

File No. 150152

Committee Item No. 11

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date March 4, 2015

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Airport Commission Resolution</u> |
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Completed by: Linda Wong Date February 27, 2015

Completed by: _____ Date _____

1 [License and Services Agreement - Airport Research and Development Foundation,
2 a Not-For-Profit Corporation - Application-Based Commercial Ground Transportation Trip Fee
3 Collection Services]

4 **Resolution approving the award of a License and Services Agreement to Airport**
5 **Research and Development Foundation (ARDF), a not-for-profit corporation, to**
6 **provide ARDF with a license to use the City's intellectual property for application-**
7 **based commercial ground transportation (ABCT) trip fee collection services for the**
8 **Airport and other airports, with Service Development Fee payments to the Airport of**
9 **25% of administrative fees paid to ARDF by participating airports and with**
10 **Administrative Fee payments to ARDF of 5% of ABCT trip fees collected on behalf of**
11 **the Airport, with no payments to or from either party due in the first year of the**
12 **agreement, for a two-year term to commence following Board approval, with three**
13 **one-year options to extend.**

14
15 WHEREAS, The Airport has recently issued permits to Transportation Network
16 Companies (TNCs) to provide application-based commercial ground transportation services to
17 and from the Airport; and

18 WHEREAS, The Airport's Information Technology and Telecommunications (ITT) and
19 Landside Operations Staff has created an Application-Based Commercial Ground
20 Transportation (ABCT) Management System to manage TNC activity at the Airport; and

21 WHEREAS, On January 20, 2015, by Resolution No. 15-008, the Airport Commission
22 (the "Commission") approved a License and Services Agreement (the "Agreement") for the
23 ABCT Management System to be made available to ARDF, as licensee, for use by other
24 airports; and
25

1 WHEREAS, ARDF, an affiliate of the American Association of Airport Executives, is
2 uniquely qualified to function as the licensee of the ABCT Management System because it is
3 a 501(c)(3) organization, its mission is to support the airport industry, and it has the
4 infrastructure, technological capabilities, and expertise to provide tracking, collection, and
5 clearinghouse services on behalf of airports in their management of ABCT; and

6 WHEREAS, On January 30, 2015, the Office of Contract Administration approved
7 ARDF as the sole source for the Agreement; and

8 WHEREAS, Under the Agreement, the Airport will provide ARDF with a revocable
9 license to use the ABCT Management System for the life of the intellectual property, exclusive
10 for the first two years of the Agreement, in return for a Service Development Fee equal to 25%
11 of the total administrative services fees collected by ARDF from participating airports, which
12 Service Development Fee shall begin to accrue after the first year the Agreement is in effect;
13 and

14 WHEREAS, ARDF will provide the Airport with tracking, collection, and clearinghouse
15 services for its permitted ABCT for an initial two-year term with three one-year options to
16 extend at the Commission's discretion, in return for an Administrative Services Fee equal to
17 5% of the ABCT trip fees collected on behalf of the Airport, which Administrative Services Fee
18 shall begin to accrue after the first year the Agreement is in effect; now, therefore, be it

19 RESOLVED, That this Board of Supervisors approves the award of a License and
20 Services Agreement to Airport Research and Development Foundation to use the Application-
21 Based Commercial Ground Transportation Management System to manage Application
22 Based Commercial Ground Transportation at the San Francisco International Airport and
23 other airports; and, be it

1 FURTHER RESOLVED, That the License and Services Agreement is on file with the
2 Clerk of the Board of Supervisors in File Number 150152, which is hereby declared to be
3 part of this resolution as if set forth fully herein; and, be it

4 FURTHER RESOLVED, That within thirty (30) days of the License and Services
5 Agreement being fully executed by all parties, the Airport Commission shall provide a copy of
6 the final agreement to the Clerk of the Board for inclusion into the official file.

Item 11 File 15-0152	Department: San Francisco International Airport (Airport)
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the license and service agreement on a sole source basis between the Airport and a non-profit, Airport Research and Development Foundation (ARDF), in which the Airport would license the application-based commercial ground transportation, or ABCT, system to ARDF.

Key Points

- In October 2014, the Airport issued operating permits to three transportation network companies (Lyft, Uber, and Sidecar) to pick up and drop off passengers at the Airport for a fixed fee payable to the Airport of \$3.85 per trip. In order to monitor these Airport trips and collect trip fees, Airport staff developed the ABCT system in-house. The Airport proposes a license and service agreement with ARDF, in which ARDF would implement the ABCT system at the Airport and collect the transportation network companies' trip fees.

