

# WENDTOS License Agreement

This WENDTOS License Agreement (“License”) is entered into between WENDT CORPORATION (“WENDT”), a New York corporation with offices at 2555 Walden Ave, Buffalo, NY 14225, and the party defined as “Customer” in that certain WENDTOS Subscription Agreement existing between WENDT and Customer (“Subscription Agreement”), the terms of which are hereby expressly incorporated by reference into this License. Capitalized terms used in this License shall have the meaning set forth in the Subscription Agreement if not otherwise defined herein. The terms of this License govern Customer’s use of and its subscription to the WENDTOS Services and WENDT’s use of Customer Data (defined below). WENDT and Customer are sometimes hereinafter referred to individually as a “party” and collectively as “parties.” This License becomes binding and effective on Customer on the Effective Date set forth in the Subscription Agreement.

## 1. TERM AND TERMINATION.

**A.** Customer’s use of the WENDTOS Services is subscription-based as governed by the Subscription Agreement and this License (such subscription-based use referred to as Customer’s “Subscription”). Customer’s Subscription and this License shall commence upon the Effective Date of the Subscription Agreement and shall continue for an initial term of twelve (12) months (the “Initial Term”), unless otherwise specified in the Subscription Agreement or unless earlier terminated by the express provisions of this License. Upon expiration of the Initial Term, the Subscription and this License shall automatically renew for additional successive 12-month renewal terms, unless otherwise specified in the Subscription Agreement or unless earlier terminated pursuant to the express provisions of this License or a party gives the other party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each, a “Renewal Term” and with the Initial Term, the “Term”).

**B.** WENDT may terminate the Subscription and this License, effective on written notice to the Customer, if the Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after WENDT’s delivery of written notice thereof; or (ii) breaches any of its obligations under this License.

**C.** Either party may terminate the Subscription and this License without cause upon thirty (30) days prior written notice to the other party, provided that upon termination without cause by WENDT Customer shall be entitled to a refund of the prorata Subscription Fees for the unfulfilled Term. Either party may terminate the Subscription and this License, effective immediately: (i) if the other party becomes insolvent or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or (ii) if a petition under the United States Bankruptcy Act or any similar law of any jurisdiction, is filed concerning the other party.

**D.** Customer’s Subscription is expressly only licensed at the level subscribed in the Subscription Agreement for the duration of the Term while Customer is and remains a current subscriber in good standing not in breach of this License or the Subscription Agreement. Upon expiration or earlier termination of the Subscription and this License, Customer shall immediately discontinue use of the WENDTOS Services, and, without limiting Customer’s obligations under Section 6 Customer shall delete, destroy, or return all copies of the WENDTOS Services or other WENDT IP (defined below) and upon request by WENDT certify in writing to WENDT that the WENDT IP has been deleted or destroyed. No expiration or termination will affect Customer’s obligation to pay all Subscription Fees that may have become due before such expiration or termination or entitle Customer to any refund of prepaid Subscription Fees except as otherwise set forth herein. Customer acknowledges and agrees that upon expiration or termination of its Subscription and this License, Customer will not have access to the WENDTOS Services (including the WENDTOS App) or any historical information or data input to, output from, stored within, or otherwise related to Customer’s use of the WENDTOS Services, and WENDT will have no obligation to return or

preserve any data or information related to Customer or its use of the WENDTOS Services. Customer is solely responsible for backup of Customer’s data.

## 2. CUSTOMER SUBSCRIPTION / LIMITED LICENSE.

**A.** During Term, WENDT grants Customer a limited, non-exclusive, royalty-free (except for the Subscription Fees due to WENDT), non-transferable and terminable license to access and to use the WENDTOS Services solely for Customer’s internal business operations during the Term at the location specified in the Subscription Agreement. Customer acknowledges that a Subscription at “Level 1 - WENDT RSS Basic Tech Support with VPN Connectivity” or similar does not include Customer use of the WENDTOS App for PC/Mac, tablet, smartphone and/or other system. Customer is expressly prohibited from sublicensing use of the WENDTOS Services or WENDTOS App to any affiliate or third party or from using the WENDTOS Services or WENDTOS App for or on behalf of any other location even if commonly owned or operated with Customer. Each Customer location requires a separate Subscription and License.

