

**BLUE ECONOMY AGREEMENT**  
**between**  
**SAN DIEGO UNIFIED PORT DISTRICT**  
**and**  
**SWELL ADVANTAGE LTD.**  
**for**  
**SMART MARINA PROJECT**

**THIS BLUE ECONOMY AGREEMENT** (“Agreement”) is being made this 21th day of June, 2017 (“Effective Date”), by and between the **SAN DIEGO UNIFIED PORT DISTRICT**, a public corporation with a business address of 3165 Pacific Highway, Post Office Box 120488, San Diego, CA 92112-0488 (“District”), and **SWELL ADVANTAGE LTD.**, a company incorporated under the laws of the Province of Nova Scotia, Canada, with its principal place of business located at 701-1505 Barrington Street, Halifax, NS Canada B3J 3K5 (“Swell”), with regards to the terms and conditions as set forth herein. The District and Swell may be referred to collectively as the “Parties,” with each being a “Party.”

**RECITALS**

**WHEREAS**, the District has established the Blue Economy program which seeks to encourage the implementation of innovative technologies and blue tech businesses that will benefit the local port community of San Diego and enable the District to diversify its portfolio of business lines and assets by providing resources and funding which will foster that development (the “Program”);

**WHEREAS**, the District’s purposes include promotion of commerce and navigation, and the District manages land and water in the San Diego Bay, including marinas and other boat slips;

**WHEREAS**, Swell has developed automated dock management platform to connect available and latent moorings, dock and wharf spaces to boaters;

**WHEREAS**, Swell proposes to demonstrate the operation of the automated dock management and optimization platform in the San Diego Bay;

**WHEREAS**, Swell has applied to participate in the Program and has been selected by the District to participate in such program;

**WHEREAS**, the District desires to participate in the automated dock management platform demonstration project and business model validation, both as more particularly described in the attached Exhibit A, for purposes of determining the feasibility, effectiveness and the potential scalability of such operation in the San Diego Bay (the "Pilot Project") by providing funding and other resources to Swell in connection with the Pilot Project, and in support thereof, and the District desires to receive a certain share of Swell's revenue from the automated dock management platform; and

**WHEREAS**, the Parties desire to enter into this Agreement in order to set forth their respective duties, obligations and revenue sharing arrangements in regards to Swell's participation in the Program and the District's participation and support of Swell as to the Pilot Project.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements in this Agreement, the Parties agree as follows:

1. Recitals Incorporated by Reference. The recitals set forth above are incorporated herein by this reference and are made terms of this Agreement and not mere recitals.

1. Term. This Agreement shall commence on June 21, 2017 and shall terminate on May 31, 2018, subject to earlier termination as provided herein. However, the obligations of Swell under Section 5, 6, 7, 14, 15 shall survive termination of this

Agreement for a period of 15 years until May 31, 2032, and 16, Indemnity, shall survive termination of this Agreement (“Surviving Obligations”).

2. Swell to Perform the Pilot Project. Swell shall perform the Pilot Project in accordance with the attached Scope of Work, Exhibit A.

3. District Support of Pilot Project. District will support the Pilot Project by providing the following, and shall not be responsible for any other support or compensation for the Pilot Project. Swell shall be responsible for all other costs and expenses of the Pilot Project.

- a. Upon execution of this Agreement, District shall provide funding in the amount of \$100,000.00 (US) to Swell. Payment from District to Swell shall be made in one lump-sum.
- b. For the Pilot Program only, the District shall provide, at no cost to Swell: (1) staff resources to conduct District’s environmental review under the California Environmental Quality Act and California Coastal Act permitting and (2) reasonable assistance to Swell to help obtain other necessary permits, exemptions, waivers, approvals that may be needed.

4. Revenue Sharing. In consideration of the District providing funding, staffing resources, and other support as described in Section 4, herein, the District shall be entitled to a five percent (5%) share of any and all gross revenue of any kind that Swell earns and receives related to an automated dock management platform, including without limitation, revenue from moorage and docking management, insurance lead generation, SaaS licensing, other licensing, sales, service, equipment, products, commissions, and other revenue for a period of fifteen (15) years from execution of this Agreement regardless of where in the world such revenue is generated (“Revenue Share”).

