# Gimmal

# MASTER AGREEMENT

THIS **MASTER AGREEMENT** is made by and between Gimmal LLC, a Texas limited liability company with offices at 24 Greenway Plaza, Suite 1000, Houston TX 77046 ("**Gimmal**"), and _____, a _____ [CORPORATION] with offices at the address set forth in the "Client Information" below ("**Client**"). Gimmal and Client may be referred to together herein as the "**Parties**" or individually herein as a "**Party**."

The "**Master Agreement**" or "**Agreement**" consists of this cover page ("Cover Page"), the following pages which set forth the general terms and conditions governing the contractual relationship between the Parties, and one or more addenda that reference this Master Agreement and are executed by both Parties (each, an "**Addendum**" or collectively, the "**Addenda**"). Each Addendum sets forth certain rights, duties, and obligations of the Parties regarding the Licensed Software, Maintenance and Support Services, subscription licenses, Subscription Services, Professional Services, and/or other services or products provided under this Master Agreement. Any Addenda, exhibit, schedule, or Order Form which references this Master Agreement and is executed by the Parties, is hereby incorporated into and made a part of this Master Agreement. This Master Agreement supersedes all previous understandings and agreements between the Parties, whether oral or written.

| Client Information | |
| --- | --- |
| **Company:** | |
| **Name:** | |
| **Title:** | |
| **Address:** | |
| **Phone:** | |
| **Email:** | |

| Gimmal Information | |
| --- | --- |
| **Company:** | Gimmal LLC |
| **Name:** | Mark Johnson |
| **Title:** | CFO / COO |
| **Address:** | 24 Greenway Plaza, Suite 1000 |
| | Houston TX 77046 |
| **Phone:** | 713.586.6500 |
| **Email:** | contracts@gimmal.com |

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

| Client | |
| --- | --- |
| **By:** | _____ |
| **Name:** | _____ |
| **Title:** | _____ |
| **Date:** | _____ |

| Gimmal | |
| --- | --- |
| **By:** | _____ |
| **Name:** | _____ |
| **Title:** | _____ |
| **Date:** | _____ |

# GIMMAL LLC
## Master Agreement

**1. DEFINITIONS**. In addition to capitalized terms that are otherwise defined in this Master Agreement, or in any Addendum or Schedule hereto, the following capitalized terms shall have the meanings set forth in this Section 1.

1.1. "**Authorized User**" has the meaning set forth in the applicable Addendum.

1.2. "**Confidential Information**" means any material, data, or information relating to a Party's research, development, products, product plans, services, customers, Client Data, Client programs, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, operations or other business information, trade secrets, or intellectual property that such disclosing Party treats as proprietary or confidential, and which is marked or communicated as "confidential" or "proprietary" or that, given the circumstances, should be reasonably apparent that such information is of a confidential or proprietary nature. Without limiting the foregoing, the Licensed Software, Subscription Services and all IP Rights associated therewith shall constitute Confidential Information of Gimmal, and all software and any databases (including any data models, structures, non-Client specific data, and Client Data and aggregated statistical data contained therein) disclosed by a Party shall constitute Confidential Information of the disclosing Party.

1.3. "**Client**" has the meaning set forth on the Cover Page.

1.4. "**Client Data**" means any information, including, but not limited to the information that is provided to Gimmal by Client in order for Gimmal to perform its assessment or provide its services or otherwise obtained by Gimmal in the course of performing services, including any other software made accessible to Gimmal by Client, regardless of whether owned or licensed from third parties by Client and whether in printed or electronic form, all data provided by Authorized Users, or any data used with or derived from Client's use of the Licensed Software or Subscription Services, as applicable, and all other non-public information and materials relating to Authorized Users, or their respective businesses or business operations that Client or Authorized Users hereunder provide or make available to Gimmal, or provide Gimmal with access to, in connection herewith. All Client Data shall be the Confidential Information of Client at all times.

1.5. "**Effective Date**" means, for the Master Agreement or any Addenda, the date on which the individual document has been executed by both Parties (the latter date on which it is executed by either Party).

1.6. "**IP Rights**" means any and all intellectual property rights of any type, recognized in any country or jurisdiction throughout the world, now or hereafter existing, and whether or not perfected, filed, or recorded, including without limitation, all (i) inventions, including patents, patent applications, and statutory invention registrations or certificates of invention, and any divisions, continuations, renewals, or re-issuances of any of the foregoing; (ii) trademarks, service marks, domain names, trade dress, logos, and other brand source distinctions; (iii) copyrights and works of authorship; (iv) trade secrets and know-how; and (v) other intellectual property rights of any type throughout the world.

