OEM Agreement

This **OEM Agreement** (“***Agreement***”) is made and entered into as of this \_\_\_ day of \_\_\_\_, 2023, (“***Effective Date***”), by and between **SoftLedger, Inc.**, a Delaware corporation, with offices at 100 South Commons, Suite 102, Pittsburgh, PA 15212 (“***SoftLedger***”), and **\_\_\_\_\_\_\_\_\_\_\_\_,** a \_\_\_\_\_\_\_\_\_\_ corporation, with offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“***Company***”).

**Whereas**, SoftLedger owns and operates a hosted, full-featured accounting and reporting platform as further described on **Exhibit A** (“***SoftLedger Service***”);

**Whereas**; Company owns and offers for sale the Company products and services as described on **Exhibit A** (“***Company Products***”); and

**Whereas**, Company wishes to integrate the SoftLedger Service into the Company Products and offer the Combined Product to its end user customers.

**Now Therefore**, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. **Definitions**.
	1. **Combined Product**. The term “***Combined Product***” shall mean the product resulting from the integration of the SoftLedger Service into the Company Products and which shall be marketed and distributed by Company.
	2. **Documentation**. The term “***Documentation***” shall mean SoftLedger’s documentation, instructions, user manuals, training materials, and other materials in written or electronic form, referring or relating to the SoftLedger Service.
	3. **End User**. The term “***End User***” shall mean any person or entity that obtains the right to use the Combined Product from Company.
	4. **End User License**. The term “***End User License***” shall mean the license agreement between Company and an End User, pursuant to which Company shall sublicense the use of the Combined Product to End Users.
	5. **Fees**. The term “***Fees***” shall mean all fees and other payments payable under this Agreement.
	6. **Term**. The term “***Term***” shall mean the Initial Term and each Renewal Term.
	7. **Updates**. The term “***Updates***” shall mean error corrections, enhancements and modifications made by SoftLedger to the SoftLedger Service and/or Documentation.
2. **Grant of Licenses; Other Obligations**.
	1. **License to Company**. Subject to the terms and conditions of this Agreement, SoftLedger grants to Company the following nonexclusive licenses to:
		1. develop integration or interfaces between the SoftLedger Service and Company Products;
		2. use SoftLedger’s application programming interface (“***API***”) to integrate the SoftLedger Service into the Company Products and make available the SoftLedger Service to End Users: (i) only as part of the Combined Product (and not on a standalone basis); and (ii) pursuant to the terms of an End User License;
		3. reproduce and distribute copies of the Documentation in conjunction with making available the Combined Product to End Users; and
		4. use the SoftLedger Service to perform internal testing and training and to provide demonstrations to potential End Users.
	2. **Use of Third Parties**. Company has the limited, nonexclusive right to sublicense the rights granted to it in Section 2.1 to its third party sales partners (“***Agents***”), provided that Company remains directly responsible to SoftLedger for any action or inaction of its Agents.
	3. **Ownership and Reservation of Rights**. All right, title and interest in and to the SoftLedger Service, API and Documentation and any copies thereof shall remain the exclusive property of SoftLedger. Except for the licenses granted herein, there are no other licenses, express or implied, granted to Company. Company agrees that it will not, and will not permit any third party to: (a) access the SoftLedger Service or API, other than End Users; (b) modify, adapt, alter or translate the SoftLedger Service, API or Documentation, except as expressly allowed herein; or (c) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the SoftLedger Service or API.
	4. **End User License**. Company shall ensure that all End Users are required to accept the terms of the End User License before using the Combined Product and that the End User License shall be at least as protective of the SoftLedger Service and API as the terms set forth herein and shall contain terms that impose no less obligations or restrictions on End Users in all material respects than those imposed on Company herein, including that: (a) title to and ownership of the Combined Product remains with Company and its licensors, (b) all implied warranties regarding the Combined Product are disclaimed, (c) all consequential, special, and indirect damages are disclaimed on behalf of Company and its licensors, and (d) Company’s licensors are named as intended third party beneficiaries of the End User License.
	5. **End User Data**. Each party shall establish and maintain a commercially reasonable security program that includes appropriate technical, organizational and security measures designed to protect the confidentiality, integrity and availability of data submitted by End Users or generated by End Users from use of the Combined Product (“***End User Data***”), and prevent the destruction and loss of and the unauthorized use, disclosure or alteration of or access to, End User Data (each a “***Security Incident***”), in each case, in such party’s possession or control. In the event either party becomes aware or reasonably suspects that a Security Incident has occurred, it shall immediately (i) notify the other of such Security Incident and (ii) investigate and, in the case of an actual Security Incident within its control, remediate the effects of the same. As between the parties, End User Data shall be the property of Company and SoftLedger shall only use such End User Data as necessary to provide the SoftLedger Service.