Swell shall pay the Revenue Share to the District on a quarterly basis. Each payment of Revenue Share shall be accompanied by a written report of Swell’s

applicable gross revenue and Revenue Share calculation, in a form reasonably required by the District ("Revenue Report"). Unless an alternative method of payment has been arranged in writing by the Parties, all payments to the District shall be made payable to "SAN DIEGO UNIFIED PORT DISTRICT" and be sent to 3165 Pacific Highway, Post Office Box 120488, San Diego, CA 92112-0488. Swell shall make each quarterly payment within 30 days of the end of each quarter. Notwithstanding the foregoing, until such time as the Revenue Share would equal \$40,000 (USD) for a calendar year, Swell may report and pay the Revenue Share on an annual basis, within 30 days of the end of the year.

Swell's first Revenue Report shall be for the period ended December 31, 2017. However, notwithstanding the above, the first two years of Revenue Share shall not be paid to the District until January 30, 2020 for the Revenue Share accrued to December 31, 2019 at which time all previous Revenue Share shall be paid in full to the District without interest, and all payments of Revenue Share thereafter shall be paid quarterly with the Revenue Report.

In order to ensure that the District receives its bargained-for Revenue Share, Swell agrees that all of its dealings involving the Pilot Project and/or related to an automated dock management platform, including without limitation, dealings related to moorage and docking management, insurance lead generation, SaaS licensing, other licensing, sales, service, equipment, products, commissions, and other revenue, whether with independent third parties, Swell affiliates, owners, insiders, or others, shall be the result of arms-length negotiations. If any such dealings are not the result of arms-length negotiations and result in less Swell gross revenue than would have resulted from an arms-length negotiation, for the purpose of calculating the District's Revenue Share for such deals, the higher Swell gross revenue that would have resulted from an arms-length negotiation shall be used in the calculation of Revenue Share.

5. Swell's Buy Out Option. Swell may buy out District's right to receive further Revenue Share once the District receives a specific return on its \$100,000 funding as stated below through a total of cumulative Revenue Share payments and other

payments from Swell to District. The “Date of Buy Out” shall be the date upon which Swell gives District written notice to exercise buy out. After a buy out, all obligations of Swell in this Agreement, other than the payment of future Revenue Share, continue for the remaining term of the Agreement.

<b>Date of Buy Out</b>	<b>Cumulative Total of Revenue Share payments and other payments from Swell to District required for Buy Out</b>
Prior to second anniversary of Effective Date of this Agreement	\$300,000
On or after the second anniversary of Effective Date of this Agreement, but prior to third anniversary of Effective Date of this Agreement	\$400,000
On or after the third anniversary of Effective Date of this Agreement, but prior to fourth anniversary of Effective Date of this Agreement	\$500,000
On or after the fourth anniversary of Effective Date of this Agreement, but prior to fifth anniversary of Effective Date of this Agreement	\$600,000
On or after the fifth anniversary of Effective Date of this Agreement, but prior to sixth anniversary of Effective Date of this Agreement	\$700,000
On or after the sixth anniversary of Effective Date of this Agreement, but prior to seventh anniversary of Effective Date of this Agreement	\$800,000
On or after the seventh anniversary of Effective Date of this Agreement, but prior to eighth anniversary of Effective Date of this Agreement	\$900,000
On or after the eighth anniversary of Effective Date of this Agreement	\$1,000,000

6. Records and Audit Rights. Swell shall, at all times, maintain full and complete records relating to revenue from the Pilot Project and/or related to an automated dock management platform, including without limitation, dealings related to moorage and docking management, insurance lead generation, SaaS licensing, other licensing, sales,

service, equipment, products, commissions, and other revenue. All such records shall be kept for a minimum of ten (10) years from their creation.