1.7. "**Licensed Software**" has the meaning set forth in the applicable Addendum.

1.8. "**Professional Services**" has the meaning set forth in the applicable Addendum.

1.9. "**Subscription Services**" has the meaning set forth in the applicable Addendum.

**2. GENERAL.** This Master Agreement contains the general terms and conditions governing the contractual relationship between Gimmal and Client. The rights, duties, and obligations of the Parties with respect to the Licensed Software, any Maintenance and Support services, Subscription Services, Professional Services, or other services or products provided by Gimmal to Client are set forth in one or more Addenda executed by the Parties. The Parties acknowledge and agree that this Master Agreement does not, absent execution of such an Addendum, impose any obligation upon either Party to provide, acquire, purchase or pay for any such license, access, or services.

**3. ORDER OF PRECEDENCE.** In the event of a conflict between this Master Agreement and any Addendum or other attachment that is executed contemporaneously with this Master Agreement, the terms and conditions of this Master Agreement shall govern. In the event of a conflict between this Master Agreement and any Addendum or other attachment executed by both Parties subsequent to the Effective Date of this Master Agreement, the terms and conditions of this Master Agreement shall govern, except to the extent that the applicable Addendum or other executed attachment expressly states the intent of the Parties to supersede one or more provisions in this Master Agreement that are specifically identified. This Master Agreement shall prevail over any different, conflicting, inconsistent, or additional terms contained in any purchase order or similar document issued by Client.

**4. FEES AND PAYMENTS**

4.1. Fees Payable. In consideration for Gimmal's performance under this Agreement, Client agrees to pay Gimmal or its designated representative the fees and other amounts set forth on all applicable Addenda or orders placed under the applicable Addenda. Unless otherwise provided in the applicable Addendum, all undisputed fees and other amounts due under this Master Agreement shall be due payable net thirty (30) calendar days after date of receipt by Client of the applicable invoice.

4.2. Disputed Charges. Client must notify Gimmal in writing of any dispute or disagreement with invoiced charges within fifteen (15) calendar days after the date of receipt of the invoice by Client. Absent such notice, Client shall be deemed to have agreed to the charges as invoiced.

4.3. Late Charges. Gimmal may charge a late charge equal to the lesser of (i) one percent (1%) per month or (ii) the maximum amount allowed by applicable law, on any outstanding past due balance that is not the subject of a good faith dispute.

4.4. Taxes. Unless otherwise stated in writing by Gimmal, prices do not include sales, use, property, customs, excise, value-added, federal, state, provincial, municipal and other similar taxes, duties, or fees, levied on the Licensed Software, any Services, and/or Subscription Services, all of which shall be the obligation of Client, except for any such amounts due with respect to Gimmal's profit or income. Client shall pay or, upon receipt of an invoice from Gimmal, shall reimburse Gimmal for all such taxes, irrespective of whether said taxes are included on any invoice.

**5. CONFIDENTIAL INFORMATION**

5.1. Access; Ownership. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain Confidential Information of the other Party or Confidential

Information of third parties that the Disclosing Party (as defined below) is required to maintain as confidential. The Parties agree that all items of Confidential Information are proprietary to the Disclosing Party or such third party, as applicable, and shall remain the sole property of the Disclosing Party or such third party.

5.2. Mutual Obligations. Except as may be expressly set forth in this Agreement, each Party (the "Receiving Party") that receives Confidential Information of the other Party (the "Disclosing Party") agrees during the term of this Agreement and thereafter, as follows: (i) to use the Confidential Information only for the purposes of performing this Agreement; (ii) to hold the Confidential Information of the other Party in confidence and restrict it from dissemination to, and use by, any third party; (iii) to protect the confidentiality of the other Party's Confidential Information using the same degree of care, but no less than a reasonable degree of care, as the Receiving Party uses to protect its own Confidential Information; (iv) the Receiving Party will not create any derivative work from Confidential Information disclosed by the other Party; (v) to restrict access to the Confidential Information to such of its personnel, agents, subcontractors, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to terms no less restrictive than the terms set forth in this Agreement with respect to the treatment of such Confidential Information; and, (vi) at the option of the Disclosing Party, to either return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement, except for archival copies which may be retained and which shall be destroyed in accordance with the party's record retention policy. Any such retained copies shall remain subject to this Section 5.