	6. **License to SoftLedger**. Subject to the terms and conditions of this Agreement, Company grants to SoftLedger a royalty-free, nonexclusive and nontransferable license to use the Company Products to: (a) develop integration or interfaces between the SoftLedger Service and Company Products; and (b) test, support and maintain the SoftLedger Service as part of the Combined Product.
3. **Payment**.
	1. **Payment**. Company shall pay SoftLedger the Fees as described in **Exhibit A**.
	2. **Taxes**. All payments, fees and other charges payable under this Agreement are exclusive of applicable federal, state, local and foreign taxes, levies and assessments.
4. **Support**. The parties shall provide support as provided in **Exhibit B**.
5. **Sales Support and Training; Contacts**. The parties agree to the terms regarding sales support and training set forth in **Exhibit C**. Throughout the Term, each party shall appoint a qualified employee to manage the relationship with the other (“***Business Contact***”). The initial Business Contact is set forth in **Exhibit B**. Each party shall notify the other when it changes its Business Contact. The Business Contact will be the primary liaison to the other party with overall responsibility for managing the respective party’s performance under this Agreement, including resolution of conflicts.
6. **Trademarks; Copyright Notices**.
	1. **Branding/Trademark Rights**. The Combined Product shall be private-labeled with Company’s branding, provided however that it may contain mutually agreed upon branding of SoftLedger to indicate that the functionality of the SoftLedger Service is included in the Combined Product. During the Term, SoftLedger hereby grants to Company a nonexclusive, nontransferable license to use SoftLedger’s trademarks, trade names, logos and/or slogans (the "***Trademarks***"), as provided to Company by SoftLedger in connection with the distribution of the SoftLedger Service and Documentation hereunder.
	2. **Copyright and Proprietary Notices**. Company agrees to maintain and respect the copyright and any other notices of the SoftLedger Service, API, Documentation and any other materials provided by SoftLedger. Except for the notices and Trademarks provided to Company (if any) with the SoftLedger Service and Documentation and as provided in Section 6.1, the parties acknowledge and agree that the Combined Product shall be branded with Company trademarks.
7. **Warranties and Disclaimer of Warranties**.
	1. **Mutual Warranties**. Each party represents and warrants that (a) it is an entity validly existing and in good standing under the laws of its establishment or incorporation, (b) it has full corporate power and authority to execute, deliver and perform its obligations under this Agreement, (c) the person signing this Agreement on its behalf has been duly authorized and empowered to enter into this Agreement, (d) this Agreement is valid, binding, and enforceable against it in accordance with its terms, and (e) it will comply with all applicable laws and regulations and will not make any representations or warranties on behalf of the other party.
	2. **SoftLedger Warranties**. SoftLedger warrants to Company (a) that the SoftLedger Service will materially conform to the Documentation; and (b) that the SoftLedger Service will conform to the uptime guarantee and that SoftLedger will comply with the support obligations provided in **Exhibit B**. SoftLedger shall promptly repair or replace any non-conforming SoftLedger Service. THE FOREGOING WARRANTY IS THE SOLE WARRANTY OF SOFTLEDGER AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
8. **Limitation of Liability**. EXCEPT FOR ANY VIOLATION OF THE CONFIDENTIALITY PROVISIONS HEREIN, ANY INFRINGEMENT, VIOLATION OR MISAPPROPRIATION OF A PARTY’S INTELLECTUAL PROPERTY RIGHTS AND EACH PARTY’S INDEMNIFICATION OBLIGATIONS, (i) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, AND (ii) IN NO EVENT SHALL EITHER PARTY’S LIABILITY TO THE OTHER UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNTS PAID OR TO BE PAID BY IT HEREUNDER.
9. **Indemnification**.
	1. **Indemnity**. SoftLedger shall defend, indemnify and hold harmless Company and its officers, directors, employees, successors and assigns, from and against any and all losses, damages, liabilities, settlements, costs and expenses resulting from or arising out of any third party claim, demand, or cause of action which alleges that the SoftLedger Service, API, Documentation or Trademarks infringe or misappropriate any intellectual property right of a third party (“***Claim***”). Company shall provide SoftLedger with prompt written notice of any Claim and permit SoftLedger to control the defense, settlement, adjustment or compromise of such Claim. Company shall have no authority to settle any Claim on behalf of SoftLedger.
