

GIMMAL LLC
Professional Services Addendum

This PROFESSIONAL SERVICES ADDENDUM (the "Addendum") is an addendum to, and is hereby incorporated into, the Master Agreement dated May 17, 2018, between Gimmel LLC, and the San Diego Unified Port District ("Customer").

1. DEFINITIONS. Capitalized terms used in this Addendum shall have the meaning ascribed to them in the Master Agreement, unless otherwise defined in this Addendum. In addition to capitalized terms that are otherwise defined in the Master Agreement or this Addendum, the following capitalized terms shall have the meanings set forth in this Section 1.

1.1. "Professional Services" means, in each instance, the installation, implementation, planning, project management, data conversion, configuration, deployment, integration, customization, training, consulting or other professional services provided by Gimmel to Customer pursuant to an SOW under this Addendum.

1.2. "Statement of Work" ("SOW") means an order executed by both Parties by which Customer orders Professional Services under this Addendum, each of which shall reference the Master Agreement and this Addendum and shall be an exhibit hereto. The SOW shall describe the desired services, fees, costs and expenses payable by the Customer to Gimmel in connection with the performance of such services. Each SOW shall contain, at a minimum, the following information: (i) the scope of the Professional Services to be provided; (ii) applicable rates and fees; (iii) responsibilities and dependencies of each Party; (iv) agreed upon Work Product and specific deliverables, if any; and (v) signatures of an authorized representative of each Party.

1.3. "Work Product" means any expression of Gimmel's findings, developments, inventions, analyses, conclusions, opinions, recommendations, ideas, techniques, designs, programs, enhancements, modifications, interfaces, source code, object code and other technical information resulting from the performance of Professional Services.

2. PROFESSIONAL SERVICES

2.1. Professional Services. From time to time, so long as the Master Agreement and this Addendum remain in full force and effect, the Parties may, but are under no obligation to, enter one or more SOWs pursuant to which the Customer may engage Gimmel to provide Professional Services. Each such SOW shall be made pursuant to this Addendum and shall be considered a separate engagement. No Professional Services shall be furnished by Gimmel to Customer by virtue of delivering this Addendum alone, but shall require the execution of an SOW by both Parties.

2.2. Issuance of SOWs. The Customer may request that Gimmel perform Professional Services by delivering a written SOW. The Customer shall notify Gimmel of its acceptance or rejection of such SOW. Gimmel shall have no obligation to provide Professional Services without a fully-executed SOW. Each SOW, regardless of whether it relates to the same subject matter as any previously executed SOW(s), shall become effective upon execution by authorized representatives of both Parties.

2.3. Scope Modifications. Customer may at any time request a modification to the Professional Services to be performed pursuant to any particular SOW by written request to Gimmel specifying the desired modifications. Gimmel shall submit an estimate of the cost for such modifications and a revised estimate of the time for performance of the Professional Services pursuant

to the SOW. If accepted in writing by Customer, such modifications in the SOW shall be performed under the terms of this Addendum. Modifications in any SOW shall become effective only when a written change request is executed by an authorized representative of each Party.

2.4. Gimmel Personnel. Gimmel shall be responsible for securing, managing, scheduling, coordinating and supervising Gimmel personnel, including its subcontractors, performing the Professional Services. Gimmel will designate a Gimmel project manager in each SOW who will be responsible for coordinating Gimmel's provision of Professional Services under such SOW. Gimmel shall have the right to remove or replace any personnel providing Professional Services with similarly skilled personnel. Gimmel shall provide reasonable notice to Customer of any change in personnel providing Professional Services. Gimmel may, in its sole discretion, subcontract or delegate any work under any SOW to any third party without Customer's prior written consent, provided that, Gimmel shall remain responsible for the performance, acts and omissions of any such subcontractors. Customer may request that Gimmel remove or replace Gimmel personnel if Customer believes, in Customer's reasonable discretion, that such personnel's involvement is inappropriate, unsafe or detrimental to the delivery of the Professional Services. In the event such a request is made, it is agreed by the Parties that any project timelines shall automatically extend by the amount of time required to replace said personnel and assimilate the new personnel into the project.

