AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
ARES SECURITY CORPORATION DBA THE MARINER GROUP
for
COMMANDBRIDGE MAINTENANCE AND SUPPORT
AGREEMENT NO. 65-2018

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and ARES SECURITY CORPORATION DBA THE MARINER GROUP, a California corporation, (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall furnish all technical and professional labor, and materials to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or their designated representative informed of the progress of said services at all times.

2. **TERM OF AGREEMENT.** This Agreement shall commence on July 1, 2018 and shall terminate on June 30, 2021, subject to earlier termination as provided below.

3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:

   a. **Maximum Expenditure.** The maximum expenditure under this Agreement shall not exceed $210,576. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing

immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.

b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

c. **Progress Documentation.** Service Provider shall provide District progress reports in a format and on a schedule as District directs. Progress reports shall include a description of work completed, cumulative dollar costs incurred, anticipated work for the next reporting period, percentage of work complete, and the expected completion date for remaining work. The report shall identify problem areas and important issues that may affect project cost and/or schedule. The report shall present actual percent completion versus planned percent completion.

4. RECORDS

a. Service Provider shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.

b. Such records shall be maintained by Service Provider for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

c. Service Provider understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in

Agreement No. 65-2018
Service Provider: ARES Security Corporation dba The Mariner Group
Requesting Department: Information Technology

Page 2 of 17

progress and to audit financial records, whether or not final, which Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Service Provider shall provide District at Service Provider's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at reasonable times of the Service Provider's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Service Provider shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Service Provider's failure to provide the records within the time requested shall preclude Service Provider from receiving any compensation due under this Agreement until such documents are provided.

5.   SERVICE PROVIDER'S SUB-CONTRACTORS

a.   It may be necessary for Service Provider to sub-contract for the performance of certain technical services or other services for Service Provider to perform and complete the required services; provided, however, all Service Provider's sub-contractors shall be subject to prior written approval by District. The Service Provider shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Service Provider or Service Provider's sub-contractors. Service Provider shall compensate each Service Provider's sub-contractors in the time periods required by law. Any Service Provider's sub-contractors employed by Service Provider shall be independent Service Providers and not agents of District. Service Provider shall insure that Service Provider's sub-contractors satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.

b. Service Provider shall also include a clause in its Agreements with Service Provider's sub-contractors which reserves the right, during the performance of this Agreement and for a period of three (3) years following termination of this Agreement, for a District representative to audit any cost, compensation or settlement resulting from any items set forth in this Agreement. This clause shall also require Service Provider's sub-contractors to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

a. In performance of this Agreement, Service Provider and Service Provider's sub-contractors shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and

direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of Executive Director (President/CEO) of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

   a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

   b. The Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Service Provider provided for in this Agreement.

   c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the

Agreement No. 65-2018
Service Provider: ARES Security Corporation dba The Mariner Group
Requesting Department: Information Technology

Page 5 of 17

District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the services of Service Provider provided for in this Agreement, Service Provider agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:

(1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars ($1,000,000) per Occurrence and two million dollars ($2,000,000) Aggregate for bodily injury, personal injury and property damage.

(a) The deductible or self-insured retention on this Commercial General Liability shall not exceed $5,000 unless District has approved of a higher deductible or self-insured retention in writing.

(b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit A, Certificate of Insurance, attached hereto and incorporated herein).

(c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-

Agreement No. 65-2018
Service Provider: ARES Security Corporation dba The Mariner Group
Requesting Department: Information Technology

Page 6 of 17

insurance maintained by the District shall be excess of the Service Provider's insurance and shall not contribute to it.

(d)   The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").

(2)   Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars ($1,000,000) combined single limit per accident for bodily injury and property damage.

(3)   Workers' Compensation, statutory limits, is required of the Service Provider and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars ($1,000,000) each accident, $1,000,000 disease policy limit and $1,000,000 disease each employee.   This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.

(4)   Professional Liability insurance in the amount of $1,000,000 per claim and $1,000,000 aggregate.

(a)   At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) years, in an amount no less than the amount required pursuant to this Agreement.

(b)   Alternately, if the existing Professional Liability is terminated during the above referenced five-year period, Consultant

Agreement No. 65-2018
Service Provider: ARES Security Corporation dba The Mariner Group
Requesting Department: Information Technology

Page 7 of 17

shall maintain at its own expense, "tail" coverage in the same minimum amount as set forth in this paragraph.

(c) All coverages under this section shall be effective as of the effective date of this Agreement or provide for a retroactive date of placement that coincides with the effective date of this Agreement.

(5) Umbrella or Excess Liability insurance with limits no less than one million dollars ($1,000,000) per occurrence and aggregate. This policy must provide excess insurance over the same terms and conditions required above for the General Liability, Automobile Liability and Employer's Liability policies.

b. Service Provider shall furnish District with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the District, an exemplar Certificate of Insurance is attached as Exhibit A and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the District. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the District in writing at least 30 days in advance of policy cancellation. Service Provider shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.

c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of insurance, the addendum shall indicate the insurance carrier or

underwriter who is the lead carrier and the applicable policy number for the CGL coverage.

d.   Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11.   **ACCURACY OF SERVICES**. Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or subcontractors.

12.   **INDEPENDENT CONTRACTOR**. Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However,

Agreement No. 65-2018
Service Provider: ARES Security Corporation dba The Mariner Group
Requesting Department: Information Technology

Page 10 of 17

Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

    a.   If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements

shall be documented and may be used as the basis for an amendment or directive as appropriate.

b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, sub-contractor and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.

c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

19. **PAYMENT BY DISTRICT**. Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service

Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Service Provider at no expense to the District. If such expenses, miscellaneous charges, or other liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Service Provider. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Service Provider.