5.3. Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Section 5.2 shall not apply to Confidential Information that: (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the Receiving Party; (iii) is rightfully communicated to the Receiving Party by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the Receiving Party's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information and by employees or other authorized agents of the Receiving Party who have not been exposed to the Disclosing Party's Confidential Information; or (vi) is approved for release or disclosure in writing by the Disclosing Party. Notwithstanding the foregoing, each Party may disclose Confidential Information of the other Party to the limited extent required: (a) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall, to the extent allowed by law, first have given written notice to the other Party and made a reasonable effort to obtain a protective order, at the Disclosing Party's expense; or (b) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

5.4. Equitable Relief. The Parties hereto agree that monetary damages would not be a sufficient remedy for breaches of Section 5 of this Agreement, and that each Party may seek injunctive relief, specific performance, or other equitable relief as a remedy for any such breach.

## 6. INTELLECTUAL PROPERTY

6.1. Gimmal. Client acknowledges and agrees that, unless otherwise set forth in an Addendum, Gimmal and its licensors own all right, title, and interest, including all IP Rights, in and to all Confidential Information disclosed by Gimmal, the Licensed Software or Subscription Services, as applicable, any modifications or enhancements to the Licensed Software or Subscription Services, as applicable, and all software, associated documentation, hardware, and the work product resulting from all Maintenance and Support services, Professional Services, Subscription Services, or any other services performed for the benefit of Client, and any other materials, information, processes, or subject matter proprietary to Gimmal provided under this Master Agreement. Gimmal expressly reserves all rights not expressly granted to Client in this Agreement and all executed Addenda. Client shall not knowingly engage in any act or omission that would impair the IP Rights of Gimmal or its licensors. In no event shall Client obtain any ownership rights in or to the Confidential Information of Gimmal, the Licensed Software, the Subscription Services, the Professional Services, or any IP Rights of Gimmal. Client shall not remove or alter any trademark, logo, copyright, or other proprietary notices, legends, symbols, or labels on the Licensed Software or Subscription Services, and shall include all such marks and symbols on each permitted archive copy of the Licensed Software.

6.2. Client. Gimmal acknowledges and agrees that Client and its licensors own all right, title, and interest, including all IP Rights, in and to the Client Data and all Confidential Information disclosed by Client. Gimmal shall not knowingly engage in any act or omission that would impair Client's IP Rights or Confidential Information. In no event shall Gimmal obtain any ownership rights in or to the Confidential Information of Client, the Client Data, or Client's IP Rights.

## 7. REPRESENTATIONS AND WARRANTIES

7.1. General. Each Party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement, and that the execution and performance of this Agreement does not and shall not violate any other contract, obligation, or instrument to which it is a party, or which is binding upon it, including terms relating to covenants not to compete and confidentiality obligations. Furthermore, each Party represents and warrants to the other that it has obtained, and will maintain throughout the term of this Agreement, all necessary prerequisite licenses and consents, and will comply with all applicable laws and regulations. All other warranties, if any, are specifically and conspicuously identified in the applicable Addenda hereto.

7.2. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 7 AND ANY ADDENDA EXECUTED BY THE PARTIES IN CONNECTION WITH THIS MASTER AGREEMENT, (i) THE LICENSED SOFTWARE OR SUBSCRIPTION SERVICES, AS APPLICABLE, AND ANY OTHER MATERIALS, SOFTWARE, DATA, AND/OR SERVICES PROVIDED BY GIMMAL ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND (ii) GIMMAL MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND GIMMAL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, VALUE, ACCURACY OF DATA, OR QUALITY, MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN,

WHETHER LATENT OR PATENT. NO WARRANTY IS MADE BY GIMMAL ON THE BASIS OF TRADE USAGE, COURSE OF DEALING, OR COURSE OF TRADE. GIMMAL DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR SUBSCRIPTION SERVICES, AS APPLICABLE OR ANY OTHER INFORMATION, MATERIALS, TECHNOLOGY, OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. CLIENT ACKNOWLEDGES THAT GIMMAL'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF CLIENT ONLY AND NOT FOR ANY THIRD PARTY.