3. CUSTOMER RESPONSIBILITIES

3.1. Cooperation. Customer shall perform its obligations as set forth in the applicable SOW, as well as the following obligations: (i) designate and provide for each SOW one Customer project manager who will be responsible for coordinating the Customer obligations under an SOW; (ii) provide sufficient, qualified, knowledgeable personnel capable of: (a) performing Customer obligations set forth in each SOW; (b) making timely decisions necessary to move the Professional Services forward; and (c) participating in the project and assisting Gimmel in rendering the Professional Services; (iii) provide Gimmel with reasonable access to Customer's facilities during Customer's normal business hours and otherwise as reasonably requested by Gimmel in order to enable Gimmel to perform the Professional Services; (iv) in the case of on-site Professional Services, provide Gimmel with such working space as Gimmel may reasonably request; and (v) perform such other duties and tasks as set forth in an applicable SOW to facilitate Gimmel's performance of the Professional Services.

3.2. Condition for Professional Services. Customer acknowledges and agrees (i) Gimmel's ability to perform the Professional Services is conditioned upon Customer's timely performance of the Customer obligations and any assumptions described in the applicable SOW, and (ii) the performance of the Customer obligations is material to Gimmel's ability to commence, proceed with and complete the Professional Services. In the event Customer does not perform Customer obligations in a timely manner, Gimmel may take any action as set forth in the applicable SOW, or terminate the applicable SOW in accordance with this Addendum and the Master Agreement.

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3.3. Acceptance. Upon delivery of Professional Services as specified in the applicable SOW (the "Deliverable"), Customer shall have thirty (30) days to accept or reject the Deliverable, or any portion thereof, and specify with sufficient technical precision the reason for such rejection so that Gimmel understands any modifications required to make the Deliverable acceptable. Upon receipt of such notification of rejection, Gimmel shall have a commercially reasonable period of time in which to make the Deliverable acceptable to Customer. In the event Gimmel does not deliver an acceptable Deliverable or revised Deliverable, Customer's sole remedy will be a refund of amounts paid to Gimmel for such Deliverable. In the event Gimmel delivers a revised Deliverable, Customer shall have thirty (30) days to accept or reject the Deliverable. In the event Customer fails to provide written notice of rejection of any Deliverable or revised Deliverable within thirty (30) days, the Deliverable shall be deemed to be accepted.

4. PROPRIETARY RIGHTS

4.1. Proprietary Rights. All Confidential Information of either Party provided or made available to the other Party under this Addendum shall be subject to the applicable provisions of the Master Terms. All Work Product, including, without limitation, any modifications, extensions or enhancements to the Licensed Software, shall be solely owned by Gimmel, except to the extent any portion of the foregoing embodies Customer's Confidential Information and subject to the usage rights granted to Customer under the relevant SOW. Any modifications, extensions or enhancements to the Licensed Software developed under this Addendum will constitute a portion of the Licensed Software and shall be subject to all applicable terms and conditions of the Master Terms and any Addenda that are otherwise applicable to the Licensed Software, including, without limitation, provisions regarding ownership, license rights and usage restrictions.

4.2. Work Product and Custom Materials. Notwithstanding anything to the contrary in this Addendum:

4.2.1. All Work Product created under this Addendum, including all IP Rights related thereto, shall be owned by Gimmel and is licensed nonexclusively to Customer pursuant to the terms of the Master Agreement.

4.2.2. All Work Product created exclusively for Customer, and all IP Rights related thereto (collectively, "Custom Materials"), shall be solely owned by Gimmel; provided, that "Custom Materials" shall not include Customer's Confidential Information, which will be solely owned by Customer.

4.2.3. To the extent Customer acquires any rights in the Work Product or Custom Materials, Customer hereby assigns such rights to Gimmel. Customer shall give Gimmel all reasonable assistance and execute all documents necessary to assist or enable Gimmel to perfect, preserve, register and/or record such assignment and Gimmel's rights in any Work Product or Custom Materials.

5. FEES AND PAYMENTS.

5.1. Fees. Fees for any and all Professional Services shall be based on then-current hourly rates (unless otherwise agreed in the applicable SOW). Customer shall pay to Gimmel all fees as required by a particular SOW, plus any reasonable and necessary out-of-pocket travel expenses incurred and approved by Customer, all in accordance with the applicable SOW, this Section 5 and Section 4 of the Master Terms.

5.2. Travel. Customer shall reimburse Gimmel for reasonable, actual, out of pocket travel expenses and related costs, incurred by Gimmel employees and subcontractors for travel from Gimmel's office to Customer's offices, provided that such expense and costs are consistent with Customer's own travel policies and approved in advance by Customer.

5.3. Operating Expenses. Except as provided above, each Party will be responsible for its own expenses incurred in rendering performance under this Addendum.