20. **COMPLIANCE WITH PREVAILING WAGE LAWS (IF APPLICABLE)**

    a.   Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.

b.   <u>Certified Payrolls</u>. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls electronically via the software LCPtracker.

(1)   LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Service Provider will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Service Provider's request.

(2)   The use of LCPtracker by the Service Provider is mandatory. Access to LCPtracker will be provided at no cost to the Service Provider.

(3)   In order to utilize LCPtracker, the Service Provider needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to www.lcptracker.com. To Login, go to www.lcptracker.net and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Service Provider's request.

(4)   Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Service Provider's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.

(5)   Service Provider must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will

be given a Log-On identification and password from the Service Provider.

(6) Training options can be provided to the Service Provider upon request.

21. **SERVICE PROVIDER/CONTRACTOR REGISTRATION PROGRAM (IF APPLICABLE)**

a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

b. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Agreement No. 65-2018
Service Provider: ARES Security Corporation dba The Mariner Group
Requesting Department: Information Technology

Page 15 of 17

22. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.

23. **EXECUTIVE DIRECTOR'S SIGNATURE.** It is an express condition of this Agreement that said Agreement shall not be complete nor effective until signed by either the Executive Director (President/CEO) or Authorized Designee on behalf of the District and by Authorized Representative of the Service Provider.

    a.   Submit all correspondence regarding this Agreement to:

              Kurt Smith, Program Manager
              Information Technology
              San Diego Unified Port District
              P.O. Box 120488
              San Diego, CA 92112-0488
              Tel: (619) 686-6437
              Email: ksmith@portofsandiego.org

    b.   The Service Provider's Authorized Representative assigned below has the authority to authorize changes to the scope, terms and conditions of this Agreement:

              Mark Woelke, Chief Financial Officer
              ARES Security Corportation
              1934 Old Gallows Rd, Suite 410
              Vienna, VA 22182
              (571) 351-1260

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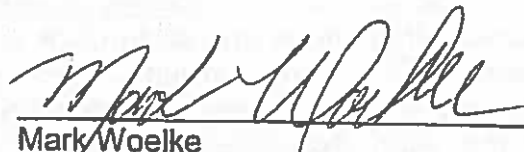
c. Written notification to the other party shall be provided, in advance, of changes in the name or address of the designated Authorized Representative.

SAN DIEGO UNIFIED PORT DISTRICT

**ARES SECURITY CORPORATION
DBA THE MARINER GROUP**

Mark Stainbrook
Vice President, Public Safety

Mark Woelke
Chief Financial Officer

Approved as to form and legality:
  GENERAL COUNSEL

By: Assistant/Deputy

A manually signed copy of this Agreement transmitted by email or any other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Agreement No. 65-2018
Service Provider: ARES Security Corporation dba The Mariner Group
Requesting Department: Information Technology

Page 17 of 17

THIS MAINTENANCE PLAN (this "**Plan**") describes the software maintenance and support maintenance program (the "**ARES Maintenance Program**") offered by ARES Security Corporation, a California corporation, dba The Mariner Group ("**ARES**"), in connection with the CommandBridge solution (the "**Product**") licensed by the User pursuant to the ARES End User License Agreement, subject to and in accordance with that certain ARES Maintenance Agreement to which this Plan is attached (the "**Maintenance Agreement**").

ARTICLE 1, DEFINITIONS

Section 1.1   Certain Matters of Construction. A reference to an article or section shall mean an Article of or a Section in this Plan, unless otherwise expressly stated.   The words "include," "includes," and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." All terms defined in this Plan shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.   The definitions contained in this Plan are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Any Plan, instrument, law, or regulation defined or referred to herein or in any Plan or instrument that is referred to herein means such Plan, instrument, law, or regulation as from time to time amended, modified, or supplemented, including (in the case of Plans or instruments) by waiver or consent and (in the case of laws and regulations) by succession of comparable successor laws or regulations and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns. Each accounting term not otherwise defined in this Plan has the meaning assigned to it in accordance with Generally Accepted Accounting Principles as consistently applied by ARES. In the event this Plan is translated into any language other than English, the English version of this Plan shall govern.

Section 1.2   Defined Terms. As used in this Plan, each of the following terms shall have the respective meanings ascribed thereto in the respective Sections of this Plan set forth opposite each such term below:

Term	Section
Minor Release	2.5(a)
Plan	Preamble
Product	Preamble
ARES	Preamble
ARES Maintenance Program	Preamble

Agreement No. XX-2018: Attachment A
Service Provider: ARES Security Corporation
Requesting Department: Information Technology

Page 1 of 5

| Tier 1 Provider | 2.2 |
| Tier 1 Support | 2.2 |

ARTICLE 2, ARES MAINTENANCE PROGRAM

Section 2.1   Overview; Process.

(a)   The purpose of the ARES Maintenance Program is to ensure that Users that have paid all applicable fees under the Maintenance Agreement have the opportunity to maximize the value of the Product during its lifetime. The ARES Maintenance Program is available to ARES customers that are a party to a Maintenance Agreement . The ARES Maintenance Program provides a mechanism for incident reporting and tracking, correction of issues, and delivery of certain patches, updates, and upgrades to the Product. Where the ARES software product(s) have been integrated into a specific user infrastructure environment, and such integration was performed by ARES as contracted integration services and have been listed in Annex 1 or the Maintenance Agreement as Integration Products, the Maintenance Program provides a mechanism to maintain the solution integration with the specific user infrastructure.