Fiscal Impact

- Under the proposed license and service agreement, the Airport would pay ARDF an Administrative Service Fee equal to 5% of trip fee revenues. In exchange, ARDF would pay the Airport a Service Development Fee equal to 25% of the Administrative Service Fee to compensate the Airport for ARDF's use of the Airport's proprietary ABCT system. The Administrative Service Fee and Service Development Fee would be waived during the first year of the agreement.
- Over the initial two year term of the agreement, the Airport expects to collect \$11,600,000 (\$5,800,000 annually) in trip fees. Based on this revenue projection, the Airport would pay ARDF \$290,000 in Administrative Service Fees; and ARDF would pay the Airport \$72,500 in Service Development Fees, for net Airport revenues of \$11,382,500.
- The Airport intends to license the ABCT system to other airports. Under the proposed license and service agreement, ARDF would be able to enter into agreements and implement the ABCT system at other airports. The Airport would charge ARDF the 25% Service Development Fee for revenues received by ARDF from other airports as compensation for ARDF's use of the Airport's proprietary ABCT system. The Airport estimates \$352,500 in these Service Development Fee revenues over the two-year term.
- The proposed license and service agreement between the Airport and ARDF was the result of a sole source contracting process. ARDF is a non-profit corporation that was formed by the American Association of Airport Executives (AAAE), an airport trade association. AAAE already has business relationships with all major airports, which would facilitate marketing the ABCT system to other airports. AAAE has experience operating a complex clearing house of transaction data, as it currently manages a system that conducts background checks on airport employees.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

City Charter Section 9.118(a) states that contracts entered into by a department, board or commission that will generate revenue in excess of \$1 million or any modification of that contract is subject to Board of Supervisors approval.

Background

In October 2014, the Airport issued permits to three transportation network companies, Lyft, Uber, and Sidecar.¹ These permits allow transportation network companies to pick up and drop off passengers at the Airport for a fixed fee payable to the Airport of \$3.85 per trip.

Airport staff developed an application-based commercial ground transportation (ABCT) system in-house, which can monitor transportation network companies' trips to the Airport and collect the appropriate fees. The ABCT system is technically compatible with transportation network companies (Uber, Lyft, and Sidecar) that have permits to pick up and drop off Airport passengers. The Airport worked with these transportation network companies to test the accuracy of the ABCT system.

The ABCT system defines a perimeter around the Airport using geographic coordinates. Transportation network companies are required by the terms of their permit to send data to the Airport's ABCT system any time that one of their respective vehicles enters, leaves, picks-up or drops-off passengers within the perimeter. The ABCT system stores this trip data for future auditing and passes this trip data to the Airport's financial systems for invoicing.

The ABCT system may be licensed by the San Francisco International Airport to other airports that charge trip fees to transportation network companies.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the license and service agreement on a sole source basis between the Airport and a non-profit, Airport Research and Development Foundation (ARDF), in which the Airport would license the application-based commercial ground transportation, or ABCT, system to ARDF. The proposed license and service agreement has an initial two-year term, with three optional one year extensions, which are at the discretion of the Airport.

Under the proposed license and service agreement, ARDF would implement the ABCT system at the Airport, monitor transportation network companies' (Uber, Lyft, and Sidecar) trips, and collect trip fees. The Airport would pay ARDF an Administrative Services Fee of 5% of total trip fee revenues. ARDF would pay the Airport a Service Development Fee equal to 25% of ARDF's Administrative Service Fee revenues (see Table 1 below). The Service Development Fee is intended to partially reimburse the Airport for its costs to develop the ABCT system.

¹ The permits are in effect through May 31, 2015.

Licensing the ABCT System to Other Airports

Under the proposed license and service agreement, the ABCT system remains the exclusive property of the City. As noted above, the Airport developed the ABCT system in-house, and may license the system to other airports that issue permits and collect trip fees from transportation network companies.

Under the proposed license and service agreement, ARDF would be able to enter into service agreements with other airports to implement and operate the ABCT system. ARDF would (1) collect Administrative Service Fees from participating airports; and (2) pay to the Airport the Service Development Fee, equal to 25% of total Administrative Service Fee revenues received by ARDF from the participating airports.

Payment of the Service Development Fee by ARDF to the Airport is intended to reimburse the Airport for ARDF’s use of the proprietary ABCT system. According to Ms. Cathy Widener, Airport Government Affairs Manager, the Airport decided to contract with ARDF to license the Airport’s ABCT system to other airports, rather than the Airport directly licensing the ABCT system to other airports, because software licensing is not the Airport’s core business.