**B.** WENDT shall use commercially reasonable efforts to make the WENDTOS App available 24 hours a day, 7 days a week during the Term, except for: (i) Planned Maintenance; or (ii) Extraordinary Circumstances. For purposes of this License, “Planned Maintenance” means maintenance where prior notice is provided to Customer via e-mail based on Customer’s current contact information, or by otherwise providing Customer with notice such as by using notification capabilities within the WENDTOS App (in-app notifications, website notifications, and the like), and “Extraordinary Circumstances” means any unavailability caused by circumstances beyond WENDT’s reasonable control, including without limitation, acts of God, acts of government (including U.S. sanctions or embargoes), flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, power outages, or Internet outages or delays.

## 3. SUBSCRIPTION FEES, BILLING AND RENEWAL.

**A.** By subscribing to the WENDTOS Services, Customer expressly agrees to pay all Subscription Fees corresponding to the Subscription selected by Customer. The Subscription Fees are fully earned upon payment to WENDT and are nonrefundable except as otherwise set forth herein. Subscription

Fees shall be invoiced on an annual basis. Customer shall pay all Subscription Fees due and owing to WENDT within thirty (30) days of the date such Subscription Fees are invoiced to Customer.

**B.** Payment Methods. Customer shall pay all Subscription Fees in accordance with Section 3A by check or by U.S. domestic electronic funds transfer (“ACH”) or similar to an account designed by WENDT.

**C.** All Subscription Fees and other amounts payable by Customer under this License or the Subscription Agreement are exclusive of taxes and similar assessments. Customer 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 or regulatory authority on any amounts payable by Customer hereunder, other than any taxes on WENDT’s income.

**D.** If Customer fails to make any payment when due, without limiting WENDT’s other rights and remedies, if such failure continues for ten (10) days or more, WENDT may suspend Customer’s Subscription and access to the WENDTOS Services and WENDTOS App until Customer makes such payment.

## 4. THE WENDT IP.

**A.** The WENDTOS Services and WENDTOS App that forms a part of the WENDTOS Services include and are enabled by and utilize a hosted software application platform currently known as the WENDTOS software platform (the “WENDTOS software platform” or “Software”), Confidential Information of Wend, and other technology, information, trade secrets, patent rights, copyrights, know-how and documentation associated therewith whether or not provided or otherwise made available by WENDT



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and used in the performance of the WENDTOS Services and implementation of the WENDTOS App, including, all intellectual property rights and Derivative Works therein, on a worldwide basis (collectively, all of the foregoing being the “WENDTIP”). WENDT or its agents shall host the WENDTOS software platform and may update the functionality and user interface of the WENDTOS software platform from time to time in WENDT’s sole discretion. For a Subscription level that includes Customer use of the WENDTOS App, Customer must provide its own devices and access to use the WENDTOS App. Certain subscription levels including “Level 1 – WENDT RSS Basic Tech Support with VPN Connectivity” or similar do not include Customer license for use of or access to the WENDTOS App for PC, tablet, and/or smartphone.

**B.** Customer acknowledges and agrees that the rights granted herein are provided on the condition that Customer will not and will not allow, give permission to, or enable any third party, including without limitation any customer, contractor, or Affiliate, to copy, create a Derivative Work of, or reverse engineer, reverse assemble, disassemble, or decompile the WENDTIP or any part thereof or otherwise attempt to discover any source code, modify the WENDTIP in any manner or form, or use unauthorized modified versions of the WENDTIP, including without limitation for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the WENDTOS Services or WENDTOS App. For purposes of this License “Derivative Work” means any modification of or extension to any software, process, algorithm, trade secret, work of authorship, invention, or to any other intellectual property right therein or thereto.