## 8. LIMITATIONS OF LIABILITY

8.1. GIMMAL AND ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE POSSESSION OF, USE OF, FAILURE OF, OR INABILITY TO USE THE LICENSED SOFTWARE OR SUBSCRIPTION SERVICES, AS APPLICABLE, OR THE PERFORMANCE OF ANY OF THEIR OBLIGATIONS UNDER THIS MASTER AGREEMENT, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS OR OTHER ECONOMIC LOSS, LOSS OF BUSINESS OPPORTUNITIES, LOSS OF GOODWILL, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER THE CLAIM OR LIABILITY IS BASED UPON ANY CONTRACT, TORT, BREACH OF WARRANTY, OR OTHER LEGAL OR EQUITABLE THEORY, AND NOTWITHSTANDING THAT ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

8.2. GIMMAL'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL NEVER EXCEED THE TOTAL AMOUNT PAID BY CLIENT TO GIMMAL UNDER THE RELEVANT ADDENDUM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO ANY EVENT GIVING RISE TO A CLAIM BY THE OTHER PARTY HEREUNDER. EACH PARTY HEREBY RELEASES THE OTHER PARTY 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 AGREEMENT.

8.3. Essential Basis. The disclaimers, exclusions, and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

## 9. INDEMNIFICATION

9.1. Indemnification by Gimmal.

9.1.1.    Gimmal shall indemnify, defend, and hold harmless Client from and against all losses, liabilities, damages, claims, costs, and reasonable expenses (including reasonable attorneys' fees) arising out of or related to a third party claim that Client's use of, or access to, the Licensed Software or Subscription Services, as applicable infringes a United States patent, copyright, or trademark, or misappropriates any third party trade secrets (an

"**Infringement Claim**"); provided that, Client must give Gimmal: (a) prompt written notice of such claim, in any event within ten (10) days after receiving written notice of the claim; (b) authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as Gimmal may reasonably request, at Gimmal's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Gimmal shall not settle any third-party claim against Client unless (x) such settlement completely and forever releases Client with respect thereto or (y) Client provides its prior written consent to such settlement. In any action for which Gimmal provides defense on behalf of Client, Client may participate in such defense at its own expense by counsel of its choice.

9.1.2.    Notwithstanding the foregoing, Gimmal shall have no obligation or liability with respect to an Infringement Claim that arises out of or relates to: (i) the combination, operation, or use of the Licensed Software or Subscription Services, as applicable with products, services, information, materials, technologies, business methods, or processes not furnished or approved by Gimmal; (ii) any modification to the Licensed Software or Subscription Services, as applicable that is not created by Gimmal, or that is created by Client or by a third party at the direction of Client; (iii) use of a version or release of the Licensed Software or Subscription Services, as applicable that is no longer supported by Gimmal; (iv) use of the Licensed Software or Subscription Services, as applicable without implementation of all applicable updates and error corrections; or (v) use of the Licensed Software or Subscription Services, as applicable other than in accordance with any applicable user documentation or specifications (the foregoing clauses 9.1.2 (i)-(v), collectively, "**Client Indemnity Responsibilities**").

9.1.3.    Upon the occurrence of any Infringement Claim for which indemnity is or may be due under this Section 9.1, or in the event that Gimmal believes that such a claim is likely, Gimmal will, at its option: (a) appropriately modify the Licensed Software or Subscription Services, as applicable to be non-infringing, or substitute functionally equivalent software or services; (b) obtain a license to the applicable third-party intellectual property rights; or (c) if the remedies set forth in clauses (a) and (b) above are not commercially feasible, as determined by Gimmal in its sole discretion, Gimmal may terminate this Agreement and the licenses granted pursuant to it on written notice to Client and refund to Client any prepaid but unearned fees.

9.1.4.    THE PROVISIONS OF THIS SECTION 9.1 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF GIMMAL TO CLIENT, AND ARE CLIENT'S SOLE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM.

9.2. Indemnification by Client. Client shall indemnify, defend, and hold harmless Gimmal from and against all losses, liabilities, damages, claims, costs, and reasonable expenses (including reasonable attorneys' fees) resulting from any third party claim arising out of or related to: (i) the Client Indemnity Responsibilities; (ii) any misappropriation or violation of Gimmal's rights in the Licensed Software or Subscription Services, as applicable or any Gimmal Confidential Information by any person who has obtained access to the Licensed Software or Subscription Services, as applicable through Client; or (iii) any claims that any data, information, or other content or materials provided to Gimmal by Client under this Agreement is inaccurate, false, misleading, fraudulent, disparaging, or otherwise infringes or misappropriates the rights of a third party. Gimmal agrees to give Client: (a) prompt written notice of such claim; (b) authority to control and direct the

defense and/or settlement of such claim; and (c) such information and assistance as Client may reasonably request, at Client's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Client shall not settle any third-party claim against Gimmal unless (x) such settlement completely and forever releases Gimmal with respect thereto or (y) Gimmal provides its prior written consent to such settlement. In any action for which Client provides defense on behalf of Gimmal, Gimmal may participate in such defense at its own expense by counsel of its choice.

