

# GIMMAL LLC

## Professional Services Addendum

This PROFESSIONAL SERVICES ADDENDUM (the “**Addendum**”) is an addendum to, and is hereby incorporated into, the Master Agreement dated \_\_\_\_\_, between Gimmel LLC (“**Gimmel**”) and \_\_\_\_\_ (“**Client**”).

**1. DEFINITIONS.** Capitalized terms used in this Addendum shall have the meanings 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 services provided by Gimmel to Client pursuant to a SOW under this Addendum.

1.2. “**Statement of Work**” (“**SOW**”) means an order executed by both parties by which Client 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 Client 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 obligations of each Party; (iv) agreed upon Work Product and specific deliverables, if any; and (v) signatures of authorized representative of both Parties.

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 into one or more SOWs to engage Gimmel to provide Professional Services, each of which is made pursuant to this Addendum and each of which shall be considered a separate engagement. No Professional Services shall be furnished to Client by virtue of delivering this Addendum alone but shall require the execution of a SOW and the Master Agreement by both Parties.

2.2. Issuance of SOWs. The Client may request that Gimmel perform Professional Services by delivering a written 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. Client 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 Client, such modifications to the SOW shall be performed under the terms of this

Addendum. Modifications to any SOW shall become effective only when a written change request is executed by authorized representatives of both Parties.

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 in each SOW a Gimmel project manager 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 with similarly skilled personnel. Gimmel shall provide reasonable notice to Client 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 Client’s prior written consent, provided that, Gimmel shall remain responsible for the performance, acts, and omissions of any such subcontractors. Client may request that Gimmel remove or replace Gimmel personnel if Client believes, in Client’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. CLIENT RESPONSIBILITIES**

3.1. Cooperation. Client 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 Client project manager who will be responsible for coordinating the Client obligations under a SOW; (ii) provide sufficient, qualified, knowledgeable personnel capable of: (a) performing Client 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 Client’s facilities during Client’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. Client acknowledges and agrees: (i) Gimmel’s ability to perform the Professional Services is conditioned upon Client’s timely performance of the Client obligations and any assumptions described in the applicable SOW; and (ii) the performance of the Client obligations is material to Gimmel’s ability to commence, proceed with, and complete the Professional Services. In the event Client does not perform Client obligations in a timely manner, Gimmel may take any action as set forth in the applicable SOW, or may terminate the applicable SOW in accordance with this Addendum and the Master Agreement.

3.3. Acceptance. Upon delivery of Professional Services as specified in the applicable SOW (the “**Deliverable**”), Client shall

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have thirty (30) days to accept or reject the Deliverable, or any portion thereof. If the Deliverable is rejected, Client shall specify with sufficient technical precision the reason for such rejection so that Gimmal understands any modifications required to make the Deliverable acceptable. Upon receipt of such notification of rejection, Gimmal shall have a commercially reasonable period of time in which to make the Deliverable acceptable to Client. In the event Gimmal does not deliver an acceptable Deliverable or revised Deliverable, Client's sole remedy will be a refund of amounts paid to Gimmal for such Deliverable. In the event Gimmal delivers a revised Deliverable, Client shall have thirty (30) days to accept or reject the revised Deliverable. In the event Client 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 Agreement. All Work Product, including, without limitation, any modifications, extensions, or enhancements to the Licensed Software, shall be solely owned by Gimmal, except to the extent any portion of the foregoing embodies Client's Confidential Information, and subject to the usage rights granted to Client 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 Agreement 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, all Work Product created under this Addendum, including all IP Rights related thereto, shall be owned by Gimmal and shall be licensed nonexclusively to Client pursuant to the terms of the Master Agreement.

**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. Client shall pay to Gimmal all fees as required by a particular SOW, plus any reasonable and necessary out-of-pocket travel expenses incurred and approved by Client, all in accordance with the applicable SOW, this Section 5 and Section 4 of the Master Agreement.

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

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

7.2. Exclusive Remedy. Client's sole and exclusive remedy, and Gimmal's sole obligation, in the event of a breach of the Professional Services Warranty is for Gimmal, at its expense, to re-perform the Professional Services which were not as warranted, provided that Gimmal has received notice from Client within thirty (30) calendar days of the completion of the Professional Services that Client alleges were not performed consistent with the Professional Services Warranty. NOTWITHSTANDING ANYTHING IN THIS ADDENDUM TO THE CONTRARY, THIS SECTION 7 SETS FORTH GIMMAL'S SOLE AND EXCLUSIVE OBLIGATION 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 AGREEMENT. WITHOUT LIMITING THE FOREGOING, CLIENT AGREES THAT GIMMAL WILL HAVE NO LIABILITY UNDER THIS ADDENDUM FOR ANY FAILURE OR DELAY IN PERFORMANCE ARISING DIRECTLY FROM A MATERIAL FAILURE BY CLIENT 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 thereunder 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

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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 Agreement.

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

8.5. Survival. The provisions of Sections 4, 5, 6, 7.2, 7.3, 8.4 and 8.5 will survive the termination of this Addendum.

[SIGNATURE PAGE TO FOLLOW.]

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

Client
<b>By:</b> _____
<b>Name:</b> _____
<b>Title:</b> _____
<b>Date:</b> _____

Gimmel
<b>By:</b> _____
<b>Name:</b> _____
<b>Title:</b> _____
<b>Date:</b> _____