

**City and County of San Francisco  
Airport Commission  
P.O. Box 8097  
San Francisco, California 94128**

**Modification No. 2**

THIS MODIFICATION (this “Modification”) is made as of January 14, 2020, in San Francisco, California, by and between Airport Research and Development Foundation (“ARDF”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Airport Commission or the Commission’s designated agent, hereinafter referred to as “Commission.”

RECITALS

- A. City and ARDF have entered into the Application-Based Commercial Ground Transportation Management System License and Services Agreement, with an effective date of March 12, 2015 (as further defined below, the “Agreement”); and
- B. On January 20, 2015 by Resolution No. 15-0008, the Commission awarded the Agreement to ARDF; and
- C. On March 10, 2015, by Resolution No. 58-15, the Board of Supervisors approved the Agreement under San Francisco Charter Section 9.118; and
- D. On February 21, 2017, by Resolution No. 17-0034, the Commission approved the City’s exercise of all three of its options to extend the Agreement, extending the current term through March 12, 2020, and approved Modification No. 1 to the Agreement (“Modification No. 1”), which (i) capped the Annual Services Fee paid by the Airport to ARDF to \$250,000; and (ii) updated standard contractual clauses;; and
- E. On June 6, 2017, by Resolution No. 220-17, the Board of Supervisors approved Modification No. 1.
- F. City and Contractor desire to further modify the Agreement on the terms and conditions set forth herein to extend the contract term, increase the aggregate contract amount, revise the Administrative Services Fee and update standard contractual clauses; and
- G. On January 14, 2020 by Resolution No. 20-0010, the Commission approved this Modification to extend the term of the Agreement through March 12, 2023 and provide for one two-year renewal option in favor of City, with a revised maximum Administrative Services Fee of \$144,000 per annum and a new not-to-exceed amount of \$1,682,000 over the term of the Agreement; and
- H. On March 3, 2020, by Resolution No. 96-20, the Board of Supervisors approved Modification No. 2.

Now, THEREFORE, the parties agree that the following Articles have been changed as follows:

**1. Article 1, Definitions, has been replaced in its entirety as follows:**

Unless otherwise noted, the terms in this Agreement shall carry their normal meaning. The terms in **bold** font shall for the purpose this Agreement have the meaning indicated following the colon (:).

1.1 **Agreement.** The term “Agreement” shall mean the Agreement dated March 12, 2015 between ARDF and City; as amended by Modification No. 1 dated February 21, 2017.

1.2 **Application-Based Commercial Ground Transportation (“ABCT”)**: Transportation to, on, or from an airport for compensation using an online-enabled application (“app”) or technology-based platform to connect passengers with drivers.

1.3 **Application-Based Commercial Ground Transportation Management System (“ABCT Management System”)**: See Licensed Product.

1.4 **Application-Based Commercial Ground Transportation Operating Permit (“ABCT Permit”)**: Each permit or other form of arrangement entered into between an airport and an ABCT Provider which authorizes such Provider to provide ground transportation services to, on, or from an airport, as any such instrument may be amended from time to time.

1.5 **Application-Based Commercial Ground Transportation Provider (“ABCT-Provider”)**: A business entity that provides ABCT services to, on, or from one or more airports. The parties acknowledge and agree that ABCT Provider is a generic term and includes but may not be limited to what is currently known in the State of California as Transportation Network Companies (TNCs) and for what other government entities or regulatory bodies may identify in other ways.

1.6 **City Data or Data**: This includes, but is not limited to, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. This includes data that is provided by a third-party for use under this Agreement.

1.7 **Confidential Information**: This means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M). “Confidential Information” also means any and all nonpublic information, whether written, electronic, or oral, concerning or relating to Airport technology, computer, or data systems, processes, or procedures, or Critical Infrastructure Information or Protected Critical Infrastructure Information as defined under the Homeland Security Act of 2002 and 6 CFR §29.2, which information or access to such information is supplied by the Airport or on behalf of the Airport to Contractor or otherwise acquired by Contractor during the course of dealings with the Airport and regardless of whether such information is in its original form, a copy, or a derivative product. “Derivative” means written or electronic material created from or with, or based on Confidential Information (i.e., a report analyzing Confidential Information shall also be considered Confidential Information). Confidential Information shall also mean proprietary, trade secret or other protected information, identified as Confidential Information by the Airport.

1.8 **Intellectual Property**: The work owned by the City which is integrated as part of the Licensed Product.

1.9 **Licensed Product**: The software, methods, processes, and knowledge developed by the City and provided on a confidential basis to ARDF under this Agreement for the permitting, tracking, monitoring, billing, and auditing of ABCT to, on, or from airport property without the need for a traditional transponder device, as more particularly described in Exhibit A to this Agreement.