(b)   Incidents should be identified by User as provided in the following Section
2.2. Incidents will be processed and addressed first by priority (with fatal incidents receiving the highest priority and low incidents receiving the lowest priority), and then in the order in which the incidents are identified.

(c)   While it is ARES's goal to resolve all incidents as quickly as possible, ARES cannot predict or guarantee how much time will be required to resolve an incident or that an incident may be resolved. Also, the Product may incorporate or utilize third party applications. In the event an incident is related to such third party applications, the timeline and ability to resolve such incident may be dependent on the applicable third party and outside of ARES's control.

Section 2.2   Tier 1 Support.   ARES or a third party designee as contemplated in the Maintenance Agreement (the "**Tier 1 Provider**") will make available the following tier 1 support (the "**Tier 1 Support**") during the term of the Maintenance Agreement, subject to the payment of all applicable fees thereunder by the User:

(a)   Users may register incidents and request support by e-mail (at support@themarinergroup.net, or such other e-mail address as may be designated from time to time by ARES) or by telephone ((803) 339-06963), or such other telephone number as may be designated from time to time by ARES) during regular business hours (generally between 8:00AM and 5:00 PM EST, Monday through

Friday, but excluding holidays). When requesting technical support, User shall provide the following:

(i)   User's name, address, contact information;
(ii)   the specific version of the Product at issue;
(iii)   the exact text of any error message received by the User;
(iv)   the actions being taken by User which resulted in the error or incident;
(v)   any steps taken by or on behalf of User to resolve the incident
(vi)   detailed information regarding the User's system (including operating system, processor, and all other pertinent information); and
(vii)   such other information as may be useful in assessing or resolving the incident.

        (b)   The Tier 1 Provider will log an incident identified pursuant to the foregoing Section 2.2(a) in the tracking software utilized by the Tier 1 Provider and classify the incident as:

(i)   fatal (i.e., the incident has caused the Product to cease being operational and/or is causing data loss or corruption, and no work around is readily available);
(ii)   critical (i.e., the incident has caused a severe impact on operations, and no work around is readily available);
(iii)   high (i.e., the incident has caused a non-critical impact on operations, and no work around is readily available); or
(iv)   low (i.e., the incident causes little or no impact to business operations, and a work around is readily available).

        (c)   The Tier 1 Provider will use commercially reasonable efforts to respond to incidents identified by a User as follows:

Classification:	Target Initial Resolution	Resolution Process:
Fatal	Four (4) business hours	Escalate to Tier 3 Support, as
Critical	Eight (8) business hours	Escalate to Tier 2 Support, as
High	One (1) business day	Escalate to Tier 2 Support, as
Low	Two (2) business days	The Tier 1 Provider will attempt to resolve the problem or provide a work around while keeping the User informed of the status of the incident weekly. The Tier 1 Provider may escalate the incident to Tier 2.if the incident is not resolved promptly.

Agreement No. 65-2018; Attachment A
Service Provider: ARES Security Corporation
Requesting Department: Information Technology

Page 3 of 5

Section 2.3 <u>Tier 2 Support</u>. For each incident that is classified as high or critical or that is classified as low but escalated to Tier 2 Support, ARES will use commercially reasonable efforts to resolve the incident or provide a workaround. ARES will use commercially reasonable efforts to notify the User at least weekly of the status of the incident until it is resolved. ARES, at its discretion, may make a hot fix available, if possible.

Section 2.4 <u>Tier 3 Support</u>. For each incident that is classified as fatal or that is classified as high or critical but escalated to Tier 3 Support, ARES will use commercially reasonable efforts to resolve the incident or provide a workaround. ARES will use commercially reasonable efforts to notify the User of the status of the incident daily until it is resolved. ARES, at its discretion, may make a hot fix available, if possible.

Section 2.5 <u>Periodic Software Releases</u>.

(a) ARES periodically releases patches, updates, upgrades, enhancements, and bug-fixes (the "**Minor Releases**") to and with respect to its software. ARES will provide to User any such Minor Releases to the Product that are generally made available by ARES, at its discretion, during the Term. Such Minor Releases shall be subject to the terms and conditions contained in the ARES End User License Agreement as Supplemental Components (as defined in the ARES End User License Agreement).

(b) Notwithstanding the foregoing <u>Section 2.5(a)</u>, Minor Releases shall not include any new product release (i.e., Version 1.X to 2.X) or any major functional revision to the Product that ARES designates as a "major release."

Section 2.6 <u>Limitations</u>.

(a) Notwithstanding the foregoing, ARES will have no obligation to provide support to a User if:

(i) such support relates to or involves any products, data, features, devices, or equipment not created or developed by ARES;
(ii) User or a third party has altered or modified any portion of the Product in any manner without the prior written consent of ARES;
(iii) User has not installed or used the Product in accordance with the Documentation (as defined in the ARES End User License Agreement);
(iv) the incident is related to an issue that was resolved by ARES through a previous Minor Release, or the incident resulted from the User not installing all Minor Releases;
(v) ARES has retired or discontinued the applicable Product, in its discretion; or
(vi) the User is not in full compliance with this Plan or the ARES End User License Agreement.

Agreement No. 65-2018; Attachment A
Service Provider: ARES Security Corporation
Requesting Department: Information Technology

Page 4 of 5

      (b)   ARES shall not provide support with respect to issues with hardware, networks, electrical or peripheral devices, telephone systems, or the operation or installation of the foregoing.

      Section 2.7   <u>Amendment to Program</u>.   ARES, at its sole and absolute discretion, shall have the right to modify the ARES Maintenance Program at any time; *provided*, that ARES shall notify the User at least thirty (30) days in advance prior to any such modification taking effect.