During the first year of the agreement, both the Airport and ARDF would waive the Administrative Services Fee and the Service Development Fee. According to Ms. Widener, the one-year waiver of the Administrative Services Fee and the Service Development Fee is to give the service provider sufficient time to develop a derivative of the Airport’s ABCT system for the purpose of providing trip monitoring and fee collection services to other airports.

FISCAL IMPACT

As shown below in Table 1, over the initial two year term of the proposed agreement, the Airport expects to collect \$11,600,000 (\$5,800,000 annually) in trip fees from transportation network companies (Uber, Lyft, and Sidecar). Based on this revenue projection, the Airport would pay Airport Research and Development Foundation (ARDF) \$290,000 (5% of \$5,800,000) in Administrative Service Fees. ARDF would pay the Airport \$72,500 in Service Development Fees (25% of Administrative Service Fee revenues). Net Airport revenue is \$11,382,500.

Table 1: Fee Collection for the Initial Two Year Term of the Agreement

Fees	Year 1	Year 2	Total
Transportation Network Companies Trip Fee Revenues	\$5,800,000	\$5,800,000	\$11,600,000
Administrative Services Fee Paid by Airport to ARDF	\$0	(\$290,000)	(\$290,000)
Service Development Fee paid by ARDF to the Airport	\$0	\$72,500	\$72,500
Net Revenue to the Airport	\$5,800,000	\$5,582,500	\$11,382,500

Source: Airport

According to Ms. Widener, there are currently nine airports in addition to San Francisco International Airport that allow or are expected to allow permitting of transportation network companies. These nine airports may therefore wish to obtain ABCT technology to manage

collection of trip fees. These airports include Los Angeles International (LAX), Orange County (SNA), Mineta San Jose International (SJC), Oakland International (OAK), Sacramento (SMF), San Diego (SAN), Denver International (DEN), Chicago O'Hare International (ORD) and Nashville (BNA). If the nine airports license the ABCT system, the Airport would collect an estimated additional \$352,500 in Service Development Fees for the initial two-year term of the agreement.

POLICY CONSIDERATION

Sole Source Contracting Process

The proposed license and service agreement between the Airport and ARDF was the result of a sole source contracting process. According to Ms. Widener, the Airport investigated companies that could serve as its licensee and determined that a not-for-profit trade organization representing the interests of the airport industry was the only option because such an organization could use the ABCT system to provide services to other airports at reasonable rates. Of the not-for-profit trade organizations representing the interests of the airport industry, the Airport determined that ARDF is the only such organization with the technical expertise and clearinghouse capabilities to adequately provide the desired services.

ARDF is a non-profit corporation that was formed by the American Association of Airport Executives (AAAE), an airport trade association.² According to Ms. Widener, AAAE already has strong business relationships with all major airports, which would facilitate marketing the ABCT system to other airports. AAAE has proven it can operate a complex clearing house of transaction data, as it currently manages a system that conducts background checks on airport employees.

The Office of Contract Administration approved ARDF as a sole source contractor for the agreement on January 30, 2015.

RECOMMENDATION

Approve the proposed resolution.

² AAAE has various levels of membership. The main membership group is the Airport Legislative Alliance that includes approximately 100 small, regional, and international airports. San Francisco International Airport is a member.



San Francisco International Airport

January 30, 2015

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2015 FEB - 2 PM 2:05
AK

Ms. Angela Calvillo
Clerk of the Board
Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

SUBJECT: Application-Based Commercial Ground Transportation ("ABCT") License and Services Agreement (No. 50037) with Airport Research and Development Foundation ("ARDF")

Dear Ms. Calvillo,

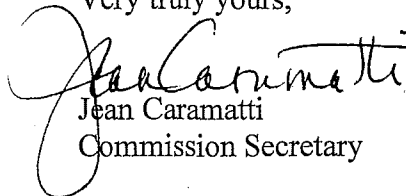
Pursuant to Section 9.118 of the City Charter, I am forwarding for the Board of Supervisor's approval, a License and Services Agreement (No. 50037) with Airport Research and Development Foundation ("ARDF") to provide ARDF with a license to use the City's intellectual property for Application-Based Commercial Transportation trip fee collection services for San Francisco International Airport (SFO) and other airports. The Airport Commission approved the Agreement by adopting Resolution 15-0008 on January 20, 2015.

