

# GIMMAL LLC

## Subscription Services (SaaS) Addendum

This SUBSCRIPTION SERVICES (SaaS) 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. "**Authorized Users**" means any employees, agents, or independent contractors of Client that are licensed and authorized to access and use the Subscription Services according to the applicable Order Form, solely for Client's internal business purposes; provided that, any agent or independent contractor shall not be an Authorized User unless and until such agent or independent contractor has entered into a binding contractual agreement with Client, which agreement is no less protective of Gimmel and its proprietary rights than the terms of this Addendum.

1.2. "**Documentation**" means Gimmel's standard user manuals and/or related documentation generally made available to Authorized Users of the Subscription Services, as updated from time to time.

1.3. "**Eligible Client Personnel**" means up to two (2) Client personnel designated by Client to receive Technical Support from Gimmel. Client shall designate one of the Eligible Client Personnel as the sole individual who sets priorities with Gimmel for support. Eligible Client Personnel must be knowledgeable about the Subscription Services and are assumed to have a baseline understanding of reported errors and the ability to reproduce the error. Client has the right to substitute personnel at any time by written notice to Gimmel (which may include notice by email or other electronic transmission).

1.4. "**Malicious Code**" means code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs, and Trojan horses.

1.5. "**Order Form**" means the fully-executed ordering documents for purchases of Subscription Services hereunder that are entered into between Client and Gimmel from time to time under this Addendum. Order Forms shall be deemed incorporated herein by reference.

1.6. "**Subscription Services**" means the online applications and platform provided by Gimmel as described in the Documentation, that are ordered by Client under an Order Form, but excluding Third-Party Software and Professional Services.

1.7. "**Subscription Term**" means the period of time from the start date to the end date specified in each Order Form for each subscription purchased thereunder. Each renewal of a subscription, whether automatic or in writing, shall constitute a new Subscription Term.

1.8. "**Technical Support**" means the provision of responses by Gimmel personnel to questions from Eligible Client Personnel related to use and operation of the Subscription Services, including basic instruction or assistance related to functional errors in the Subscription Services.

1.9. "**Technology**" means all software, designs, formulas, algorithms, processes, and programs that are owned by Gimmel

or licensors and that are used to provide the Subscription Services.

1.10. "**Third Party Software**" means software products that are provided by third Parties but may be configured to interoperate with the Subscription Services and Technology.

## **2. SUBSCRIPTION SERVICES**

2.1. Provision of Subscription Services. Gimmel shall make the Subscription Services available to Client pursuant to this Addendum and the relevant Order Forms during each Subscription Term, subject to Client's timely payment of all applicable fees. Gimmel may provide the Subscription Services and host the Technology on its own infrastructure or may use a third party cloud computing services provider. Client agrees that Client's purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Gimmel regarding future functionality or features. Gimmel may, in its sole discretion, modify, enhance, and/or expand the Subscription Services at no additional cost to Client. Gimmel also may modify, enhance, or expand the Subscription Services by providing additional features or functionality, which may, but are not required to be, added by Client to this Addendum at additional cost. Such additional cost features and functionality may be added by mutual written agreement of the Parties.

2.2. Usage Limits. The Subscription Services are subject to usage limits that are specified in the Order Forms. If Client exceeds a contractual usage limit, Gimmel may work with Client to seek to reduce Client's usage so that it conforms to that limit. If, notwithstanding Gimmel's efforts, Client is unable or unwilling to abide by a contractual usage limit, Client will execute an Order Form for additional quantities of the applicable Subscription Services promptly upon Gimmel's request, and/or pay any invoice for excess usage in accordance with this Addendum and the Master Terms.

2.3. License Grant. Subject to Client's compliance with all of the terms and conditions of the Master Agreement and this Addendum, Gimmel hereby grants Client a worldwide, non-exclusive, non-transferable, non-sublicenseable, limited, revocable right and license during the Subscription Term to access/use the Technology, solely in connection with (a) Gimmel's provision of the Subscription Services and (b) Client's use of the Subscription Services under this Addendum.

2.4. Audit Rights. During the term of this Addendum and for a period of one (1) year following its termination or expiration, Gimmel hereby reserve the right to audit Client's use of the Subscription Services to verify compliance with this Addendum. In the event that any audit reveals any non-compliance, including but not limited to underpayment of fees, Client shall promptly cure the non-compliance, pay Gimmel any shortfall at Gimmel's then current list price; provided, however, that the obligations under this Section 2.5 do not constitute a waiver of Gimmel's termination rights or any other rights hereunder.