ARTICLE 3, USER OBLIGATIONS

      Section 3.1   <u>Access</u>.   User will provide ARES with access (via remote telecommunications or on-site access at User's premises) to User's copies of the Product, work environment, and data to the extent necessary (as determined by ARES, in its discretion) to enable ARES to meet its support obligations hereunder; *provided*, that, if on-site services are required, User shall compensate ARES at its standard consulting rates and reimburse ARES for travel expenses.

      Section 3.2 <u>Minor Releases</u>. User shall promptly, and in no event later than thirty (30) days after receipt, install all Minor Releases provided by ARES.

      Section 3.3 <u>Condition</u>. ARES's obligations to provide support services are Expressly conditioned upon User satisfying the requirements of <u>Section 3.1</u>.

      Section 3.4 Requirement for Access. This Plan is subject to and a part of the Agreement. In the event any provision hereof conflicts with or is inconsistent with the Agreement, the Agreement shall govern. A User shall not receive, or be eligible to receive, any support or maintenance hereunder unless such User has paid all applicable fees and expenses under the Agreement (see Compensation & Invoicing, Attachment B) and the Agreement is in full force and effect.

Agreement No. 65-2018; Attachment A
Service Provider: ARES Security Corporation
Requesting Department: Information Technology

Page 5 of 5

ATTACHMENT B
COMPENSATION & INVOICING
San Diego Unified Port District

1. **COMPENSATION**

   a. For the satisfactory performance and completion of the services under this Agreement, District shall pay ARES (Service Provider) compensation as set forth hereunder.

   (1) Service Provider shall be compensated and reimbursed by District on the basis of invoices submitted annually for covered services during that District fiscal year (July through June). Three invoices shall be Fixed Fee, with an invoice submitted in July of each year for maintenance during that District fiscal year, per the table below.

   (2) Each invoice for Fixed Fee work shall include:

   Date work performed;
   Description of the work performed;
   Direct Costs.

Description	Amount
Maintenance, FY 19	$70,192.00
Maintenance, FY 20	$70,192.00
Maintenance, FY 21	$70,192.00
Total	*$210,576.00*

   b. **Reimbursable Expenses**

   Sub-Contractor Costs   0% mark-up
   Direct Costs   At Cost (zero mark-up)

   Note: Reimbursement for other costs in excess of $50.00 shall require the advance written approval by District's Project Manager. All other project related direct costs shall require appropriate documentation for reimbursement.

2. **INVOICING**

   a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

   b. Service Provider shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section 1, above:

Agreement No. 65-2018; Attachment B
Service Provider: ARES Security Corporation dba The Mariner Group
Requesting Department: Information Technology

Page 1 of 2

1)   Agreement No. 65-2018
2)   If applicable, the Task Authorization(s) (TA) number being charged.
3)   The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____, and that payment has not been received."

4)   Dates of service provided
5)   Date of invoice
6)   A unique invoice number

c.   District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.

d.   Invoices shall be mailed to the attention of: Kurt Smith, Information Technology, San Diego Unified Port District, P.O. Box 120488, San Diego, CA 92112-0488. All invoices SHALL ALSO BE submitted via email as an attachment to IT_Invoices@portofsandiego.org.

e.   Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.

f.   Service Provider shall submit invoices in July of each District fiscal year, commencing on July 1, 2018, for that fiscal year and for each of the fiscal years included in the agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

g.   Failure to pay the annual fees will result in a lapse of coverage, and District will cease to participate in the ARES Maintenance Program immediately at midnight when thirty (30) calendar days have passed since transmission of a proper invoice by e-mail occurs; consideration for reinstatement is at the sole discretion of ARES.

ATTACHMENT C
END USER LICENSE AGREEMENT
San Diego Unified Port District

THIS END USER LICENSE AGREEMENT (this "**Agreement**") is a legal agreement between San Diego Unified Port District ("**Licensee**"), and ARES Security Corporation dba The Mariner Group, a California corporation (the "**Company**"), governing the use of CommandBridge (the "**Software**") and the data files, operating instructions, user manuals, help files, technical information, and materials in, of, or relating to the Software, whether in written or electronic form, provided by the Company or provided or obtained in conjunction with the Software (the "**Documentation**"). By signing below or by installing, accessing, and/or using all or any portion of the Software or Documentation, you covenant, agree, represent, and warrant that you have gained lawful access to the Software and the Documentation and that that you accept and agree to the terms and conditions contained in this Agreement. The package for the Software may contain multiple versions of this Agreement, such as multiple translations and/or multiple media versions. To the extent any of the terms and conditions of such versions conflict with this English version of the Agreement, this English version of the Agreement shall apply and shall govern your use of the Software and the Documentation.

1. Grant of Limited License; Installation; Use.

(a) In consideration of the payment of the applicable license fees and you entering into this Agreement, Company hereby grants to Licensee a nonexclusive, nontransferable, non-assignable, non-sublicensable, and limited license to the Software (in object code, executable code, or in another machine readable format determined by Company in its sole discretion) and the Documentation, in each case subject to the terms and conditions of this Agreement. The Software and Documentation shall be utilized in connection with your internal business operations only.