Two sets of the following documents are enclosed for review:

- Board of Supervisors Resolution;
- Approved Airport Commission Resolution No. 15-0008
- Form SFEC-126 for the Board of Supervisors;
- Form SFEC-126 for Mayor Lee; and
- Copy of License and Services Agreement (No. 50037) with Airport Research and Development Foundation

Please contact Cathy Widener, Airport Governmental Affairs Manager, at 650-821-5023 if you have any questions or concerns regarding this matter.

Very truly yours,


Jean Caramatti
Commission Secretary

Enclosures

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE MAYOR	LARRY MAZZOLA PRESIDENT	LINDA S. CRAYTON VICE PRESIDENT	ELEANOR JOHNS	RICHARD J. GUGGENHIME	PETER A. STERN	JOHN L. MARTIN AIRPORT DIRECTOR
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AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 15-1008

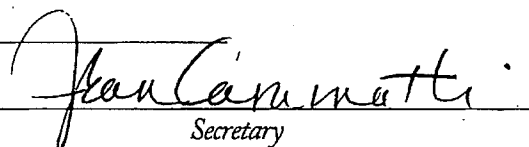
AWARD OF A LICENSE AND SERVICES AGREEMENT NO. 50037 WITH AIRPORT RESEARCH AND DEVELOPMENT FOUNDATION, A NOT-FOR-PROFIT CORPORATION ("ARDF")

- WHEREAS, the Airport has recently issued permits to Transportation Network Companies ("TNCs") to provide application-based commercial ground transportation services to and from the Airport; and
- WHEREAS, the Airport's Information Technology and Telecommunications ("ITT") and Landside Operations Staff has created an Application-Based Commercial Ground Transportation ("ABCT") Management System to manage TNC activity at the Airport; and
- WHEREAS, the Airport Commission desires that the ABCT Management System be made available through a licensee for use by other airports; and
- WHEREAS, ARDF, a subsidiary of the American Association of Airport Executives, is uniquely qualified to function as the licensee of the ABCT Management System because it is a 501(c)(3) organization, its mission is to support the airport industry, and it has the infrastructure, technological capabilities, and expertise to provide tracking, collection, and clearinghouse services on behalf of airports in their management of ABCT; and
- WHEREAS, the Airport has requested sole source approval from the Office of Contract Administration; now, therefore be it
- RESOLVED, that this Commission awards a License and Services Agreement (No. 50037) to ARDF, under which (a) the Airport will provide ARDF with a revocable license to use the ABCT Management System for the life of the intellectual property, exclusive for the first two years of the License, in return for a Service Development Fee equal to 25% of the total administrative services fees collected by ARDF from participating airports and (b) ARDF will provide the Airport with tracking, collection, and clearinghouse services of its permitted ABCT for an initial two year term with three one-year options at the Commission's discretion, in return for an Administrative Services Fee equal to 5% of the trip fees collected on behalf of the Airport; with no fee payments exchanged between the Airport and ARDF in the first year of the Agreement; and be it further
- RESOLVED, that this Commission directs the Commission Secretary to seek approval of the Agreement by the Board of Supervisors.

I hereby certify that the foregoing resolution was adopted by the Airport Commission

at its meeting of

JAN 20 2015


Secretary

**APPLICATION-BASED COMMERCIAL
GROUND TRANSPORTATION MANAGEMENT SYSTEM
LICENSE AND SERVICES AGREEMENT**

Agreement No. 50037

This LICENSE AND SERVICES AGREEMENT (this "Agreement") is made as of _____ (the "Effective Date") by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through its AIRPORT COMMISSION (the "Commission") and the AIRPORT RESEARCH AND DEVELOPMENT FOUNDATION, a not-for-profit organization with its principal place of business in Alexandria, Virginia ("ARDF") (jointly, the "parties" and individually a "party").