1.10 **Participating Airports:** Airports which have contracted with or otherwise engaged ARDF to provide services relating to the permitting, tracking and/or billing of ABCT Providers using the Licensed Product.

2. **Article 3.3. Administrative Services Fee** is amended to add 3.3.a as follows:

a. Administrative Services Fee (Extension). During the Extension Term, the Administrative Services Fee payable by City to ARDF shall equal five percent (5%) of the moneys collected by ARDF from the ABCT Providers and paid to the City, provided that such fee shall in no event exceed (i) an annual amount of \$144,000 (the “Annual Administrative Services Fee Cap”), and (ii) an aggregate, not-to-exceed amount of \$1,682,000, calculated from the Effective Date of the Original Agreement through the expiration of the Extension Term (but not including the Renewal Option, if exercised). Notwithstanding anything herein to the contrary, the Annual Administrative Services Fee Cap shall continue to apply during the Renewal Option, if exercised. The Administrative Services Fee shall otherwise be due and payable pursuant to Section 3.3 of the Agreement.

3. **Article 3.7. Most Favored Nation** is added to the Agreement to read as follows:

3.7 Most Favored Nation Clause in Favor of City. Commencing on the effective date of this Modification, ARDF covenants and agrees that, in consideration of City’s original development of the Licensed Product, ARDF shall not enter into any new agreement or modify any existing agreement with any participating airport which is a “Comparable Airport to SFO” (as defined below) providing for services relating to the permitting, tracking and/or billing of ABCT Providers using the Licensed Product on economic terms more favorable to those provided to City (as reasonably determined by City), including without limitation, the amounts of the Administrative Services Fee paid to ARDF by City and any other fees or revenue shares paid to City by ARDF hereunder, without first complying with the terms of this Section 4. In the event that ARDF shall offer and reach an agreement with any Comparable Airport to SFO for the use of Licensed Product with more favorable terms than those set forth in this Agreement, then such terms shall be promptly offered in writing to City. Upon City’s acceptance of the terms, which such acceptance may be in whole or in part, in City’s sole and absolute discretion, the parties hereto shall memorialize such terms in a letter agreement executed by each party, which such letter agreement shall not be required to be executed as a formal amendment or modification of the Agreement, but shall be nevertheless be binding upon the parties for the duration of the remaining Term of the Agreement. The requirements of this Section 4 shall only apply to the stabilized economic terms of an agreement with a Comparable Airport to SFO, and shall not apply in the event that ARDF offers any initial and temporary economic incentive to any such airport (i.e. one year of no administrative service fees) to enter into any agreement for the use of the Licensed Product, provided such initial economic incentive does not exceed one (1) year in duration. For purposes of this Agreement, a “Comparable Airport to SFO” shall mean an airport serving a predominantly urban market, with the levels of service by ABCT-Providers which are substantially similar to, or anticipated to be similar to, the levels of service of ABCT-Providers serving San Francisco International Airport, as determined by City, in its reasonable discretion. By way of example, the following airports are each deemed to be a “Comparable Airport to SFO”: (i) Los Angeles International Airport, (ii) Oakland International Airport; (iii) Dallas Fort Worth International Airport; (iv) Seattle-Tacoma International Airport; (v) Chicago O’Hare International Airport; and (vi) Dulles International Airport.

4. **Article 6.3 Services Term** is amended to add 6.3.a as follows:

a. Services Term (Extension). Unless earlier terminated or modified by City under the terms and conditions of the Agreement, the Services Term is extended for a term commencing on March 12, 2020 and continuing through March 12, 2023 (the “Extension Term”). In addition, City shall have the

option to further extend the Extension Term by one two-year option (the “Renewal Option”), which the City may exercise by written notice to ARDF upon approval of the Airport Commission, in its sole and absolute discretion, delivered not later than thirty (30) days prior to the expiration of the Extension Term. Except as modified herein, the provision applicable to the Term of the Agreement shall continue unmodified and in full force and effect.

**5. Article 8.12 Limitation on Contributions** is replaced in its entirety as follows:

8.12 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**6. Article 8.21 Laws Incorporated by Reference** is added to the Agreement to read as follows:

8.21 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at: [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/)

**7. Article 8.22 Consideration of Salary History** is added to the Agreement to read as follows:

8.22 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history> . Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

8. **Article 8.23 Alcohol and Drug-Free Workplace** is added to the Agreement to read as follows:

8.23 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

9. **Article 8.24 Incorporation of Recitals** is added to the Agreement to read as follows:

8.24 Incorporation of Recitals. The matters recited above are hereby incorporated into and made part of this Agreement.

10. **Article 8.25 Dispute Resolution Procedure** is added to the Agreement to read as follows:

8.25 Dispute Resolution Procedure.

a. Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, under San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations consistent with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

b. Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11. **Article 8.26 Notification of Legal Requests** is added to the Agreement to read as follows:

8.26 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to

City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

**12. Article 9.3 Confidentiality** is replaced in its entirety and renamed **Management of City Data and Confidential Information** as follows:

9.3 Management of City Data and Confidential Information

a. Access to City Data. City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

b. Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

c. Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

d. Confidential Information. (i) ARDF acknowledges that the content of this Agreement, the Licensed Product and any related Intellectual Property Rights, and any ABCT Provider data related to the Airport obtained by ARDF in its performance of this Agreement, including any "Required Data" or "City Data" as defined herein, are "Confidential Information". ARDF agrees to hold the Confidential Information of the City in strict confidence and not to disclose such information to third parties or to use such information for any purposes whatsoever other than as reasonably necessary to perform and exercise its rights and obligations under the terms and conditions of this Agreement. ARDF agrees to advise each of its employees, contractors, and agents of their obligations to keep such information confidential. ARDF shall exercise the same standard of care to protect such information as a reasonably prudent party would use to protect its own proprietary data and Intellectual Property Rights.

Nothing contained in this Section or elsewhere in this Agreement shall prevent the City from complying with public disclosure requirements under any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated (“Applicable Law”). ARDF’s obligations under this Section shall survive the expiration or earlier termination of this Agreement. (ii) The City acknowledges that any proprietary data or Intellectual Property Rights provided by ARDF to the City, including but not limited to commercial, technical, or financial information, in its performance of this Agreement may be “Confidential Information.” Except as required by law or order of a court of competent jurisdiction, the City agrees to make efforts to hold the Confidential Information of ARDF in confidence and not to disclose such information to third parties or to use such information for any purposes other than as reasonably necessary to perform and exercise its rights and obligations under the terms and conditions of this Agreement. The City agrees to advise its employees involved with the implementation of this Agreement to keep such information confidential. ARDF acknowledges and agrees, however, that the City as a public entity is subject to public records laws and may be required to disclose documents or information in its files. In such event, the City will make efforts to notify ARDF of the potential disclosure to provide ARDF an opportunity to intervene in the disclosure. The City’s obligations under this Section shall survive the expiration or earlier termination of this Agreement.

e. Non-Confidential Information. Notwithstanding the provisions of Section 9.3(d), Confidential Information shall not include information that (i) is already known to the receiving party without restriction on use or disclosure at the time of communication to the receiving party; (ii) is or becomes publicly known through no wrongful act or inaction of the receiving party; (iii) has been rightfully received from a third party authorized to make such communication, without restriction on use or disclosure; (iv) has been independently developed by the receiving party; or (v) is required to be disclosed by the receiving party pursuant to applicable laws or regulations or as required for defending or settling litigation. The receiving party shall have the burden of proving the existence of the foregoing exceptions.

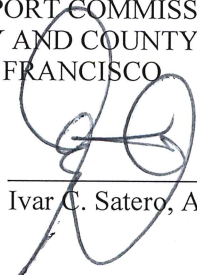

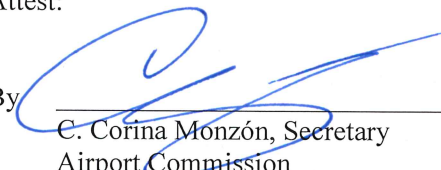
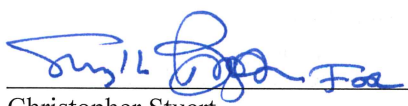
**13. Article 9.4 Taxes** is amended to add **c. Withholding** as follows:

c. Withholding. ARDF agrees that to the extent that it is obligated to pay any amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

**14. Effective Date.** Each of the changes set forth in this Modification shall be effective on and after the date of this Modification.

**15. Legal Effect.** Except as expressly changed by this Modification, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Modification as of the date first referenced above.

CITY	CONTRACTOR
AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	
 By: _____ Ivar C. Satero, Airport Director	 _____ Authorized Signature
Attest:  By  _____ C. Corina Monzón, Secretary Airport Commission	_____ Todd Hauptli, Secretary/Treasurer ARDF 601 Madison Street, Suite 200 Alexandria, VA 22314 (703) 824-0504
Resolution No: <u>20-0010</u>	City Supplier ID: 0000026008
Adopted on: <u>January 14, 2020</u>	Federal Employer ID Number: 52-1594261
Approved as to Form:  Dennis J. Herrera City Attorney	
By  _____ Christopher Stuart Deputy City Attorney	
Approved:  By <u>Galen Leung</u> (for) _____ Alaric Degrafinried, Director of the Office of Contract Administration and Purchaser	