## **3. GENERAL RESTRICTIONS AND LIMITATIONS**

3.1 Gimmel Responsibilities. In addition to providing the Subscription Services as described in Section 2.1, Gimmel (a) will provide Client with Gimmel's standard support for the

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Subscription Services at no additional charge, and/or upgraded support if purchased, and (b) will use commercially reasonable efforts to make the online Subscription Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Gimmel shall give at least 8 hours electronic notice and which Gimmel shall schedule to the extent practicable during the weekend hours between 5:00 p.m. Friday and 3:00 a.m. Monday Central time), and (ii) any unavailability caused by circumstances beyond Gimmel's reasonable control, including, for example, an act of God, act of government, flood, fire, hurricane, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Gimmel's employees), internet service provider failure or delay, failure or delay of service from any third party cloud computing services provider, or denial of service attack. Gimmel will provide Technical Support to Client (acting through its Eligible Client Personnel) in accordance with the Maintenance and Support terms available on Gimmel's web site at <http://support.gimmel.com>. Gimmel reserves the right to modify these terms from time-to-time and, other than immaterial changes and corrections, will give Client reasonable notice of modifications to these terms.

**3.2 Client Responsibilities.** Client (a) shall be responsible for Authorized Users' compliance with this Addendum, (b) shall be solely responsible for the accuracy, quality, integrity, and legality of Client Data and of the means by which Client acquired Client Data, (c) shall use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Services, and shall notify Gimmel promptly of any such unauthorized access or use, (d) shall use the Subscription Services only in accordance with the Documentation and applicable laws and government regulations, and (e) shall provide Gimmel with assistance, information, and materials that are reasonably requested as necessary to effectively provide the Subscription Services.

**3.3 Restrictions.** Client will not, directly or indirectly, do any of the following: (a) make any Subscription Services available to, or use any Subscription Services for the benefit of, anyone other than Client or its Authorized Users, (b) sell, resell, license, sublicense, distribute, rent, or lease any Subscription Service, or include any Subscription Services in a service bureau or outsourcing offering, (c) use the Subscription Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Subscription Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Subscription Services or third-party data contained therein, (f) attempt to gain unauthorized access to any Subscription Services or the Technology, (g) permit direct or indirect access to or use of any Subscription Services or Technology in a way that circumvents a contractual usage limit, (h) copy Subscription Services or any part, feature, function, or user interface thereof, (i) frame or mirror any part of any Subscription Service, other than framing on Client's own intranets or otherwise for Client's own internal business purposes or as permitted in the Documentation, (j) access any Subscription Services or Technology in order to build a competitive product or service, or (k) reverse engineer, disassemble, or decompile any Subscription Services or Technology, or any component thereof.

**3.4 Client Data.** The Subscription Services may be used to access and process Client Data in order to generate reports, analyses, documents, and/or results. If Client chooses to save such output, it will be saved as Client Data in Client's account within the platform of the third party cloud computing services

provider that Gimmel uses. However, Client's ability to recreate or duplicate such output will cease upon expiration or termination of this Addendum. Gimmel has no control over (and, accordingly, makes no representations, warranties, or covenants regarding) the storage, accessibility, or protection of Client Data by any other third party cloud computing services provider that Gimmel uses or any other providers with whom Client may store Client Data or whose services are required for the storage, accessibility, or protection of Client Data. Gimmel will not access Client Data except (a) in accordance with the licenses granted to Gimmel in Section 5.2 (Client Data; License); or (b) as compelled by law.

### 4. FEES AND PAYMENTS

**4.1. Fees.** Client shall pay to Gimmel any and all amounts due under this Addendum and all related Order Forms in accordance with Section 4 of the Master Agreement. Except as otherwise specified herein or in an Order Form, (a) fees for Subscription Services are based on Subscription Services purchased and not actual usage, (b) payment obligations are non-cancellable and fees paid are non-refundable, and (c) quantities purchased cannot be decreased during the relevant Subscription Term.

**4.2. Suspension of Service and Acceleration.** If any amount owing by Client under this Addendum is thirty (30) or more days overdue, Gimmel may, without limiting its other rights and remedies, accelerate Client's unpaid fee obligations under this Addendum so that all such obligations become immediately due and payable, and may suspend the Subscription Services to Client, until such amounts are paid in full. Gimmel will give Client at least ten (10) days' prior notice that Client's account is overdue before suspending Subscription Services.

### 5. PROPRIETARY RIGHTS.

**5.1. Ownership and Reservation of Rights.** Gimmel and its licensors own all right, title, and interest in and to Subscription Services and Technology, including, without limitation, all modifications, improvements, upgrades, derivative works, and feedback related thereto, and all IP Rights therein. Subject to the limited rights expressly granted to Client in this Addendum, and without prejudice to the provisions of Section 5.1 of the Master Agreement, Gimmel and its licensors reserve all rights, title, and interest in and to the Subscription Services and the Technology, including all related IP Rights. No rights are granted to Client under this Addendum other than as expressly set forth in this Addendum.