Recitals:

- A. The City, acting by and through the Commission, owns and operates the San Francisco International Airport (the "Airport"), which is located in the County of San Mateo, State of California.
- B. The Commission is authorized to enter into all contracts which relate to matters under its jurisdiction, subject to the approval of the San Francisco Board of Supervisors as required by the San Francisco Charter.
- C. The City has developed certain new processes to track application-based commercial ground transportation vehicles transacting business to, on, or from Airport property, for which the City has applied to the Library of Congress and the United States Patent and Trademark Office for protection of its intellectual property.
- D. The City has received requests from other airports to use the processes but the City does not have the resources to provide the same.
- E. The City desires to license to ARDF the processes for implementation in other airports. The City has selected ARDF as the licensee because ARDF is uniquely positioned as a 501(c)(3) not-for-profit trade organization representing airports and because ARDF has proven infrastructure, technological capabilities, and expertise.
- F. ARDF acknowledges that under this Agreement it would be receiving from the City intellectual property which it will use to provide airports with a system to manage their respective application-based commercial ground transportation providers on a nondiscriminatory basis and at reasonable rates.
- G. The City also desires that ARDF provide services to the Airport using the Airport's management system to track and monitor application-based commercial ground transportation transacting business to, on, or from Airport property.

H. On January 20, 2015, the Airport Commission awarded this Agreement by Resolution No. 15-0008 and on _____, the Board of Supervisors approved this Agreement by Resolution No. _____, File No. _____.

NOW THEREFORE, in consideration of the foregoing, of the mutual covenants set forth in this Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties do mutually agree as follows:

Terms and Conditions of Agreement:

ARTICLE 1

Definitions

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

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.

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

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.

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.

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

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.

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.

ARTICLE 2

Ownership; License Grants and Covenants

2.1 Ownership and License Grant. ARDF acknowledges that the Licensed Product is the sole and exclusive property of the City, and that this Agreement does not confer any transfer of title to, or ownership of, the Licensed Product. ARDF will acquire no ownership or proprietary rights whatsoever in the Licensed Product through the use of the Licensed Product or by development of any Improvement as defined in Section 2.3 below. ARDF shall not use the Licensed Product for any purpose except as expressly set forth in herein. The City grants to ARDF a worldwide, non-exclusive, revocable, non-transferable, fee-bearing license to use, reproduce, modify and create derivative works of, the Licensed Product for the purpose of performing the Licensee Services for the City and supporting the implementation of ABCT Permits at Participating Airports. Except that during the first two years of the Agreement, beginning on the Effective Date, ARDF will have exclusive rights, along with the City, to the Licensed Product (the "Exclusivity Period"). During the Exclusivity Period, the City shall not license the Licensed Product to a third party service provider, but such exclusivity shall in no way limit the City's right to use, reproduce, modify, or create derivative works of the Licensed Product or to otherwise manage ABCT Providers at the Airport using the Licensed Product.

2.2 No Transfer. The license granted to ARDF under this Agreement shall not extend any licensed rights to any other individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or any agency or instrumentality, regardless of such other entity's relationship with ARDF. ARDF may not sublicense or transfer any of the rights granted by this Agreement unless expressly agreed to in writing by the City at the City's sole discretion.

2.3 Ownership of Improvements. The City and ARDF acknowledge that each party may own, hold, or may independently develop in the future during the course of performance of this Agreement, proprietary information and technology including but not limited to software code, libraries, files, systems, interfaces, data, materials, improvements, techniques, development tools, utilities, methodologies, specifications, business methods, processes, formulae, algorithms, procedures and other know-how, information, and/or improvements to the Licensed Product (hereinafter "Improvements"). The parties agree that all Improvements and derivative works developed by a party are proprietary to that party and shall remain that party's exclusive property subject to applicable laws of inventorship. Neither the City nor ARDF is required to disclose to the other party its derivative works or Improvements of the Licensed Product unless a dispute as to the ownership of such modifications should arise.

ARTICLE 3

Payment and Audit

3.1 Service Development Fee. ARDF shall pay to the City a Service Development Fee on a continuing basis equal to twenty-five percent (25%) of Gross Revenue (defined below). The Service Development Fee shall accrue and be calculated commencing on the first calendar day following the anniversary of the Effective Date of this Agreement (if the Effective Date is January 1, 2015 then the Service Development Fee shall accrue as of January 2, 2016); no Service Development Fee shall be due and owing on any Gross Revenue received during the first year this Agreement is in effect. The Service Development Fee shall be paid in United States Dollars on a calendar quarterly basis within thirty (30) days of the close of the respective quarter and shall be remitted with a report showing the Gross Revenue generated by ARDF for the applicable calendar quarter and the calculation of the Service Development Fee for such calendar quarter (the "Fee Statement").