## 10. TERM AND TERMINATION

10.1. <u>Agreement</u>. Subject to Section 10.2 and 10.3, this Agreement shall become effective upon the Effective Date and shall remain in full force and effect until terminated in accordance with its terms.

10.2. <u>Termination on Expiration of Addenda</u>. Upon expiration or termination of any and all Addenda executed under this Master Agreement, either Party may terminate the Master Agreement by giving not less than thirty (30) days written notice to the other Party.

10.3. <u>Termination for Breach</u>. Either Party may terminate this Agreement or any Addendum to this Agreement, in the event of a material breach by the other Party. Such termination may be effected only through a written notice to the breaching Party; specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party will have a right to cure such breach or breaches within sixty (60) calendar days of receipt of such notice, and the non-breaching Party may terminate the Master Agreement or Addendum, as applicable, in the event that such cure is not made within such sixty (60)-day period to the reasonable satisfaction of the non-breaching Party. Without limiting the foregoing, Gimmal may terminate this Agreement or any Addendum to this Agreement upon written notice in the event that Client breaches Section 4 of any Software License and Support Addendum, Section 4 of any Subscription License Addendum, or Section 3 of any Subscription Services Addendum, as applicable, or becomes insolvent or enters bankruptcy prior to payment of all undisputed amounts due under this Agreement.

10.4. <u>Termination of Individual Addenda</u>. In addition to each Party's rights under Sections 10.2 and 10.3, each Party may terminate any particular Addendum according to any provision therein permitting such termination, provided that this Agreement (including this Master Agreement and any other Addenda) shall remain in full force and effect in accordance with its terms.

10.5. <u>Accrued Obligations</u>. Termination of this Agreement and/or any particular Addendum shall not release either Party from any liability which, at the time of termination, has already accrued or which thereafter may accrue with respect to any act or omission before termination, or from any obligation which is expressly stated in this Agreement and/or any applicable Addendum to survive termination. Notwithstanding the foregoing, the Party terminating this Agreement or any Addenda as permitted by any provision in this Section 10 shall incur no additional liability merely by virtue of such termination except where specifically provided for in the relevant Addendum.

10.6. <u>Cumulative Remedies</u>. Termination of this Agreement and/or any applicable Addendum, regardless of cause or nature, shall be without prejudice to any other rights or remedies of the Parties and shall be without liability for any loss or damage occasioned thereby.

10.7. <u>Effect of Termination</u>. Upon any termination of this Agreement, each Party (i) shall immediately discontinue all use of the other Party's Confidential Information; (ii) shall delete the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; (iii) shall return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in its possession; except for archival copies which may be retained and which shall be destroyed in accordance with the Party's record retention policy; and (iv) shall promptly pay all amounts due and remaining payable hereunder.

10.8. <u>Survival of Obligations</u>. The provisions of Sections 1, 2, 3, 4, 5, 6, 7.2, 8, 9, 10.4, 10.5, 10.6, 10.7, and 11, as well as Client's obligations to pay any amounts due and outstanding hereunder, shall survive termination or expiration of this Agreement.

## 11. MISCELLANEOUS

11.1. <u>Applicable Law; Venue and Jurisdiction</u>. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ITS RULES REGARDING CONFLICTS OF LAWS. THE PARTIES AGREE THAT, SUBJECT TO SECTION 11.2 (DISPUTE RESOLUTION; ARBITRATION), ANY AND ALL CAUSES OF ACTION BETWEEN THE PARTIES ARISING FROM OR IN RELATION TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE STATE AND FEDERAL COURTS LOCATED WITHIN THE STATE OF TEXAS.

11.2. <u>Dispute Resolution; Arbitration</u>. Except with respect to equitable remedies and disputes related to the Licensed Software or Subscription Services, as applicable or Confidential Information, any dispute, claim, controversy, or disagreement between the Parties arising from or relating to this Agreement or the breach thereof (a "**Dispute**") shall be resolved in accordance with this dispute resolution procedure.

11.2.1. <u>Negotiation</u>. Initially, Gimmal's Project Manager and Client's Project Manager will work to resolve any Dispute. If Gimmal's Project Manager and Client's Project Manager cannot resolve the Dispute within a reasonable period of time, either Party may initiate this dispute resolution process by giving written notice to other Party and the Parties shall use their good faith efforts, using senior representatives (having the authority to negotiate and bind their employer), to resolve the Dispute.