### 5. OWNERSHIP OF WENDTIP / USE OF CUSTOMER DATA.

**A.** Customer acknowledges and agrees that the WENDTOS Services, WENDTOS App, and WENDTOS software platform, including the specific design and structure of the programs, WENDT’s processing and presentation of Customer Data, user interfaces, components and all other parts and aspects thereof, constitutes the proprietary trade secrets and copyrighted material of WENDT, and that WENDT owns all rights, title and interest in and to the WENDTOS Services (including the WENDTOS App), the WENDTOS software platform, all Feedback (defined below) and all WENDTIP. Output from the WENDTOS Services and WENDTOS software platform provided to Customer (e.g., performance data, charts, trends, reports) shall be owned by Customer, subject to WENDT’s license to use such output and Customer Data set forth below, and Customer hereby grants WENDT a nonexclusive, irrevocable, worldwide, royalty-free, perpetual, sublicensable license to retain, copy, process, display, make derivative works of, and otherwise use all such output from the WENDTOS Services and WENDTOS software platform provided to Customer and Customer Data. As used herein, “Feedback” means bug reports, suggestions, comments or other feedback provided by Customer to WENDT with respect to the WENDTOS Services or the WENDTOS software platform. WENDT is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback. Customer hereby assigns to WENDT on Customer’s behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and WENDT is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although WENDT is not required to use any Feedback. The rights granted to Customer are limited by this License and this License does not convey any other rights in the WENDTIP, express or implied, nor does it grant any ownership in the WENDTIP or any intellectual property rights therein or thereto. WENDT expressly reserves all rights not expressly granted herein.

**B.** Customer agrees that if it makes or develops or suggests any improvements, customizations, or customized implementations of the WENDTIP or WENDTOS Services that do not qualify as Derivative Works (“Implementations”), such Implementations are hereby licensed to WENDT on a non-confidential, nonexclusive, irrevocable, worldwide,

royalty-free, sublicensable basis to perform services, use, distribute, publish, display, copy, sell, have sold, make, have made, create Derivative Works of, import, export, and license the Implementations and products and services utilizing or incorporating the Implementations, and to otherwise commercially exploit the same.

**C.** Customer retains ownership of its data and information input to the WENDTOS Services (“Customer Data”) but grants WENDT a nonexclusive, irrevocable, worldwide, royalty-free, perpetual, sublicensable license for WENDT to retain, copy, process, display, make derivative works of, and otherwise use all such Customer Data and to disclose such Customer data on an anonymous basis, both during the Term and thereafter, as required for WENDT to provide the WENDTOS Services to Customer and other customers and for WENDT’s development, improvement, debugging, comparison, benchmarking, and otherwise further developing the Software or its output and/or for improving equipment manufactured and/or supplied by WENDT or others and/or for comparing Customer Data on an anonymized basis to similar data of other customers. For avoidance of doubt, WENDT’s license and rights in the Customer Data granted herein shall include the right for WENDT to use such Customer Data during and after the Term as required to provide WENDTOS Services to Customer and other customers and for WENDT to disclose such Customer Data in an anonymous form to other customers to compare KPI’s and track and compare Customer Data against corresponding data from other customers including for the purpose of WENDT being able to show Customer and other customers how their machines work in comparison to others for benchmarking and improvement of operations.

**D.** Customer agrees not to remove any copyright or proprietary legends on/in the WENDTIP, and to implement reasonable security measures to protect WENDT’s proprietary rights therein from unauthorized use or disclosure. Certain marks, words and logos displayed on the WENDTOS App constitute trademarks, trade names, or service marks belonging to WENDT or its licensors. Except as necessary for Customer to make use of the WENDTOS Services in accordance with this License, Customer is not authorized to use any such marks. Ownership of all such marks and the goodwill associated therewith remains with WENDT or its respective licensors.

### 6. CONFIDENTIALITY.

**A.** The parties agree that during the course of performance under this License, each party may disclose to the other party certain technical and/or non-technical information, which, whether or not marked or identified as “confidential”: (i) is disclosed in a tangible or visual form; (ii) is disclosed in an oral, non-tangible or visual form; or (iii) is identified and treated as confidential by disclosing party and given the circumstances of disclosure, and/or the nature of the information, the recipient knew or should reasonably have known the information was confidential (collectively, the “Confidential Information”). Confidential Information does not include information, technical data or know-how which (a) is rightfully in the possession of the receiving party at the time of disclosure as shown by the receiving party’s files and records immediately prior to the time of disclosure; (b) prior to or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any action or action of the receiving party; (c) is approved in writing for release by the disclosing party; or (d) is independently developed by the receiving party without use of or reference to any Confidential Information of the disclosing party. Anonymized Customer Data is not Confidential Information.