3.2 Gross Revenue. "Gross Revenue" means gross receipts of every kind and nature derived from ARDF's use of the Licensed Product, including but not limited to, all fees and charges levied on Participating Airports and/or ABCT Providers by ARDF. Gross Revenue shall not include moneys collected by ARDF in its capacity as a billing agent from ABCT Providers, which are, in turn, paid to Participating Airports. Any provision to the contrary notwithstanding, it shall be an incurable, material breach of this Agreement (without requirement of notice or opportunity to cure) if at any time ARDF takes any action or enters into any arrangement or agreement intended to understate or to conceal Gross Revenue under this Agreement. If ARDF desires to enroll an airport located in a jurisdiction in which local taxes are imposed on ARDF for the moneys it collects on behalf of that airport, then, in the event ARDF desires to adjust the Service Development Fee as it relates to such moneys, the City and ARDF shall meet and confer on whether or not to amend this Agreement to address that particular situation.

3.3 Administrative Services Fee. The City shall pay to ARDF an "Administrative Services Fee" for the Licensee Services (defined in Section 4.1) at the following rates: (a) during the first year of the Services Term (defined in Section 6.3), for free and without any fee, charge, or cost pass through to the City; and (b) during the second year of the Services Term and each one-year extension of the Services Term if any such option to extend is exercised by the City, five percent (5%) of the moneys collected by ARDF from the ABCT Providers and paid to the City. City shall pay the Administrative Services Fee to ARDF on a monthly basis with payments for each month to be made within thirty (30) days after the close of such month. Invoicing for and payment of the Administrative Services Fee shall be made in a manner and form as required by the City. The Administrative Services Fee paid by the City to ARDF shall constitute Gross Revenue as defined in Section 3.2 for the purpose of calculating the Service Development Fee. The City may withhold payment to ARDF in any instance in which ARDF has failed or refused to satisfy any material obligation provided for under this Agreement. The City's Administrative Services Fee shall not exceed \$500,000 during the initial Services Term, the two years from the Effective Date (defined in Section 6.3).

3.4 Books and Records; Audit. ARDF will keep accurate books and accounting records for the purpose of showing the Service Development Fee payable to the City and

ARDF's compliance with this Agreement. The books and records will be kept at ARDF's principal place of business, retained for three (3) years following the end of the calendar year to which they pertain and made available on ten (10) days notice during regular business hours, to the inspection of the City or its agents for the purpose of verifying ARDF's Fee Statement and compliance with this Agreement. Should the City determine that ARDF, or any agent or employee of ARDF, is not calculating or paying the Service Development Fee in conformance with the requirements of this Agreement, the City shall provide ARDF with written notice of such failure and within five (5) business days of ARDF's receipt of such notice ARDF shall remedy the deficiency.

3.5 Payment; Invoice Format. Invoices furnished by ARDF under this Agreement must be in a form acceptable to the Office of the Controller of the City and County of San Francisco and must include a unique invoice number. All amounts paid by the City to ARDF shall be subject to audit by the City. Payment shall be made by the City to ARDF at the address specified in the section entitled "Notices."

3.6 Late Charge. If any payment of the Service Development Fee is not received by the City within ten (10) business days of its due date, then ARDF shall pay to the City a late charge equal to one percent (1%) of the overdue amount.

ARTICLE 4

Licensee Services to the City

4.1 Licensee Services. As a condition of the City's grant of license rights to ARDF, ARDF agrees to perform the Licensee Services (as described in Exhibit B) for the City. The City may, for any reason whatsoever or for no reason at all, elect to maintain its own ABCT Management System or contract with another provider for maintenance of its ABCT Management System, without any (or any portion of) the Licensee Services from ARDF, by providing ten (10) days' prior written notice to ARDF specifying the Licensee Services which the City no longer requires ARDF to perform. Such election shall in no way affect the license rights granted to ARDF or ARDF's obligation to pay the Service Development Fee to the City under this Agreement.

ARTICLE 5

No Warranties; Consulting Services; Limitations of Liability

5.1 No Warranties. The City licenses the Licensed Product "as is" without any warranties, express or implied, oral or written, and makes no representation or guarantees to ARDF whatsoever and specifically disclaims all warranties including but not limited to (a) any warranty that the Licensed Product is timely, secure, or error-free, will operate without interruption, or is compatible with equipment and software configurations; (b) any and all implied warranties of merchantability; (c) any and all warranties of fitness for a particular purpose; and (d) indemnification for infringement of any third-party rights.