11.2.2. <u>Arbitration</u>. If the Parties do not resolve the Dispute within a period of thirty (30) days following the written notice initiating the dispute resolution, then, upon written notice by either Party to the other, the Dispute shall be finally settled by confidential, binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration panel shall be comprised of three neutral arbitrators, each of whom shall have experience with and knowledge of technology law, and at least one of which must be an attorney. Each Party shall appoint one arbitrator and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. The arbitrators shall apply the governing law of this Agreement (without giving effect to its conflicts of law rules) to all aspects of the Dispute, and the decision of a majority of the arbitrators shall be final and binding and shall be enforceable in any court of

competent jurisdiction. Each Party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. The place of arbitration shall be Houston, Texas USA. The language of the arbitration shall be English. Except as may be required by applicable law or as ordered by any court of competent jurisdiction, neither Party, nor its representatives, nor any arbitrator may disclose the existence, subject, evidence, proceedings, or results of any arbitration hereunder without the prior written consent of the other Party.

11.2.3. Notwithstanding the above, the Parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the Dispute.

11.3. Compliance with Laws and Regulations. Each Party shall undertake all measures necessary to comply with all applicable laws and regulations, including but not limited to, (a) the export laws and regulations of the United States and other applicable jurisdictions, and without limiting the foregoing, each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports from the U.S.; and (b) the regulations promulgated by the European Parliament and the Council of the European Union, Regulation of 4 April 2016, regarding the processing of personal data, commonly referred to as "GDPR".

11.4. Force Majeure. Either Party shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of god, fire, strike, embargo, terrorist attack, war, insurrection or riot, or other causes beyond the reasonable control of such Party. Any delay resulting from any of such causes shall extend performance accordingly or shall excuse performance, in whole or in part, as may be reasonable under the circumstances.

11.5. Notices. All notices required by or relating to this Agreement shall be in writing and shall be sent by means of overnight courier, charges prepaid, certified mail, or by e-mail with confirmation of delivery, to the Parties to the Agreement as identified on the Cover Page to this Agreement, or addressed to such other address as that Party may have given by written notice in accordance with this provision.

11.6. Assignment. Neither Party may assign its rights or delegate its obligations under this Agreement without the other Party's prior written consent, and, absent such consent, any purported assignment or delegation shall be null, void, and of no effect. Notwithstanding the foregoing, either Party may assign this Agreement, without requiring such prior consent, in connection with a merger or sale of all or substantially all of its assets, provided that the assignee agrees in writing to assume the assignor's obligations under this Agreement. This Agreement shall be binding upon and inure to the benefit of Gimmal and Client and their successors and permitted assigns.

11.7. Marketing. Upon Client's prior written approval, Gimmal may issue a press release announcing (a) Client's selection of Gimmal's product and services; and/or (b) Client's successful deployment of the Gimmal products and services. Client agrees to have an authorized Client representative provide a quote for these press releases. Furthermore, Client agrees that Gimmal may refer to Client in its marketing and promotional materials, verbally and/or in writing, provided that Client has provided its approval prior to publication thereof.

11.8. Independent Contractors. Client and Gimmal acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship, or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement. Furthermore, nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Client and either Gimmal or any employee or agent of Gimmal.

11.9. Amendment. No amendment to this Agreement or any Addendum shall be valid unless it is made in writing and is signed by the authorized representatives of the Parties.

11.10. Waiver. No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.

11.11. Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance, or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

11.12. No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors, and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors, and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

11.13. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement.

11.14. Headings. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.

11.15. Entire Agreement. This Agreement (together with any Addenda) sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions, and understandings between the Parties with respect to the subject matter hereof. Neither of the Parties shall be bound by any conditions, inducements, or representations other than as expressly provided for herein, except where specifically amended through addenda subsequent in time to this Master Agreement and mutually signed by both Parties.

11.16. No Solicitation. Each Party agrees that during the term of this Agreement, and for a period of one (1) year after the termination or expiration of this Agreement, it shall not offer employment or engagement (whether as an employee, independent contractor, or consultant) to any employee or consultant of the other Party without the prior written consent of

the other Party. In the event a Party offers employment or engagement (whether as an employee, independent contractor, or consultant) to an employee or consultant of the other Party, it shall pay to other Party an amount equal to one (1) year's salary of such employee or consultant to help offset costs the other Party will incur to replace the employee and provide training to the new employee(s). The obligations set forth herein shall not apply to recruiting through job postings made available to the general public (for example, through newspaper or online job postings).