(b) The Software and the Documentation (and your rights to and with respect to the Software and Documentation) shall be in accordance with and subject to the terms and conditions of this Agreement and such ordering documents as may be executed by you and Company with respect to the Software and the Documentation (as applicable, an "**Order Form**"), and you shall not have any rights in, to, or with respect to the Software or the Documentation in addition to those rights provided in this Agreement and the Order Form. In the event of a discrepancy between this Agreement and an Order Form, the terms of this Agreement shall govern unless the Order Form explicitly supersedes this Agreement, Company executes such Order Form, and a duly authorized corporate officer of Company initials the provision of the Order Form superseding this Agreement; *provided*, that if an Order Form contains limitations with respect to the Software or Documentation in addition to those provided in this Agreement (such as with respect to authorized users, computers, cores, or facilities), such limitations shall be incorporated in this Agreement and become a part hereof.

(c) From time to time after you obtain the Software, Company may, in its sole discretion, make available updates, bug fixes, supplements, or add-on components relating to the Software (collectively, the "**Supplemental Components**").

Supplemental Components may be provided under separate agreement for additional consideration. If other terms are not provided, the Supplemental Components shall be included in the definition of Software, and your use of such Supplemental Components will be governed by the terms and conditions of this Agreement.

THE SECTIONS BELOW REGARDING DISCLAIMER OF WARRANTIES, EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES, AND LIMITATION OF LIABILITY AND REMEDIES SHALL APPLY TO SUCH SUPPLEMENTAL COMPONENTS.

(d)   You acknowledge and agree that the acts, actions, errors, and omissions of your employees and personnel (including your authorized agents and representatives) are and shall be considered your acts, actions, errors, and omissions. You shall be solely responsible and liable for your employees and personnel.

2.   <u>License Restrictions and Limitations</u>.

(a)   Licensee shall not, and shall not allow or permit any of its employees or personnel to, (i) copy, redistribute, encumber, sell, rent, lease, lend, sub-lease, sublicense or otherwise transfer the Software or Documentation or the right to access and use the Software or the Documentation to, for, or on behalf any third party; (ii) install or permit the installation and/or use of any harmful or malicious code, including, but not limited to, any automated rootkits, trojans, viruses, spyware or other specific exploits designed to breach the security of the Software or learn, gain access to or use the Software or the results of the use of the Software; (iii) attempt to or remove, disable, circumvent or render ineffective any code, feature, process or method of the Software intended to secure, encrypt or otherwise prevent the Software from unauthorized access and use; (iv) remove, modify, or obscure any legal notices, product identification, or proprietary rights notices included within or referenced by the Software or Documentation; (v) modify, adapt, enhance, localize, translate, decompile, disassemble, or reverse engineer the Software or the Documentation; (vi) attempt to derive the source code of the Software; (vii) create any derivative works of the Software, including customization, translation or localization; (viii) utilize the Software in connection with any service bureau or time-sharing system or to provide processing services for any third party; (ix) access or use the Software or Documentation remotely or via a LAN, WAN or other networked computer; (x) use the Software or the Documentation for the development of or in connection with a software application or service that has the same or similar features, capabilities, and/or function of or to the Software; (xi) publish any tests, results, or other information containing or relating to the Software or the Documentation; (x) use the Software or Documentation for any unlawful purpose; or (xi) violate the terms and conditions contained in this Agreement.

(b)   Except as otherwise expressly provided herein, you may install and use <u>ONE</u> copy of the Software on <u>ONE</u> Computer. The Software may not be installed, displayed, accessed, shared or used concurrently on, from or by different computers, systems, or devices. The Software may not be used by more than one processer on a single Computer at any one time.   You may only transfer the Software from one

Computer to another upon the express written consent of the Company. For this purpose, "**Computer**" shall mean a physical device or virtual machine that accepts information in digital or similar form and manipulates such information for a specific result based on a sequence of instructions, including, without limitation, a desktop computer, laptop computer, server, tablet, mobile or other hand-held device, telecommunication device, internet-connected device, and any other hardware product capable of operating software applications; and "**virtual machine**" shall mean a software implementation that executes programs like a physical machine where the software running inside the virtual machine is limited to the resources and abstractions provided by the virtual machine.

   3.   Reservation of Rights and Ownership; Confidential Information.

        (a)   The Software and Documentation are protected by copyright and other intellectual property laws and treaties. Company reserves all rights not expressly granted to you in this Agreement. This Agreement does not grant you any rights to trademarks or service marks of Company or its affiliates, suppliers, or licensors.

        (b)   The Software and Documentation are licensed, not sold. You acknowledge and agree that, as between you and Company, Company retains the sole and exclusive right, title, and interest in and to: (a) the Software and the Documentation; (b) all patents, copyrights, trade secrets, and other intellectual property rights with respect to the Software and the Documentation; and (c) suggestions made by you for, to, or relating to the Software and the Documentation, even if such suggestions are incorporated into subsequent versions of the Software and the Documentation. Licensee agrees to assign, and does hereby assign to Company, all right, title and interest in and to the Software, the Documentation, and any related intellectual property that may be developed or acquired by you as a result of the access and use of the Software or the Documentation. Licensee further agrees not to make any claim for, and does hereby expressly waive and release any right to, an accounting, compensation or other consideration of any kind arising from or related to any participation in the use, modification or improvement of the Software or the Documentation.

        (c)   You acknowledge and agree that, by virtue of your access to the Software and the Documentation and your relationship with Company, certain Confidential Information may be provided to or made available to you. With respect to all Confidential Information, you shall: (i) take all steps necessary to keep all Confidential Information strictly confidential; (ii) not disclose or reveal any Confidential Information to any person other than your employees and personnel who are actively and directly involved in activities authorized hereunder and who need to know the Confidential Information in connection with activities authorized hereunder; (iii) not use Confidential Information for any purpose other than in connection with your activities that are authorized under this Agreement; and (iv) not disclose to any person (other than those of your employees and personnel who are actively and directly participating in the scope of work under this Agreement or who otherwise have a need to know for the purpose of your activities that are authorized under this Agreement) any information about the Agreement, or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that Confidential Information has been made

available hereunder. For this purpose, "**Confidential Information**" includes, but is not limited to, (1) all documents and information that Company or its affiliates, suppliers, licensors, and personnel treat as confidential or proprietary, (2) this Agreement and the Documentation, (3) all business plans, projections, records, and other related documents or information, and (4) algorithms, innovations, and concepts developed by Company and/or its affiliates, suppliers, licensors, and personnel. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement.