5.2 Consulting Services; Consulting Fees. In order to support the transition of the Licensed Product to ARDF and ARDF's implementation of the Licensed Product for

Participating Airports, the City agrees to provide technical support services to ARDF at such times and using such employees as determined by the City (the "Consulting Services"), which services are more particularly described in Exhibit C to this Agreement. The City shall be obligated to provide Consulting Services for the first forty-five (45) days from and after the Effective Date without charge. Thereafter, the City may at its own discretion continue to provide Consulting Services to ARDF, but shall not be obligated to provide any Consulting Services to ARDF. Should the City provide Consulting Services following the initial forty-five (45) day period, the City may charge ARDF Two Hundred Dollars (\$200) per hour for each hour of Consulting Services provided as determined by the City (the "Consulting Fees"). ARDF shall pay the Consulting Fees within fifteen (15) days of written demand from the City.

5.3 Limitations of Liability. The City has no liability whatsoever to ARDF for any claim based upon (a) any errors in or omissions in Licensed Product; (b) any delays or delivery problems resulting from use of the Licensed Product; (c) the unavailability or interruption of the Licensed Product or any of its features; (d) ARDF's use of the Licensed Product (regardless of whether ARDF received assistance, information or advice from the City or any City personnel); (e) transmission errors or any problems relating to telephone lines or other transmission devices, including the unavailability of telephone lines or other electronic transmission lines or devices; (f) rejection of the Licensed Product by ARDF; (g) infringement of any intellectual property rights by Licensed Product; (h) the content and format of Licensed Product; (i) incorrect transmission or delivery instructions by ARDF; (j) any unauthorized access to the Licensed Product; (k) any alteration or destruction of Licensed Product resulting from third parties' unauthorized access to the Licensed Product (e.g., "hacking"); (l) damages caused by any computer "virus" or other damaging or destructive software or software components contained in files or otherwise transmitted through the Licensed Product; or (m) the installation of software unrelated to the Licensed Product by ARDF onto its computer system that interferes with the Licensed Product.

ARTICLE 6

Effective Date; Term

6.1 Effective Date. The Effective Date of this Agreement shall be the date that the approval by the San Francisco Board of Supervisors becomes final.

6.2 License Term. The term of the license granted under this Agreement shall continue in effect until the expiration of the City's rights in the Licensed Product or such other time as the license is revoked by the City.

6.3 Services Term. Unless earlier terminated or modified by the City under Section 4.1, ARDF's obligation to provide the Licensee Services under this Agreement shall expire on the second (2nd) year anniversary of the Effective Date. The City shall have three (3) separate and consecutive options to extend the Services Term for additional periods of one (1) year each, which the City may exercise, upon approval of the Airport Commission, by notice in writing to ARDF delivered not later than thirty (30) days prior to the expiration of the then current Services Term. Should the Services Term expire prior to the expiration of the License Term, all rights and obligations of the parties under this Agreement shall continue in full force and effect except

only those which specifically relate to the provision of Licensee Services. References to the “term” of this Agreement shall include both the License Term and the Services Term.

ARTICLE 7

Default; Remedies

7.1 **Event of Default.** Each of the following shall constitute an event of default (“Event of Default”) under this Agreement:

a. The failure by ARDF to pay the Service Development Fee, Consulting Fees, or any other charge required to be paid under this Agreement, or any part thereof, when due, which failure is not cured within five (5) business days after written notice thereof from the City.

b. The failure by ARDF to perform the Licensee Services or any other provision, covenant or condition of this Agreement to be observed or performed by ARDF where such failure continues for ten (10) business days after written notice thereof from the City.

c. The failure by ARDF to observe or perform according to the provisions of Section 9.3 [Confidentiality] of this Agreement where such failure continues for more than three (3) business days after written notice thereof from the City.

d. The failure by ARDF to adequately support national and international implementation of the ABCT Management System using the Licensed Product, as reasonably determined by the City, where such failure continues for sixty (60) days after written notice thereof from the City.

7.2 **Remedies.** Upon the occurrence of any Event of Default by ARDF, the City shall have, in addition to any other remedies available to the City at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

a. Recover its actual damages resulting from such breach and/or seek specific performance or other equitable relief, and/or elect, without further notice, to be excused from future performance under this Agreement.

b. Terminate this Agreement, in which event ARDF shall immediately cease use of the Licensed Product and promptly return any of the City’s Intellecion Property Rights, Confidential Information and other Airport data to the City.