6. LIMITATION ON LIABILITY. GIMMAL'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS ADDENDUM OR ANY PROFESSIONAL SERVICES, REGARDLESS OF THE FORM OF ACTION, SHALL NEVER EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO GIMMAL PURSUANT TO THE APPLICABLE SOW DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH ACTION FOR THE PROFESSIONAL SERVICES UPON WHICH DAMAGES OR COSTS ARE BASED. CUSTOMER HEREBY RELEASES GIMMAL FROM ALL OBLIGATIONS, LIABILITY, CLAIMS, OR DEMANDS IN EXCESS OF THIS LIMITATION. THE PARTIES ACKNOWLEDGE THAT EACH OF THEM RELIED UPON THE INCLUSION OF THIS LIMITATION IN CONSIDERATION OF ENTERING INTO THIS ADDENDUM. GIMMAL'S ENTIRE LIABILITY IS SET FORTH IN THIS SECTION 6 AND THIS SECTION 6 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS ADDENDUM.

7. WARRANTIES AND LIMITATIONS.

7.1. Limited Warranty. Gimmel warrants the Professional Services performed hereunder will be performed in a professional and workmanlike manner, using sound principles, accepted industry practices and competent personnel ("Professional Services Warranty"). The Professional Services Warranty shall not apply if the Work Product is implemented, customized, modified, enhanced or altered by Customer or any third party that is not specifically retained by Gimmel as a contractor for such purposes.

7.2. Exclusive Remedy. Customer's sole and exclusive remedy, and Gimmel's sole obligation, in the event of a breach of the Professional Services Warranty is for Gimmel, at its expense, to re-perform the Professional Services which were not as warranted, provided Gimmel has received notice from Customer within thirty (30) calendar days of the completion of the Professional Services that Customer alleges were not performed consistent with the Professional Services Warranty. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THIS SECTION 7 SETS FORTH GIMMAL'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE PROFESSIONAL SERVICES WARRANTY SET FORTH IN SECTION 7.1 ABOVE.

7.3. Disclaimer. GIMMAL MAKES NO ADDITIONAL REPRESENTATIONS OR WARRANTIES UNDER THIS ADDENDUM, AND THE PARTIES AGREE THAT THIS ADDENDUM IS SUBJECT TO ALL REPRESENTATIONS, WARRANTIES, DISCLAIMERS, AND LIMITATIONS OF LIABILITY SET FORTH IN THE MASTER TERMS. WITHOUT LIMITING THE FOREGOING, CUSTOMER AGREES THAT GIMMAL WILL HAVE NO LIABILITY UNDER THIS ADDENDUM FOR ANY FAILURE OR DELAY IN PERFORMING ARISING

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DIRECTLY FROM A MATERIAL FAILURE BY CUSTOMER TO PERFORM ITS OBLIGATIONS HEREUNDER.

8. TERM; TERMINATION

8.1. Term. This Addendum shall become effective upon the Effective Date hereof, and shall continue in effect until it is earlier terminated in accordance with this Section 8. Unless otherwise stated in the applicable SOW, the term of each SOW shall last until performance there under is completed.

8.2. Termination on Completion of SOWs. Upon expiration or termination of any and all SOWs under this Addendum, either Party may terminate this Addendum by giving not less than thirty (30) days written notice to the other Party. Notwithstanding the foregoing, this Addendum shall remain in effect for a period of not less than one (1) year from the Effective Date.

8.3. Termination for Breach. Either Party may, at its option, terminate this Addendum and all outstanding SOWs hereunder, in the event of a material breach by the other Party pursuant to Section 10.3 of the Master Terms.

8.4. Effect of Termination. Upon termination or expiration of this Addendum, Customer shall promptly pay to Gimmel all amounts due for work completed under this Addendum.

8.5. Survival. The provisions of Sections 4, 5, 6, 7.3, 8.4 and 8.5 will survive the termination of this Addendum.

[SIGNATURE PAGE TO FOLLOW.]

GIMMAL LLC
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The Parties have caused their duly authorized representatives to execute this Addendum as of the dates set forth below.

Customer	
By:	<u>Keith Coffey</u>
Name:	Keith Coffey
Title:	CTO
Date:	5-17-2018

Gimmel	
By:	<u>Mark Johnson</u>
Name:	Mark Johnson
Title:	President
Date:	May 10, 2018 2:13:06 PM CDT