4. <u>Consent to Use of Data</u>. You agree that Company and its affiliates, suppliers, and licensors may collect and use technical information from you related to the Software and your use of the Software, including, but not limited to, technical information pertaining to Software issues experienced by you that are reported or discovered when you request technical support.

5. <u>Backup Copy</u>. You may make and maintain one back-up copy of the Software as long as this Agreement is in effect. Concurrent with the expiration or termination of this Agreement, if applicable, all copies of the Software and Documentation shall be returned to Company or promptly destroyed with written notice and certification of destruction to Company.

6. <u>Support and Maintenance</u>. Company and its affiliates, suppliers, and licensors shall not provide any support or maintenance to or relating to the Software or the Documentation under this Agreement. Support and Maintenance to or with respect to the Software and Documentation will only be provided to you under a separate written support agreement, if such agreement is executed by you and the Company, subject to the terms and conditions contained in such agreement.

<u>Termination</u>. The license granted herein shall be effective unless and until it is terminated. This license shall terminate as provided on the Order Form, if applicable. This Agreement, and the license

7. rights granted hereunder, shall terminate and expire automatically without notice from Company if you fail to comply with any provision of this Agreement. Upon any such termination, all of your rights to use the Software and the Documentation shall immediately cease and you shall promptly destroy all copies of the Software and the Documentation, including the above referenced back-up copy, if any. The provisions of Sections 1(d) through 17 shall survive termination of this Agreement indefinitely, regardless of the reason for such termination.

8. <u>Export Compliance</u>. You acknowledge that the Software and the Documentation are subject to export control laws of the United States of America, from other countries where the Software or the Documentation originated, in whole or in part, and/or from where the Software or the Documentation is being exported. You agree to strictly comply with all such laws and regulations and acknowledge and agree that you are and shall be solely responsible to obtain licenses to and pay all costs related to the export, re-export, or import the Software and the Documentation.

9.   Limited Warranty; Disclaimer.

(a)   Company represents and warrants that: (i) it has all right, title and authority necessary to grant the licenses extended under this Agreement; (ii) for a period of sixty (60) days after the date hereof, the Software will perform in all material respects in accordance with the Documentation; *provided*, that all claims under this subparagraph (b) must be made in writing no later than sixty (60) days after the date hereof; and (iii) the Software is free of any programs, subroutines, code, instructions, data or functions, (including viruses, worms, date bombs, time bombs, spyware, malware, or other limiting design, instruction, or routine) introduced by the Company, the purpose of which is to intentionally cause the Software to cease operating, or to damage, interrupt, interfere with or hinder the operation of the Software, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY ABOVE IN THIS SECTION 9, THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND. COMPANY MAKES NO OTHER EXPRESS WARRANTIES AND WAIVES ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (REGARDLESS OF WHETHER COMPANY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE), AND NON-INFRINGEMENT REGARDING THE SOFTWARE AND/OR THE DOCUMENTATION. NO ADVICE OR INFORMATION GIVEN BY COMPANY OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY, WHETHER ORAL OR WRITTEN. COMPANY DOES NOT WARRANT THAT THE SOFTWARE OR THE DOCUMENTATION WILL BE ERROR-FREE. COMPANY DOES NOT WARRANT THAT THE USE OF THE SOFTWARE OR RELATED SERVICES WILL REDUCE, ALTER OR ELIMINATE THE RISK, PROBABILITY OR CONSEQUENCES OF ANY BREACH OF SECURITY, ATTACK, DAMAGE OR INJURY TO ANY PERSON OR PROPERTY. ANY AND ALL USE OF THE SOFTWARE, DOCUMENTATION, OUTPUT OR REPORTS GENERATED BY THE SOFTWARE, RESULTS AND RELATED SERVICES ARE AT THE SOLE RISK   OF   THE   LICENSEE.

THE LIMITED WARRANTY PROVIDED IN SECTION 9 SHALL BE VOID IF ANY FAILURE OF THE SOFTWARE HAS RESULTED FROM ACCIDENT, ABUSE, MISAPPLICATION, ABNORMAL USE, YOUR FAILURE TO FOLLOW THE INSTALLATION OR OTHER REQUIREMENTS OR INSTRUCTIONS CONTAINED IN THE DOCUMENTATION (IF ANY), OR MODIFICATIONS TO THE SOFTWARE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITED WARRANTY AND THE DISCLAIMERS SET FORTH ABOVE SHALL APPLY TO COMPANY AND ITS SUBSIDIARIES, AFFILIATES, RESELLERS, SUPPLIERS AND DEVELOPERS. IN THE EVENT THAT ANY COURT FINDS THAT ANY WARRANTY THAT IS DISCLAIMED ABOVE MAY NOT BE DISCLAIMED UNDER APPLICABLE LAW, YOU AGREE THAT THIS SECTION 9 SHALL BE REVISED TO THE MINIMUM EXTENT POSSIBLE TO COMPLY WITH APPLICABLE LAW.