**B.** Each party agrees not to use the Confidential Information disclosed to it by the other party for any purpose except as necessary to perform its obligations under this License. Neither party will disclose the Confidential Information of the other party to third parties or to the first party’s employees except employees and service providers who are required to have the information in order to carry out such party’s obligations hereunder who have agreed in writing, as a condition of employment,



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engagement or otherwise (or who are otherwise bound by fiduciary duty or rules of professional conduct), to protect the Confidential Information with terms no less stringent than are imposed by this Section. Each party agrees that it will protect the other party's Confidential Information using the same standard of care that it uses in protecting its own Confidential Information, but in no case less than reasonable care. Each party agrees to promptly notify the other in writing of any misuse or misappropriation of Confidential Information of the other party that may come to its attention.

**C.** The confidentiality and non-use obligations of each receiving party will survive expiration or termination for a period of five (5) years; except that such obligations shall survive indefinitely with respect to (i) Personal Data, and (ii) each disclosing party's software and technology-based trade secrets so long as they remain eligible for trade secret under prevailing law (without regard to any breach of the receiving party). In the event of any expiration or termination of this License, upon request by the disclosing party, the receiving party shall cease all use of the other party's Confidential Information and return to the disclosing party all copies of the disclosing party's Confidential Information in the receiving party's possession or control, or destroy the same and certify as to its destruction, except as otherwise expressly permitted herein. The receiving party will not be required to return or immediately destroy an archive copy of the disclosing party's Confidential Information made for backup purposes in the ordinary course; provided that such archive copy will be subject to the ongoing obligations of confidentiality and non-use contained herein and shall be destroyed in the ordinary course of business or as required by applicable law. For purposes of this License, "Personal Data" generally means nonpublic, personally identifiable information of or concerning any living individual among the consumers, employees, clients and customers of Customer or WENDT, their parents, subsidiaries, affiliates and agents.

**D.** Each party shall comply with prevailing laws and regulations governing Personal Data, including, without limitation and as may be applicable, the EU General Data Protection Regulation ("GDPR"), the UK General Data Protection Regulation ("UK GDPR"), the California Consumer Privacy Act ("CCPA"), and the California Privacy Rights Act ("CPRA").

**E.** Security Practices. During the Term, the parties will each implement and maintain at least minimum administrative, physical and technical safeguards and measures designed to protect against unauthorized access to the Software and any associated data or information.

**F.** Customer acknowledges that WENDT now has or may enter into relationships with certain third-parties that may provide services to WENDT based upon Customer's use of the WENDTOS Services and/or the WENDTOS App. Customer further acknowledges and agrees that all data and information input by Customer or otherwise provided to the WENDTOS Services or WENDTOS App may be used by WENDT and/or provided to such third-parties for the purpose of providing the WENDTOS Services to Customer.

## 7. REPRESENTATIONS AND WARRANTIES.

**A.** Each party hereby represents and warrants to the other that: (i) such party has the right, power, and authority to enter into this License and the WENDTOS Subscription Agreement, and to fully perform all its obligations hereunder and thereunder; (ii) the execution of and performance under this License does not violate any agreement existing between such party and any third party.

**B.** Customer represents and warrants that it has the right, power, authority to: (i) input data and information into and/or to cause data and information to be input into the WENDTOS Services and the WENDTOS App.

**C.** The person signing or otherwise accepting this License on behalf of Customer represents and warrants that he/she has the right, power and authority to enter into this License on behalf of and legally bind Customer.

**D.** WENDT warrants that it will deliver and perform the WENDTOS Services in a good and workmanlike manner consistent with applicable

industry standards and the functional requirements and technical specifications.

## 8. INDEMNIFICATION.

Customer shall defend, indemnify and hold WENDT, its affiliates, and each of their respective officers, directors, shareholders, employees, agents, contractors, and representatives harmless from and against any and all losses, damages, liabilities, costs (including, attorneys' fees) arising from or related to: (i) Customer's violation of this License; (ii) Customer's breach of any agreement or obligations with respect to its equipment or software providers, its customers or employees, or any third-party; (iii) Customer's violation of any third party intellectual property or privacy right; (iv) Customer's negligence or willful misconduct; (v) Customer's use of the WENDTOS Services or Software in a manner not authorized by this License; (vi) Customer's use of the WENDTOS Services or Software in combination with data, software, hardware, equipment or technology not provided by WENDT or authorized by WENDT in writing; or (vii) modifications to the WENDTOS Services or Software not made by WENDT. Customer may not settle any claim against WENDT unless WENDT consents to such settlement in writing, and further provided that WENDT will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice.