	2. **Limits of Indemnity**. SoftLedger shall have no obligation under Section 9.1 for any claim based upon use by Company of the SoftLedger Service, API or Documentation in a form other than as provided by SoftLedger if such infringement would have been avoided by the use of an unaltered release of the same; or based upon the use of the SoftLedger Service, API or Documentation with other items not provided by SoftLedger, where such infringements would have been avoided by the use of the SoftLedger Service or Documentation alone.
	3. **Indemnification by Company**. Company shall defend, indemnify and hold harmless SoftLedger and its officers, directors, employees, agents, successors and assigns, from and against any and all losses, damages, liabilities, settlements, costs and expenses resulting from or arising out of any third party claim, demand, or cause of action that alleges that the Company Products, Company trademarks or any other Company products or services marketed and distributed by Company (aside from the SoftLedger Service) infringes or misappropriates any intellectual property right of a third party. SoftLedger will provide Company with prompt written notice of such a claim and permit Company to control the defense, settlement, adjustment or compromise of such claim. SoftLedger shall have no authority to settle any such claim on behalf of Company.
10. **Term and Termination**.
	1. **Term**. This Agreement shall commence on the Effective Date and shall continue for three (3) years, unless earlier terminated as provided herein (the "***Initial Term***"). This Agreement shall renew automatically for successive one (1) year periods (each a "***Renewal Term***") unless written notification of intent not to renew is provided by either party to the other not less than sixty (60) days prior to the beginning of any Renewal Term.
	2. **Termination**. Either party may terminate this Agreement if the other party commits a material breach of this Agreement and such breach remains uncured for thirty (30) days after written notice of such breach is delivered to the other party. Either party may also terminate this Agreement if the other party makes an assignment for the benefit of creditors, or if any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law is initiated by the other party, or is initiated against it and not dismissed within sixty (60) days, or if the other party ceases to be actively engaged in business.
	3. **Obligations Upon Termination**. Upon termination or expiration of this Agreement for any reason:
		1. all licenses granted herein shall terminate, provided however that Each End User that has licensed the Combined Product prior to expiration or termination may continue to use the SoftLedger Service, and SoftLedger shall support such use as provided herein, for the remainder of the term of the corresponding license purchased by the End User; and
		2. all Fees and any other monies due hereunder shall remain due and payable in accordance with the terms hereof.
	4. **Survival of Obligations**. Any and all provisions or obligations contained in this Agreement which by their nature or effect are required or intended to be observed, kept or performed after termination of this Agreement will survive the termination of this Agreement and remain binding upon and for the benefit of the parties, their successors and permitted assigns including, without limitation, Sections 8 through 12.
11. **Confidentiality**. Each party agrees that during and after the existence of this Agreement it will hold in strictest confidence, and will not use for any purpose unrelated to its performance of this Agreement or disclose to any third party, any Confidential Information of the other party. The term “***Confidential Information***” shall mean all non-public information, whether business or technical in nature, that the other party designates as being confidential, or which under the circumstances of disclosure ought to be treated as confidential. If either party has any questions as to what comprises Confidential Information of the other party, it agrees to consult with such other party. Notwithstanding the foregoing, information will not be deemed confidential if it (i) was known to the receiving party, and such information was acquired through proper methods, prior to its receipt from the disclosing party, as evidenced by written records of the receiving party; (ii) is now or (through no act or failure on the part of the receiving party) later becomes generally known through no breach of this Agreement by the receiving party; (iii) is supplied to the receiving party by a third party that is free to make that disclosure without restriction; or (iv) is independently developed by the receiving party without use of or reference to any Confidential Information provided by the disclosing party. The restrictions on disclosure imposed by this Section shall not apply to information that is required by law or order of a court, administrative agency or other governmental body to be disclosed by the receiving party, provided that in each such case the receiving party provides the disclosing party with prompt written notice of such order or requirement and reasonably assists the disclosing party in obtaining a protective order or other appropriate relief.
12. **General**
	1. **Notices**. Any notice, consent, or other communication hereunder shall be in writing, and shall be given personally or sent via overnight delivery to either party at their respective addresses listed above and to the attention of the individual listed below:

if to SoftLedger:

Attn.: CEO

if to Company:

Attn.: CEO

or such other address or individual as may be designated by written notice of either party. Notices shall be deemed given when delivered.

* 1. **Waiver and Amendment**. This Agreement may not be modified except by a written instrument signed by both parties. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.
	2. **Assignment**. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, provided, however, that either party may assign this Agreement without such consent in connection with any merger, consolidation, any sale of all or substantially all of such party’s assets or any other transaction in which more than fifty percent (50%) of its voting securities are transferred, subject to all of the terms of this Agreement, provided further however that if such assignment is to a direct competitor of the other party, the non-assigning party may terminate this Agreement by providing written notice to the other at any time within thirty (30) days of learning of such assignment. Subject to the above, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
	3. **Governing Law**. The rights of the parties hereunder shall be governed by the laws of the Commonwealth of Pennsylvania without giving effect to principles of conflicts of laws. Any suits brought hereunder shall be brought in the federal or state courts in Allegheny County, and each party submits to the jurisdiction thereof.
	4. **Independent Contractors**. The relationship of the parties is that of independent contractors and nothing contained in this Agreement shall be construed to make either party an agent, partner, joint venturer, or representative of the other for any purpose and neither party shall enter into any obligations on behalf of the other.
	5. **Integration**. This Agreement, including the attached Exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof and replaces any prior understandings, written or oral.
	6. **Severability**. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.
	7. **Force Majeure**. Nonperformance of either party shall be excused to the extent that performance is rendered impossible by any reason where failure to perform is beyond the reasonable control of the non performing party.
	8. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

**In Witness Whereof**, the parties have executed this agreement as of the Effective Date.

|  |  |
| --- | --- |
| **SoftLedger, Inc.** Signed: Name: Title:  | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Signed: Name: Title:  |

1.

This **Exhibit A** is part of the attached Agreement between SoftLedger and Company.

1. **SoftLedger Service:** The SoftLedger Service includes SoftLedger’s accounting software application and APIs.
2. **Company Products:** The Company Products include Company’s software products for \_\_\_\_\_\_\_.
3. **Fees:**
	1. Fees. Company shall pay SoftLedger the following Fees: TBD
4. Maintenance and Support
5. **First Level Support**. Company shall provide first level support to End Users. First level support shall consist of receiving the initial support request from the End User, verification of the End User’s support entitlement, identifying the problem, evaluating possible answers, and resolving the issue or escalating the incident. If Company is not able to resolve the issue via first level support, Company shall commence the following actions: (i) gather information regarding the nature of the issue; (ii) assign a severity level; and (iii) escalate the support request to SoftLedger for second level support. SoftLedger will provide Company with copies of its standard support materials for its own use.
6. **Second Level Support**. SoftLedger shall provide second level support to Company and not to End Users and shall provide such support via telephone from Monday through Friday, 8:00 a.m. to 5:00 p.m. PST, excluding national holidays. Second level support means SoftLedger’s response to support requests escalated by Company’s support in accordance with the schedule below. In addition, SoftLedger shall provide Company with periodic reports on the status of any request, which may include reclassification of the severity level.

|  |  |  |
| --- | --- | --- |
| **Severity** | **Definition** | **Response level** |
| Priority 1 | Complete failure of SoftLedger Service or API to perform  | Constant effort until resolved, but shall use best efforts to resolve the issue within twenty-four (24) hours |
| Priority 2 | Severe impact that materially restricts the SoftLedger Service or API from performing | Constant effort until resolved |
| Priority 3 | Minimal impact preventing minor feature from performing | Next Update |
| Priority 4 | Minimal or no impact on features or outside of the control of SoftLedger | Fixed at SoftLedger’s discretion |

1. **Uptime**. SoftLedger shall ensure that the SoftLedger Service and API maintains at least 99% availability (measured on a calendar monthly basis), twenty-four hours a day, seven days a week, 365 days a year. Downtime does not include unavailability (i) caused by factors outside of SoftLedger’s reasonable control, or (ii) during scheduled maintenance, notice of which will be provided to Company reasonably in advance.
2. **Updates**. SoftLedger shall make available to Company all Updates as soon as they are generally available.
3. **Contacts**. In connection with its support and other obligations, each party shall name a Business Contact to help with problem resolution and to coordinate the parties’ efforts.

|  |  |
| --- | --- |
| Company: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  | SoftLedger: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |

1. Sales Support and Training
2. **Pre-sales Support**. SoftLedger will provide Company with the following pre-sales support for qualified prospect opportunities:
* Reasonable participation in sales calls and meetings via phone and video conferencing as requested by Company.
* SoftLedger shall provide copies of its standard presentations, marketing collateral, and white papers that Company can re-brand for its own use.

Any additional pre-sales efforts by SoftLedger will be subject to mutual agreement.

1. **Sales**. Company shall be responsible for sales account management as well as marketing and distribution of the Combined Product to its Agents and End Users.
2. **Training**. SoftLedger shall provide Company with a copy of its training materials and courseware used to provide customer education. SoftLedger will provide reasonable remote training regarding the SoftLedger Service to designated Company personnel as agreed upon by the parties.
3. **Marketing**. Company agrees to keep SoftLedger informed of Company’s and its Agents’ marketing and sales activities and results with respect to the Combined Product.