(b)   If Company breaches the foregoing limited warranty and Licensee provides timely written notice of such breach, Company shall, at its option and in full

satisfaction of its warranty obligations (i) repair or replace the Software that does not meet such limited warranty; or (ii) return the amount paid by you to license the Software that resulted in such breach.

10. Indemnity.

(a) Company shall (i) defend you from and against any claim raised in a legal suit or proceeding alleging that the Software infringed or infringes any United States patent or any United States copyright, and (ii) pay all damages awarded by a court of competent jurisdiction for such claim (or any amounts agreed to by Company in settlement of such claim); *provided*, that such obligations are expressly conditioned upon you (A) promptly notifying Company of any such claims (but in no event later than five (5) calendar days after you are notified or obtain knowledge of such claims); (B) providing such assistance as may be required by Company; (C) immediately ceasing all activities that allegedly are infringing any such patent or copyright; and (D) giving Company sole and absolute control over all such claims and any related proceedings or settlement negotiations. THE FOREGOING IS IN LIEU OF ANY WARRANTIES OF NONINFRINGEMENT, WHICH IS EXPRESSLY DISCLAIMED UNDER THE FOREGOING SECTION 9. The foregoing obligation of Company does not apply with respect to Software or portions or components thereof that (1) were not supplied by Company, (2) were made or developed in whole or in part in accordance to your specifications, (3) were modified after shipment by you, if the alleged infringement relates in whole or in part to such modification, (4) were combined with other products, processes or materials where the alleged infringement relates to such combination, or (5) results from your use of the Software that is incident to an infringement not resulting primarily from the Software or is not strictly in accordance with the terms of this Agreement ("**Excluded Claim**").

THE PROVISIONS OF THIS SECTION 10(a) SET FORTH THE ENTIRE LIABILITY OF COMPANY AND YOUR SOLE REMEDY WITH RESPECT TO INFRINGEMENT AND ALLEGATIONS OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHER PROPRIETARY RIGHTS OF ANY KIND ARISING FROM OR RELATED TO THE SOFTWARE, THE DOCUMENTATION, OR THE MARKETING, INSTALLATION, OPERATION, DESIGN, DISTRIBUTION OR USE OF THE SOFTWARE OR THE DOCUMENTATION.

(b) Licensee agree to indemnify and hold harmless Company and affiliates and personnel from and against any claims, actions, demands, liabilities, settlements, damages and expenses, including but not limited to reasonable attorneys' fees and costs, (i) of unrelated third-parties arising from or related to violation of this Agreement and/or (ii) related to an Excluded Claim.

11. Limitation of Liability. Subject to the limitations provided in this Section 11, the aggregate liability of Company, its resellers, and anyone else involved in the creation, production, marketing, distribution, or delivery of the Software or the Documentation for damages or claims arising from or relating, directly or indirectly, to the Software, the Documentation, or this Agreement shall be limited to and shall not exceed, in the aggregate, the fees actually paid or payable by you to Company under this Agreement to license the Software and the Documentation; *provided*, that such limitation shall not apply with respect to the indemnification obligations of Company under the foregoing Section 10(a).

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY, ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND SUCCESSORS AND ASSIGNS OR ANY PERSON OR ENTITY INVOLVED IN THE CREATION, PRODUCTION, DELIVERY OR USE OF THE SOFTWARE, ITS CONTENTS OR RESULTS OF THE USE OF THE SOFTWARE OR RELATED SERVICES, BE LIABLE TO THE OTHER PARTY, AND ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND SUCCESSORS AND ASSIGNS OR ANY PERSON OR ENTITY INVOLVED IN THE CREATION, PRODUCTION, DELIVERY OR USE OF THE SOFTWARE, ITS CONTENTS OR RESULTS OF THE USE OF THE SOFTWARE OR RELATED SERVICES ("RELATED PARTIES") FOR ANY INJURY TO PERSON OR PROPERTY OR DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR LOSS OF DATA OR PROPERTY) ARISING FROM OR RELATED TO THIS AGREEMENT AND/OR THE USE, RELIANCE ON OR TRANSFER OF ANY PROPERTY, SOFTWARE, INFORMATION, DATA OR SERVICES PROVIDED, GENERATED OR MADE ACCESSIBLE UNDER THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH INJURY OR DAMAGES; *PROVIDED* THAT THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO (a) A PARTY'S OBLIGATION TO INDEMNITY THE OTHER PARTYAND ITS RELATED PARTIES UNDER THE FOREGOING SECTION 10; OR (b) ANY VIOLATION OF LICENSEE OF THE LICENSE RIGHTS AND RESTRICTIONS SET FORTH ABOVE.

12.   Taxes/Costs. You shall be solely responsible for (a) the cost of shipping or transporting the Software and the Documentation; (b) payment of all taxes, duties, and other costs, fees, and expenses arising from or related to the transaction contemplated in this Agreement, the Software, and/or the Order Form (excluding only Company's taxes on its net income), including, but not limited to, sales, use, excise, value added, and all other taxes; (c) all applicable export and import fees; (d) all custom duties and import and export fees and expenses; and (e) all other charges, costs, and fees.

13.   Audit Rights. Company and its designees and representative shall have the right, during normal business hours, to audit your use of the Software and your compliance with this Agreement. Company will provide no less than three (3) days advance written notice prior to conducting an audit. During an audit, you shall provide Company and its designee and/or representatives with access to your records and personnel solely for the purposes authorized in this Section 13, and you shall cooperate with such audit. The cost of the audit shall be paid by Company unless the results of the audit indicate that you have not complied with this Agreement, in which case, you shall promptly pay Company any amounts owed thereto, and you shall bear all costs associated with or relating to the audit. You shall be responsible for any professional, personnel, or general administrative expenses you incur in connection with an audit.

