

**SAN DIEGO UNIFIED PORT DISTRICT
PURCHASE AGREEMENT
FOR
RECORDS MANAGEMENT SOFTWARE**

**Purchase Order No. _____
Purchase Agreement No. 63-2020RH**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and **GIMMAL LLC** (Vendor) a Texas LLC.

The parties agree:

1. SPECIFICATIONS:

(a) Specifications are attached as Attachment A, Specifications, and Vendor understands the meaning, intent and requirements contained therein.

(b) Vendor agrees to furnish the materials to the District by the delivery date specified in strict conformity with the specifications therefore, for the prices quoted and in accordance with conditions herein.

2. RECEIPT OF GOODS:

The goods will be deemed received by District when delivered to District electronically via login provided by the vendor, which shall hereinafter be referred to as the "Place of Delivery."

3. RIGHT OF INSPECTION:

District will have the right to inspect and accept or reject the goods when received at the Place of Delivery, and the right, within ten (10) business days after receipt, to give notice to Vendor of any claim for damages on account of the condition, quality, or grade of the goods. The District retains the right to inspect and accept or reject any goods to be delivered to a bailee, as if such were delivered to the District itself, and in such instance, Vendor will tender to District a valid and adequate negotiable document of title covering the goods or written acknowledgement from the bailee of the District's right to possession of the goods. Any attempt by District to correct any of the goods delivered in a defective or non-working condition will not constitute an acceptance of such goods where such efforts are commercially reasonable in extent and cost, and District may subsequently revoke its acceptance and reject the goods where the attempt to correct such defect has proved unsuccessful.

4. REJECTED GOODS:

On receipt of notification of rejection of goods, Vendor will immediately arrange to receive back the rejected goods at Vendor's expense, and [Parties to initial clause below]:

_____	_____	Ship conforming goods within ten (10) business days of notice of rejection, unless District notifies Vendor to forego such shipment in its notification of rejection of goods.
Vendor	District	

5. RISK OF LOSS:

The risk of loss from any casualty to the goods, regardless of the cause, will be on Vendor up to the time of receipt of the goods by District at the Place of Delivery, but only after any proper inspection has been completed without rejection of the goods. Thereafter, such risk will be on District, including any goods thereafter returned to Vendor until their receipt by Vendor.

6. **TRADE NAMES:**

Certain materials may be designated in the specifications by a trade name or the name of a manufacturer. Materials which are "an equal" item of equal quality and the required characteristics for the purpose intended will be permitted.

7. **DELIVERY:**

(a) Delivery shall be made within the time set forth on the Purchase Order. Time is of the essence as to delivery.

(b) Vendor shall not be held liable for failure to make delivery because of strikes, conscription of property, governmental regulations, acts of God or any other causes beyond control of vendor, provided a written extension of time to make delivery is obtained from the Executive Director of District or authorized designee.

8. **FIRM PRICES:**

Prices of a bid shall be firm prices not subject to escalation. In the event the specifications provide for escalation the maximum limit shall be shown. If no limit is set to this escalation, the bid shall be rejected. In the event of a decline in market price(s) below the price(s) bid, District shall receive the benefit of such decline.

9. **ROYALTIES AND PATENTS:**

The successful vendor shall pay all royalties and patent fees. Said Vendor shall defend all suits and claims for infringements of any patent rights and shall save District harmless from loss on account thereof, including reasonable attorney's fees.

10. **TAXES:**

District shall furnish Exemption Certificates for Federal Excise Tax. District shall pay the State, City and County Sales Taxes. However, sales tax is to be added by the Vendor to the net amount invoiced.

11. **ASSIGNMENT:**

No assignment by either party of any rights, including rights to moneys due or to become due under this Agreement, or delegation of any duties under this Agreement or under any orders subject to this Agreement, will be binding upon the other party until its written consent has been obtained.

12. **CALIFORNIA LAW:**

The validity, construction, and interpretation of this bid and any Agreement shall be governed by the laws of the State of California.

13. **PAYMENT:**

Payment for the materials shall be made for materials which shall be due and payable only upon acceptance by the District after the materials have been delivered and inspected and tested for compliance with the specifications

14. ANTITRUST CLAIMS:

These provisions are included in this Agreement as required by California Government Code Section 4550 et seq: In submitting a bid to the District, the Vendor offers and agrees that if the bid is accepted, it will assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, materials or services by the Vendor for sale to the District pursuant to the bid. Such assignment shall be made and become effective at the time the District tenders final payment to the vendor, without further acknowledgment by the parties.

15. VENDOR'S WARRANTIES:

In addition to any manufacturer's warranties associated or provided with the goods, copies of which shall be delivered by Vendor with the goods and their incorporation herein shall be deemed made by this reference, without attachment, as though fully set forth herein, Vendor expressly warrants that the goods are fit for the purpose to which Buyer desires the goods to be used (new and unused goods).

Furthermore, the parties intend that the provisions of Division 2 of the California Uniform Commercial Code ("CUCC") will apply to this Section, except where this Contract may expressly provide otherwise, and thereby Vendor intends all implied warranties there under, without limitation by reference herein, to apply to this Contract, including, but not limited to: (i) a warranty that the goods are now free, and at the time of delivery will be free, from any security interest or other lien or encumbrance, (ii) a warranty that at the time of signing the Contract, Vendor neither knows, nor has reason to know, of the existence of any outstanding title or claim of title hostile to the rights of Vendor in the goods, (iii) a warranty that the goods are of merchantable quality, and (iv) a warranty that the goods are fit for the purpose to which Buyer desires the goods to be used.

16. INDEMNIFICATION:

Vendor agrees to indemnify, defend and hold harmless District, its officers, agents, and employees, from and against any and all claims, liabilities, damages, demands, losses, costs, and expenses including reasonable attorney's fees arising directly or indirectly out of the obligations of this Agreement, except claims arising through the sole negligence or willful misconduct of the District.

17. COMPLIANCE WITH LAWS:

The Parties will comply with all applicable governmental laws, regulations, orders, and other rules of duly constituted authorities.

18. TERMINATION:

The District also reserves the right, at any time prior to delivery and acceptance of the goods and after delivery of written notice to Vendor at the above address or fax number, to terminate this Agreement, with or without cause, even though there has not been any act or omission sufficient to constitute an anticipated or actual breach of the Agreement or of any implied warranty. Termination of this Agreement in accordance with the section will serve to release both Parties from any further obligations hereunder, including but not limited to delivery of and payment for the goods.

19. NOTICES:

All notices and other communications required or authorized under this Agreement will be given in writing by: (i) personal delivery, (ii) registered mail or overnight express delivery service or (iii) email. Each party will advise the other promptly of any change in its address. It is an express condition of this Agreement that this contract shall not be complete or effective until signed by the Executive Director or designee on behalf of the District.

VENDOR:

Vendor's Legal Entity Listing (DBA, etc)

Vendor's Signature

Date

Signatory's Printed Name
SAN DIEGO UNIFIED PORT DISTRICT:

Printed Name

Title

Signature

Date
APPROVED AS TO FORM AND LEGALITY:

General Counsel

By: Assistant/Deputy

Date

Attachment A
SPECIFICATIONS AND PRICING
San Diego Unified Port District

Qty	SKU	Product Name	License Type	Annual Subscription
1	xx103	Gimmel Business	Package	\$ 52,350
Gimmel Business provides a platform to manage records and govern content. This includes a connection to any two sources and 10 million managed records. In addition users will have access to tools to assist in the saving and classification on content.				
Annual Price				\$ 52,350