## 9. DISCLAIMERS, LIMITATION OF DAMAGES AND LIABILITY.

**A.** EXCEPT FOR THE REPRESENTATIONS AND LIMITED WARRANTY EXPRESSLY SET FORTH IN SECTION 7D, THE WENDTOS SERVICES, WENDTOS APP, AND WENDT IP ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR TRADE USAGE INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. WENDT PROVIDES NO WARRANTY THAT THE WENDT IP OR WENDTOS SERVICES OR WENDTOS APP WILL BE UNINTERRUPTED OR ERROR-FREE, OR REGARDING THE SECURITY, ACCURACY, RELIABILITY, TIMELINESS OR PERFORMANCE OF THE WENDTOS SERVICES OR WENDTOS APP. WENDT MAKES NO WARRANTY ABOUT THE SUITABILITY OF THE WENDT IP OR WENDTOS SERVICES OR WENDTOS APP FOR ANY PURPOSE AND DOES NOT WARRANT THAT THE WENDT IP OR WENDTOS SERVICES OR WENDTOS APP WILL MEET CUSTOMER REQUIREMENTS OR PROVIDE ANY PARTICULAR OUTCOME FOR CUSTOMER.

**B.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WENDT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THIS LICENSE, THE WENDTOS SERVICES PROVIDED, the WENDTOS APP, OR THE USE OF OR INABILITY TO USE THE WENDTOS SERVICES OR WENDTOS APP INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, COMPUTER FAILURE OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

**C.** LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO LIABILITIES OR LOSSES ARISING FROM FRAUD OR INTENTIONAL MISCONDUCT, IN NO EVENT WILL WENDT'S AGGREGATE, CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS LICENSE EXCEED (I) THE SUM OF THE SUBSCRIPTION FEES PAID BY CUSTOMER TO WENDT DURING THE TWELVE (12) MONTH PERIOD

IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THESE LIMITATIONS ARE CUMULATIVE FOR ALL CLAIMS HOWEVER ARISING AND SHALL APPLY EVEN IF THE REMEDIES PROVIDED IN THIS LICENSE SHALL FAIL OF THEIR ESSENTIAL PURPOSE.

**D.** BASIS OF BARGAIN. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE FOREGOING SECTIONS ON WARRANTIES AND DISCLAIMERS,



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INDEMNIFICATION AND LIMITATION OF LIABILITY FAIRLY ALLOCATE THE RISKS BETWEEN THE PARTIES AND ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT THE SUBSCRIPTION FEES THAT WENDT CHARGES FOR THE WENDTOS SERVICES and WENDTOS APP ARE BASED UPON ITS EXPECTATION THAT THE RISK OF ANY LOSS OR INJURY THAT MAY BE INCURRED BY USE OF THE WENDTOS SERVICES AND WENDTOS APP WILL BE BORNE BY CUSTOMER AND NOT WENDT AND WERE WENDT TO ASSUME ANY FURTHER LIABILITY OTHER THAN ASSET FORTH HEREIN, SUCH FEES WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER.

### 10. GENERAL PROVISIONS.

**A. Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “Notice”) must be in writing and addressed to the parties at the addresses set forth on the Subscription Agreement (or to such other address that may be designated by the party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or email (with confirmation of transmission), or postage pre-paid certified or registered mail with return receipt requested. Except as otherwise provided in this License, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

**B. Governing Law.** This License, the Subscription Agreement and all other exhibits and schedules incorporated herein are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New York. Any legal suit, action, or proceeding arising out of or related to this License, the Subscription Agreement or the licenses granted hereunder and therein will be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in the city of Buffalo and County of Erie, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

**C. Export Restrictions.** Each party shall (i) comply with applicable laws and regulations administered by the U.S. Commerce Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control or other governmental entity imposing export controls and trade sanctions (“Export Restrictions”), including designating countries, entities and persons (“Sanctions Targets”) and (ii) not directly or indirectly export, re-export or otherwise deliver WENDTOS Services or the WENDTOS App to a Sanctions Target, or broker, finance or otherwise facilitate any transaction in violation of any Export Laws.