The District shall, at all times, upon reasonable notice, have the right to review such records and to audit such records. Inspection of such records shall occur during business hours at Swell's offices and/or facilities. Swell shall, at no cost to District, furnish reasonable facilities and assistance during such review and audit. If any such inspection or audit reveals that Swell has underpaid any Revenue Share due hereunder by more than 5%, Swell shall also reimburse the District within 30 days after receipt of a copy of the inspection or audit report for all out-of-pocket costs and expenses incurred by the District for such inspection or audit. If an underpayment of the Revenue Share is determined by any such inspection or audit and Swell does not dispute such finding, then Swell shall pay to the District within 30 days after receipt of a copy of the inspection or audit report the amount of any such underpayment. If an overpayment of the Revenue Share for any quarterly period is determined by any such inspection or audit and the District does not dispute such finding, then the District shall pay to Swell within 30 days thereafter the amount of such overpayment.

7. Most-Favored Pricing. In further consideration of the District providing funding and staffing resources as described in Section 4, herein, the District shall be entitled, if it so chooses, to contract with Swell for services, equipment, and/or materials related to an automated dock management platform upon prices and terms which are equal to, or more favorable to the District than, prices and terms then being offered by Swell to any other entity or customer in the world.

8. Representations and Warranties by Swell.

- a) Swell has all requisite legal and corporate power and authority to enter into this Agreement and perform its obligations in accordance with the terms of this Agreement. The execution and delivery of this Agreement by Swell and the consummation by it of the transactions contemplated hereby have been

duly authorized by all necessary action on the part of Swell and no further action is required by Swell in this regard. This Agreement has been duly executed and delivered by Swell and constitutes the valid and binding obligation of Swell enforceable against Swell in accordance with its respective terms except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

- b) Swell is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other person, entity or party in connection with the execution, delivery and performance by Swell of this Agreement in accordance with its terms.
- c) The operation of the business of Swell, as it is currently conducted and as proposed to be conducted, including Swell's proposed activities in connection with the Pilot Project as contemplated hereby, has not, does not and will not infringe or misappropriate in any manner the intellectual property of any third party or constitute unfair competition or trade practices under the applicable laws of any jurisdiction.
- d) Swell has not received written notice from any third party or any other overt threats from any third party, that the operation of the business of Swell as it is currently conducted and as proposed to be conducted, or any act, product or service of Swell, infringes or misappropriates the intellectual property of any third party or constitutes unfair competition or trade practices under the applicable laws of any jurisdiction.

9. Operation of Business. Swell will operate its business in a manner which will not knowingly infringe or misappropriate in any manner the intellectual property of any third party or constitute unfair competition or trade practices under the applicable laws of any jurisdiction. Swell shall notify the District immediately upon receiving notice from any person, party or government agency or authority of notice of any other overt threats that the operation of the business of Swell infringes or misappropriates the intellectual property of such third party or constitutes unfair competition or trade practices under the applicable laws of any jurisdiction.

10. Acknowledgement of District Involvement. In recognition of the District's support of the Pilot Project, Swell agrees to acknowledge such by including the following statement in publicity, publication, marketing, reports and documentation related to the Pilot Project in manner, location, and size reasonably likely to be seen by the intended audience: "This demonstration project is made possible through the Port of San Diego's Blue Economy Program." Without the District's prior consent, which may be withheld or conditioned in each instances in its absolute discretion, Swell shall not use the District's name, logo, or other intellectual property, or misrepresent the District's involvement or statements related to Swell or the Pilot Project.

11. Compliance. Swell and its 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. Swell shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable. Swell shall comply with all Federal, State, regional and local laws, and district ordinances and regulations applicable to the performance of any services contemplated by this Agreement as exist now or as may be added or amended.



12. Independent Analysis and Waiver. Swell shall perform, demonstrate and operate the Pilot Project, and provide the services as contemplated by this Agreement independent of the control and direction of the District, other than normal contract monitoring provided; however, Swell shall possess no authority with respect to any District decision. While Swell may seek subject matter advice and information from District employees or personnel, provision of such advice is at the sole and absolute discretion of the District, and District shall not be responsible or liable for any such advice or information that it may provide, or the absence of such. Swell waives any and all claims for damages in reliance of any advice and/or information provided by the District and/or its personnel and agents.