**5.2. Client Data; License.** As between Gimmel and Client, Client exclusively owns all rights, title, and interest in and to all of the Client Data. Client hereby grants Gimmel a worldwide, limited-term license to host, copy, transmit, and display Client Data, as necessary for Gimmel to provide the Subscription Services in accordance with this Addendum. Subject to the limited licenses granted herein, Gimmel acquires no right, title, or interest from Client under this Addendum in or to Client Data. Client hereby grants to Gimmel a perpetual, non-exclusive, royalty-free license to use Client Data in order to provide, monitor, and improve the Subscription Services to Client.

**5.3. Content; License.** Client represents and warrants to Gimmel that it owns all right, title, and interest in, or otherwise has full and sufficient authority to use in the manner contemplated by this Addendum, any content furnished by Client to Gimmel for incorporation into the Subscription Services. Client hereby grants Gimmel a limited, non-exclusive, royalty-free license to use such content in the manner contemplated by this Addendum.

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**6. LIMITATION OF LIABILITY.**

GIMMAL'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS ADDENDUM OR ANY SUBSCRIPTION SERVICES, REGARDLESS OF THE FORM OF ACTION, SHALL NEVER EXCEED THE TOTAL AMOUNT PAID BY CLIENT TO GIMMAL PURSUANT TO THIS ADDENDUM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH ACTION 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. Gimmel Warranties. Gimmel warrants that: (a) the Subscription Services shall perform materially in accordance with the Documentation and (b) subject to Section 7.2 (Third-Party Software), the functionality of the Subscription Services will not be materially decreased during a Subscription Term. For any breach of either such warranty, Client's exclusive remedy shall be as provided in Sections 8.3 (Termination for Breach). Client acknowledges that availability of the Subscription Services depends upon the availability of the internet and any cloud computing services provider that Gimmel uses, and that Gimmel has no control over such availability. Accordingly, Gimmel makes no representations, warranties, or covenants regarding the availability of the Subscription Services to the extent that such availability depends upon the availability of the internet or any cloud computing services provider that Gimmel uses.

7.2. Third Party Software. The Subscription Services have been built as a software-as-a-service on a cloud-computing platform. The Subscription Services are designed to work with the cloud-computing platform and with certain other Third-Party Software. Client's use of Third-Party Software is governed entirely by the terms of Client's agreement with the relevant third party. Nothing in this Addendum creates any rights or obligations on the part of Gimmel with respect to such Third-Party Software nor should this Addendum be construed as creating any rights or obligations on the part of any third party providing Third-Party Software with respect to the Subscription Services provided by Gimmel.

7.3. Limitation of Warranties and Liability. GIMMAL MAKES NO ADDITIONAL REPRESENTATIONS OR WARRANTIES UNDER THIS ADDENDUM EXCEPT FOR THOSE EXPRESSLY SET FORTH IN THIS SECTION 7. THIS ADDENDUM IS SUBJECT TO ALL OF THE DISCLAIMERS, AND LIMITATIONS OF LIABILITY SET FORTH IN SECTIONS 7 AND 8 OF THE MASTER AGREEMENT. WITHOUT LIMITING THE FOREGOING, CLIENT AGREES THAT GIMMAL WILL HAVE NO LIABILITY UNDER THIS ADDENDUM FOR ANY FAILURE OR DELAY IN PERFORMING ARISING DIRECTLY FROM A MATERIAL FAILURE BY CLIENT TO PERFORM ITS OBLIGATIONS HEREUNDER.

**8. TERM; TERMINATION**

8.1. Term of Addendum. This Addendum shall become effective upon the Effective Date hereof and shall continue in effect until all subscriptions granted in accordance with this Addendum have

expired or been terminated, unless and until it is earlier terminated in accordance with this Section 8.

8.2. Term of Purchased Subscriptions. The term of each subscription to the Subscription Services shall be as specified in the applicable Order Form. Except as otherwise specified in this Addendum or the applicable Order Form, subscriptions to the Subscription Services will automatically renew for additional one-year periods, unless either Party gives the other Party notice of non-renewal at least thirty (30) days before the end of the relevant Subscription Term.

8.3. Termination for Breach. Either Party may, at its option and subject to the Master Agreement, terminate this Addendum 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 any termination of this Addendum, Client shall (i) immediately discontinue all use of the Subscription Services and Documentation; and (ii) promptly pay to Gimmel all amounts due and payable under this Addendum.

8.5. Refund or Payment on Termination. Upon any termination by Client pursuant to Section 10.3 of the Master Agreement, Gimmel shall refund Client any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination by Gimmel pursuant to Section 10.3 of the Master Agreement, Client shall pay any unpaid fees covering the remainder of the term of all subscriptions after the effective date of termination. In no event shall any termination relieve Client of the obligation to pay any fees payable to Gimmel for the period prior to the effective date of termination.

8.6. Survival. The provisions of Sections 2.4, 4, 5, 6, 7.3, 8.4, 8.5, and 8.6 will survive 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> _____