**D. Severability.** If any provision of this License is held by a court of competent jurisdiction to be unenforceable or contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this License shall remain in effect.

**E. Survival Provisions.** Sections 1D, 4, 5, 6, 7, 8, 9, and 10 any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or earlier termination of this License. All other provisions of this License will not survive the expiration or earlier termination of this License.

**F. Assignment.** Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of WENDT, except Customer or WENDT may assign the

Subscription and License as part of the sale of its business or assets or as part of a bona fide internal reorganization of its business. WENDT may assign any or all of its rights or delegate any or all of its obligations under the Subscription and/or License. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating party of any of its obligations hereunder. This License is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

**G. Publicity.** Neither party will make any news or press release regarding this License without the other party’s prior written consent. Customer grants WENDT the right to include Customer’s name and logo on the WENDT website and other WENDT promotional materials to identify Customer as a customer of the WENDTOS Services.

**H. Force Majeure.** Except for the nonpayment of money due, neither party shall be liable for any delay or failure in performance due to Extraordinary Circumstances (as defined above); provided, that, if such Extraordinary Circumstances result in the WENDTOS Services or WENDTOS App being unavailable for thirty (30) consecutive days, either party may terminate this License immediately upon written notice.

**I. Relationship of the Parties.** The parties are independent contractors, and this License does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. There are no third-party beneficiaries to this License.

**J. Amendment and Modification; Waiver.** No amendment to or modification of this License is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this License, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this License will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies available to a party at law or in equity.

**K. Entire Agreement.** This License, the Subscription Agreement, and any exhibits or schedules linked or referenced herein or therein constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Any terms and conditions of any other instrument issued by Customer in connection with this License which are in addition to, inconsistent with or different from the terms and conditions of this License shall be of no force or effect. This License supersedes any confidentiality, non-disclosure, evaluation or trial agreement previously entered into by the Parties in relation to the subject matter hereof. In the event of a conflict between the terms of this License and the Subscription Agreement, the terms of this License shall control.

**L. Equitable Relief.** Customer acknowledges and agrees that a breach or threatened breach by Customer of any of its obligations under this License would cause WENDT irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, WENDT will be entitled to equitable relief, including, without limitation, a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

\*\*\* END \*\*\*



## 4.0 WENDTOS Subscription Agreement

This WENDTOS Subscription Agreement (“Agreement” or “Subscription Agreement”) is made and entered into as of the date set forth below between the customer identified below (“Customer”) and WENDT CORPORATION, a New York corporation with offices at 2555 Walden Ave, Buffalo, NY 14225 (“WENDT”). Customer and Wendt are each a “party” and are collectively “parties” to this Agreement. In consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Customer hereby agrees to subscribe to use WENDT’s equipment performance reporting system known as WENDTOS (“WENDTOS Services”) at the subscription level and at Customer’s plant location set forth below (the “Subscription”). Wendt hereby agrees to Customer’s Subscription to use WENDTOS Services at the level subscribed below subject to Customer’s payment of the fees set forth below (“Subscription Fees”).

2. Customer’s use of WENDTOS Services shall be governed by the WENDTOS License Agreement (the “License”) attached hereto and made

a part hereof which shall be entered into as of the Effective Date set forth below. The Subscription shall commence upon the Effective Date and shall continue for an initial term of 12 months and shall automatically renew for additional 12-month terms unless earlier terminated pursuant to the License. In accordance with the License, Customer shall have the option to terminate this Subscription and the License upon thirty (30) days written notice at any time (paid Subscription Fees are nonrefundable upon termination by Customer).

3. Each party represents and warrants to the other party that: (i) the execution of this Agreement by its representative whose signature is set forth below has been duly authorized by all necessary corporate or organizational action of such party; and (ii) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party.

4. Customer’s name, address, location and other applicable information along with the applicable Subscription Fees, which shall be payable in accordance with the License, are set forth below:

