall retain all right, title, and interest in and to its own pre-existing materials, software, tools, methodologies, and Intellectual Property Rights ("Vendor IP").

6.3 Ownership of Deliverables. Upon full and final payment by Client for the applicable Deliverables, all right, title, and interest in and to the Deliverables specifically created for Client under an SOW shall be the sole property of Client. Vendor hereby assigns to Client all such rights.

6.4 License to Vendor IP. To the extent any Vendor IP is incorporated into the Deliverables, Vendor grants Client a non-exclusive, perpetual, royalty-free, worldwide license to use such Vendor IP solely as necessary for Client to use the Deliverables for its internal business purposes.

7. INDEMNIFICATION

7.1 Mutual Indemnification. Each party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the other party, its Affiliates, and their respective officers, directors, and employees (the "Indemnified Party") from and against any and all third-party claims, losses, damages, liabilities, and expenses (including reasonable attorneys' fees) arising out of or related to: (a) the Indemnifying Party's gross negligence or willful misconduct; or (b) the Indemnifying Party's material breach of this Agreement.

7.2 IP Indemnification by Vendor. Vendor shall indemnify, defend, and hold harmless Client from and against any third-party claim that the Services or Deliverables infringe upon any U.S. patent, copyright, or trademark.

7.3 Procedure. The Indemnified Party shall provide the Indemnifying Party with prompt written notice of any claim and shall cooperate with the Indemnifying Party in the defense of such claim. The Indemnifying Party shall have sole control over the defense and settlement of the claim.

7.4 Cap. The total liability of an Indemnifying Party under this Section 7 shall not exceed the total fees paid by Client to Vendor under this Agreement in the twelve (12) months immediately preceding the event giving rise to the claim.

8. WARRANTIES

8.1 Service Warranty. Vendor warrants that for a period of one (1) year following the acceptance of any Deliverable, the Services will be performed in a professional and workmanlike manner consistent with generally accepted industry standards. Vendor's sole and exclusive liability and Client's sole and exclusive remedy for a breach of this warranty shall be, at Vendor's option, to (a) re-perform the non-conforming Services at no additional charge to Client, or (b) provide a refund to Client for the fees paid for the non-conforming Services.

8.2 General Warranties. Each party represents and warrants that it has the full power and authority to enter into and perform its obligations under this Agreement.

8.3 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, VENDOR MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICES OR DELIVERABLES, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

9. LIMITATION OF LIABILITY

9.1 Exclusion of Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 Liability Cap. EXCEPT FOR A PARTY'S OBLIGATIONS UNDER SECTION 7 (INDEMNIFICATION), A BREACH OF SECTION 5 (CONFIDENTIALITY), OR LIABILITY ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CLIENT TO VENDOR IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10. INSURANCE

During the Term, Vendor shall maintain, at its own expense: (a) Commercial General Liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (b) Professional Liability (Errors & Omissions) insurance with limits of not less than \$1,000,000 per claim; and (c) Workers' Compensation insurance as required by applicable law. Vendor shall provide a certificate of insurance upon Client's reasonable request.

11. GENERAL PROVISIONS

11.1 Force Majeure. Neither party shall be liable for any failure or delay in performance due to causes beyond its reasonable control, including acts of God, war, terrorism, or natural disaster.

11.2 Notices. All notices under this Agreement shall be in writing and sent to the addresses of the parties set forth at the beginning of this Agreement, or to such other address as may be designated in writing.

11.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles.

11.4 Dispute Resolution. The parties agree to first attempt to resolve any dispute arising out of this Agreement through good faith negotiations. If the dispute is not resolved within thirty (30) days, the parties agree to submit the dispute to the exclusive jurisdiction of the state and federal courts located in Wilmington, Delaware.

11.5 Independent Contractor. The relationship of the parties is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture, or agency relationship.

11.6 Entire Agreement. This Agreement, together with all SOWs, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral.

11.7 Assignment. Neither party may assign this Agreement without the prior written consent of the other party, except in the case of a merger, acquisition, or sale of all or substantially all of its assets.

11.8 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Master Services Agreement as of the Effective Date.

CLIENT: Acme Corp

By: _____ Name: Title: Date:

VENDOR: Zenith Solutions

By: _____ Name: Title: Date:

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Warranty Status: STANDARD Special Notes: None ---