13. Assignment. Swell shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of the Executive Director (President/CEO) of the District in each instance, which consent may not be unreasonably withheld, conditioned or delayed. District shall respond to Swell's request for consent within thirty (30) days of receipt of Swell's request or receipt of any reasonably required information, whichever is later. A transfer of the interest of persons, firms or entities responsible for the managerial control of Swell by sale, assignment, bequest, inheritance, operation of law or other disposition, so as to result in a change in the present control of said entity and/or of the underlying beneficial interests of said entity shall constitute an "assignment" for all purposes of this Agreement. For the purposes hereof, "control" shall be deemed to mean (i) ownership of not less than fifty (50%) percent of all of the membership and/or ownership interest in such entity, or not less than fifty (50%) percent of all of the legal and equitable interests in any entity, or (ii) the ability effectively to control or direct the business decisions of such entity.

14. Share of Revenue Upon Sale and/or Transfer of Majority in Interest in Swell. In the event that the District has consented to an assignment in which there is (i) a transfer of the interest of persons, firms or entities responsible for the managerial

control of Swell and/or (ii) a transfer of a majority in interest in Swell, so as to result in a change in the present control of Swell, the District shall be entitled to receive seventy five hundredths of a percent (0.75%) share of the gross sale proceeds that were paid in connection with the sale of interest in Swell. Payment shall be made by Swell to the District within thirty (30) days of closing of the sale and shall be accompanied by all documents reasonably necessary to document the gross sales proceeds and calculate the amount owed to District. The obligations of Swell and rights of District set forth in Section 7, Records and Audit Rights, shall equally apply to documents related to occurrence triggering this Section 15.

Additionally, in order to ensure that the District receives its bargained-for percentage of the gross sale proceeds, Swell agrees that all of its dealings involving an occurrence triggering this Section 15, whether with independent third parties, Swell affiliates, owners, insiders, or others, shall be the result of arms-length negotiations. If any such dealings are not the result of arms-length negotiations and result in less gross sale proceeds than would have resulted from an arms-length negotiation, for the purpose of calculating the percentage of the gross sale proceeds, the higher gross sale proceeds that would have resulted from an arms-length negotiation shall be used in the calculation of District's percentage.

**15. Indemnity.** To the fullest extent provided by law, Swell 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 all 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 Swell's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the Pilot Project, the performance by Swell as provided for in this Agreement, any materials, products or services provided by Swell or failure to act by Swell, its officers, agents, subcontractors and employees. The Swell duty to defend, indemnify, and hold harmless shall not include any Claim arising from the gross negligence or willful misconduct of the District, its agents, officers, or employees. The duty to indemnify, and

the duty to defend the District as set forth herein requires that Swell pay all reasonable attorneys' fees and costs that the District may incur associated with or related to enforcing the indemnification provisions and defending any Claim. The District may, at its own election, conduct its defense, or participate in the defense of any Claim. If the 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, Swell agrees to pay all reasonable attorneys' fees and all costs incurred by the District.

Swell hereby further indemnifies the District, its agents, officers or employees against, and agrees to hold each of them harmless from, any and all damages, losses and/or liability incurred or suffered by any of them:

- (i) arising out of or related in any way to any misrepresentation or breach of any representation or warranty made by Swell in this Agreement;
- (ii) arising out of or related in any way to any breach of any covenant or agreement to be performed by Swell pursuant to this Agreement;
- (iii) arising out of or related in any way to the infringement by Swell (including without limitation through use by Swell or its licensees) of the intellectual property rights of a third party; or
- (iv) arising out of violations by Swell of applicable law.

#### 16. Insurance Requirements.

Swell 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 B, 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-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 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. Swell 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 B 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. Swell 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 this Agreement or otherwise on Swell or its sub-contractors or any tier of its sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

17. Independent Contractor. Swell and any agent or employee of Swell shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Swell's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Swell. Swell shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Swell acknowledges that it is aware that because it is an independent contractor. Swell disclaims the right to any fee or benefits except as expressly provided for in this Agreement. This Agreement does not form a legal partnership or agency relationship between Swell and the District.

18. Advice of Counsel. The Parties agree that they are aware that they have the right to be advised by counsel of their choice 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.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to its principles or rules of conflict of laws to the extent such principles or rules are not mandatorily

applicable by statute and would require or permit the application of the laws of another jurisdiction. For purposes of any claim, suit, action or proceedings arising out of or in connection with this Agreement, each of the parties hereby irrevocably submits to the exclusive jurisdiction of the federal and state courts located in the County of San Diego in the State of California.

20. 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.

21. New Inventions. During the term of this Agreement, new innovations, inventions, trade secrets, technology, know-how, applications, and intellectual property, and other rights may be developed related to the Pilot Project or the subject matter of this Agreement by Swell, the District, or jointly (collectively "New Inventions"). The Parties acknowledge that this Agreement does not contain agreements between Swell and the District as to inventorship, assignment, ownership, licensing, right to use, or other intellectual property rights related to New Inventions. Any such agreements relating to New Inventions, if any, shall require a separate and new agreement.

22. 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.

23. Compliance With Prevailing Wage Laws. Swell acknowledges and agrees that it will ensure that all persons and/or entities (including any subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection

with any work relating to the Pilot Project shall comply with the requirements of California's and any other prevailing wage laws to the extent such laws are applicable.

24. Compliance With All Applicable Laws (including Environmental Laws). Swell shall comply with all applicable District rules and policies, including policies relating to safety and the handling of biohazards, as well as federal, state, or local laws (including all applicable environmental laws), ordinances, codes, rules, permits, licensing conditions, and regulations, including any amendments thereto in connection with the implementation of the Pilot Project, and shall procure, at its expense, any licenses, permits, insurance, and government approvals necessary to the operation of its business.

25. Servicer 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 may be subject to compliance monitoring and enforcement by the Department of Industrial Relations.

26. Captions; Headings. The captions and/or headings by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.

27. Force Majeure. Neither Party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by: (i) fires, embargoes, floods, wars, labor stoppages, government requirements, or acts of God; or (ii) other circumstances substantially beyond its reasonable control.

28. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall be one and the same instrument. This Agreement may be executed by facsimile signature or signature transmitted via scan/email.

29. Attorneys' Fees. If any dispute arises between the Parties with respect to matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing party in any such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief to which it may be entitled.

30. Severability. If any provision of this Agreement is inoperative or unenforceable for any reason in any jurisdiction, such circumstances shall not have the effect of rendering

the provision in question inoperative or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, Sections or subsections of this Agreement in any jurisdiction shall not affect the remaining portions of this Agreement in such jurisdiction or in any other jurisdiction.

31. Amendment; Waivers. This Agreement shall not be amended, supplemented or modified except in a writing executed by authorized representatives of the Parties. Waiver by a Party of any breach of any provision of this Agreement by the other Party shall not operate, or be construed, as a waiver of any subsequent or other breach.

32. Notice. All notices, requests, demands and other communications made in connection with this Agreement shall be in writing and shall be deemed to have been duly given (a) if sent by first-class registered or certified mail, return receipt requested, postage prepaid, on the fifth day following the date of deposit in the mail, (b) if delivered personally, when received, or (c) if transmitted by facsimile, email transmission or other telegraphic communications equipment, when confirmed, in each case addressed to the parties identified herein below. Further,

If to the District:

Jason Giffen  
 Assistant Vice President, Operations  
 Planning & Green Port  
 San Diego Unified Port District  
 P.O. Box 120488  
 San Diego, CA 92112-0488  
 Tel. 619-686-6473  
 Email: [jgiffen@portofsandiego.org](mailto:jgiffen@portofsandiego.org)

If to Swell

Iaian Archibald  
Co-Founder and CEO, Swell Advantage Ltd.  
701-1505 Barrington Street,  
Halifax, NS Canada B3J 3K5  
Tel. (902)-478-1146  
iaian@swelladvantage.com

33. Integration and Modification. This Agreement, along with the Permit referenced herein, 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.

34. Authorization. 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 Swell.

35. Further Assurances. Each of the Parties hereto agrees to execute all such further instruments and documents and to take all such further action as the other Party may reasonably require in order to effectuate the terms and purposes of this Agreement. The Parties shall act in good faith in the performance of their obligations under this Agreement.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their officers thereunto duly authorized as of the day and year first written above. The Parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

“District”

“Swell”

**SAN DIEGO UNIFIED PORT DISTRICT,  
A Public Corporation**

**Swell Advantage Ltd.**

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Deputy/Assistant General Counsel

## EXHIBIT A SCOPE OF WORK

### Attachment A Scope of Work

#### San Diego Unified Port District

1. **Overview:** Swell Advantage shall conduct a pilot project to refine, and continue the development of a smart marina mapping tool to automate and optimize dock management for marinas. This tool is focused on maximizing revenue from transient boaters and from long-term resident boaters, and providing a better customer experience. The pilot project core objective is to improve Swell Advantage's technology and customize it to fit the needs of marinas in the San Diego region.