14. Injunctive Relief. You agree that a remedy at law for a breach or violation of this Agreement would be inadequate, that Company and its affiliates, suppliers, and licensors would suffer immediate and irreparable harm as a result of such breach or violation, and that Company and its affiliates, suppliers, and licensors shall be entitled to obtain temporary, preliminary, and permanent injunctive relief, without bond, to restrain any such breach or violation in any court of competent jurisdiction. Nothing provided in this Section 14 shall limit the remedies available to Company in this Agreement or under applicable law.

15. Governing Law; Disputes.

(a) This Agreement shall be governed by the laws of Delaware, U.S.A., without regard to conflict of law principles. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement and is hereby expressly excluded.

(b) Any legal proceedings arising from or relating to this Agreement shall be brought and resolved exclusively in courts located in Atlanta, Georgia (and appropriate appellate courts), and the parties expressly consent to exclusive personal jurisdiction and venue therein; provided, that this subparagraph (b) shall not limit Company's right to injunctive relief in any court of competent jurisdiction as provided above.

16. Third Party Components. You acknowledge and agree that the Software may require certain commercially available software and hardware to run properly, such as operating systems, databases, and servers or other hardware that meet the requirements specified in the Documentation. You shall be solely responsible for obtaining such hardware and software licenses and for paying all costs and expenses related thereto. All licensing terms and agreements for such hardware and software shall be between you and the applicable third party provider, and Company shall have no obligation or liability in connection therewith. You acknowledge and agree that the Software may utilize, incorporate, embed, or access third party applications, and that such third party applications may be subject to additional contractual terms and license requirements, which such terms and license requirements are referenced or made available in the Documentation.

17. General.

(a) You shall not transfer, assign, pledge, gift, or encumber this Agreement or any rights granted hereunder without the prior written consent of Company, and any attempt to do so shall be void and of no force or effect.

(b) No provision of this Agreement may be waived except in writing signed by the waiving party. No waiver of any default or violation shall constitute a waiver of any subsequent default or violation of the same or other provision.

(c) The section headings used in this Agreement are intended for convenience only and shall not be deemed to modify, limit, or supersede any provision.

(d)   This Agreement may be executed in one or more identical counterparts (including by facsimile or portable document format (pdf)) for the convenience of the parties hereto, each of which counterparts will be deemed an original, but all of which counterparts together will constitute one and the same agreement.

This Agreement contains the entire agreement between you and Company relating to the Software and the Documentation and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software, the Documentation, or any other subject matter covered by this Agreement. If any provision of this Agreement is, or is determined to be, invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law, and the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

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EXHIBIT A
CERTIFICATE OF INSURANCE
San Diego Unified Port District

By signing this form, the authorized agent or broker *certifies* the following:

(1) The Policy or Policies described below have been issued by the noted Insurer(s) [Insurance Company(ies)] to the Insured and is (are) in force at this time.

(2) As required in the Insured's agreement(s) with the District, the policies include, or have been endorsed to include, the coverages or conditions of coverage *noted on page 2 of this certificate.*

(3) Signed copies of *all* endorsements issued to effect require coverages or conditions of coverage are attached to this certificate.

Return this form to: **San Diego Unified Port District c/o Ebix BPO**
P.O. Box 100085 – 185
Duluth, GA 30096   – OR –
Email: portofsandiego@ebix.com FAX 1-866-866-6516

Name and Address of Insured (Consultant)	SDUPD Agreement Number: _____
	This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: $_____		Commencement Date: Expiration Date:	Each Occurrence: $_____ General Aggregate: $_____
	Commercial Automobile Liability All Autos Owned Autos Non-Owned & Hired Autos		Commencement Date: Expiration Date:	Each Occurrence: $
	Workers Compensation – **Statutory** Employer's Liability		Commencement Date: Expiration Date:	E.L. Each Accident $ E.L. Disease Each Employee $ E.L. Disease Policy Limit $
	Professional Liability Claims Made Retro-Active Date _____		Commencement Date: Expiration Date:	Each Claim $
	Excess/Umbrella Liability		Commencement Date: Expiration Date:	Each Occurrence: $_____ General Aggregate:$_____

CO LTR	COMPANIES AFFORDING COVERAGE	A. M. BEST RATING
A		
B		
C		
D		

A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District.

Name and Address of Authorized Agent(s) or Broker(s)	E-mail Address:
	Phone: Fax Number:
	Signature of Authorized Agent(s) or Broker(s) Date:

Agreement No. 65-2018; Exhibit A
Service Provider: ARES Security Corporation dba The Mariner Group
Requesting Department: Information Technology

Page 1 of 2

<u>SAN DIEGO UNIFIED PORT DISTRICT</u>

REQUIRED INSURANCE ENDORSEMENT

<u>ENDORSEMENT NO.</u>	<u>EFFECTIVE DATE</u>	<u>POLICY NO.</u>

NAMED INSURED:

GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):
All written agreements, contracts and leases with the San Diego Unified Port District
and any and all activities or work performed on district premises

Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or in any endorsement now or hereafter attached thereto, it is agreed as follows:

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.

2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.

3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").

4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

Except as stated above, and not in conflict with this endorsement, nothing contained herein shall be held to waive, alter or extend any of the limits, agreements or exclusions of the policy(ies) to which this endorsement applies.

_____
(NAME OF INSURANCE COMPANY)

_____
(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

**San Diego Unified Port District
c/o Ebix BPO
P.O. Box 100085 – 185
Duluth, GA 30096   – OR –
Email to: portofsandiego@ebix.com Fax: 1-866-866-6516**