Swell Advantage has established a relationship with Cabrillo Isle Marina, owned by the largest owner of marinas in the world, Safe Harbor Marinas. Swell Advantage signed a Letter of Intent (LOI) with Safe Harbor Marinas to conduct a pilot project in collaboration with the manager of Cabrillo Isle Marina to adapt the Swell Advantage software platform to fit the needs of the marina. Specifically, automating procedures used to maximize revenue and providing new customer communication tools.

The pilot project involves improving and demonstrating Swell's technology and smart phone applications. Swell Advantage's principal will be leading the pilot project together with a team composed of a computer engineer, software developers, and marketing & sales professionals. The duration of the pilot project is expected to be 7 months.

2. **Scope and Timeline:**

The Swell Advantage product roadmap includes three feature sets that all have a foundation in the Swell Advantage marina mapping framework. The first feature set is the Max Swell revenue maximization tools. The second feature set is the Max Swell Marina Butler customer service communication tool. The third is the automated dock management platform. This "parking meter" solution for temporary docking is live with Canadian clients and is being refined with our current clients.

The pilot project work will be focused on, but not limited to:

- a. Max Swell, the revenue optimization and analytics tool are to mirror existing systems until Swell staff and marina management are happy with the tool's performance. Approval for full implementation rests with marina management.
- b. Develop and test the Marina Butler communication tools (Maxswell) using a select group of customers from Cabrillo Isle marina.

- c. Implement Swell Advantage automated dock management system to handle temporary boaters. This component is not considered mission critical in this pilot given the current needs of Cabrillo Isle.

Activity	June	July	Aug	Sept	Oct	Nov	Dec
Develop marina mapping and visualization tool							
Identify Max Swell inputs, constraints and outcomes							
Beta test and implement Max Swell							
Live testing and refinement							
Develop Maxwell communication roadmap							
Develop Maxwell mobile applications							
Test with beta group and implement							
Live testing and refinement							
Customization of dock management platform							
Implement and test							

3. **Success Metrics:** Swell Advantage shall ensure the success of the pilot project by tracking performance based on key metrics such as:
- Ability to determine the maximum potential revenue of a marina vs. current revenue
  - Ability to identify the highest potential revenue per customer from a marina's waitlist related to openings at the marina
  - Ability to streamline marina to customer communications
  - Deliver the above services through applications with an easy to use UI/UX



**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: [sdupd@prod.certificatesnow.com](mailto:sdupd@prod.certificatesnow.com)**

**Fax: 1-866-866-6516**

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ <b>This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.</b>	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	<b>Commercial General Liability</b> <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____		<b>Commencement Date:</b>  <b>Expiration Date:</b>	<b>Each Occurrence:</b> \$ _____  <b>General Aggregate:</b> \$ _____
	<b>Commercial Automobile Liability</b> <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		<b>Commencement Date:</b>  <b>Expiration Date:</b>	<b>Each Occurrence:</b> \$ _____
	<b>Workers Compensation – Statutory</b> Employer's Liability		<b>Commencement Date:</b>  <b>Expiration Date:</b>	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	<b>Professional Liability</b> <input type="checkbox"/> Claims Made Retro-Active Date _____		<b>Commencement Date:</b>  <b>Expiration Date:</b>	Each Claim \$ _____
	<b>Excess/Umbrella Liability</b>		<b>Commencement Date:</b>  <b>Expiration Date:</b>	<b>Each Occurrence:</b> \$ _____  <b>General Aggregate:</b> \$ _____
CO LTR	COMPANIES AFFORDING COVERAGE		A. M. BEST RATING	
A				
B				
C				
D				
<b>A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District.</b>				
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: _____	