ARTICLE 8

City and Other Governmental Provisions

8.1 **Conflict of Interest.** Through its execution of this Agreement, ARDF acknowledges that it is familiar with the provision of Section 15.103 of the City’s Charter,

Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

8.2 Consideration of Criminal History in Hiring and Employment Decisions.

a. ARDF agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of ARDF's obligations under Chapter 12T is set forth in this Section. ARDF is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

b. The requirements of Chapter 12T shall only apply to ARDF's operations to the extent those operations are in furtherance of the performance of this Agreement, and shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, whose employment is or would be in whole or in substantial part physically located in the City and County of San Francisco, which excludes Airport property.

Applicants or employees who would be or are performing work in furtherance of this Agreement may be required to be screened by the U.S. Department of Homeland Security for security badging. A rejection by the U.S. Department of Homeland Security of an applicant's or employee's security badging application, and the resulting inability of ARDF to hire the applicant or assign the employee to perform services under this Agreement, shall not be considered an Adverse Action under Chapter 12T.

c. ARDF shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. ARDF's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. ARDF shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. ARDF shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 8.2(d), above. ARDF shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. ARDF shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that ARDF will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. ARDF shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under ARDF's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. ARDF understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

8.3 Local Business Enterprise Utilization; Liquidated Damages.

a. The LBE Ordinance. ARDF shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase ARDF's obligations or liabilities, or materially diminish ARDF's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this Section. ARDF's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of ARDF's obligations under this Agreement and shall entitle the City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, ARDF shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement. If ARDF willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, ARDF shall be liable for liquidated damages in an amount equal to ARDF's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Contract Monitoring Division ("CMD") or any other public official authorized to enforce

the LBE Ordinance (separately and collectively, the “Director of CMD”) may also impose other sanctions against ARDF authorized in the LBE Ordinance, including declaring the ARDF to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the ARDF’s LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, ARDF acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to the City upon demand. ARDF further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to ARDF on any contract with the City. ARDF agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

8.4 Nondiscrimination; Penalties.

a. ARDF Shall Not Discriminate. In the performance of this Agreement, ARDF agrees not to discriminate against any employee, City and County employee working with ARDF, applicant for employment with ARDF, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts. ARDF shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. ARDF’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. ARDF does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, ARDF shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth in this Agreement. ARDF shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, ARDF understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against ARDF and/or deducted from any payments due ARDF.

8.5 MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of ARDF acknowledges and agrees that he or she has read and understood this Section.

8.6 Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges ARDF not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

8.7 Drug-Free Workplace Policy. ARDF acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. ARDF agrees that any violation of this prohibition by ARDF, its employees, agents or assigns will be deemed a material breach of this Agreement.

8.8 Resource Conservation. Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated in this Agreement by reference. Failure by ARDF to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

8.9 Compliance with Americans with Disabilities Act. ARDF acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. ARDF shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. ARDF agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of ARDF, its employees, agents or assigns will constitute a material breach of this Agreement.

8.10 Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of

communications between the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

8.11 Public Access to Meetings and Records. If ARDF receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, ARDF shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, ARDF agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. ARDF further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. ARDF acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. ARDF further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

8.12 Limitations on Contributions. Through execution of this Agreement, ARDF acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code ("Section 1.126"), which prohibits any person who contracts with 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, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. ARDF acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. ARDF further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of ARDF's board of directors; ARDF's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in ARDF; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by ARDF. Additionally, ARDF acknowledges that ARDF must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. ARDF further agrees to provide to the City the names of each person, entity or committee described above.

8.13 Requiring Minimum Compensation for Covered Employees.

a. ARDF agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines

and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated in this Agreement by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco . A partial listing of some of ARDF's obligations under the MCO is set forth in this Section. ARDF is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires ARDF to pay ARDF's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and ARDF is obligated to keep informed of the then-current requirements. Any subcontract entered into by ARDF shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is ARDF's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, the City may pursue any of the remedies set forth in this Section against ARDF.

c. ARDF shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. ARDF shall maintain employee and payroll records as required by the MCO. If ARDF fails to do so, it shall be presumed that the ARDF paid no more than the minimum wage required under State law.

e. The City is authorized to inspect ARDF's job sites and conduct interviews with employees and conduct audits of ARDF.

f. ARDF's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the ARDF fails to comply with these requirements. ARDF agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for ARDF's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. ARDF understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, ARDF fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, ARDF fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. ARDF represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If ARDF is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but ARDF later enters into an agreement or agreements that cause ARDF to exceed that amount in a fiscal year, ARDF shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the ARDF and this department to exceed \$25,000 in the fiscal year.

8.14 Requiring Health Benefits for Covered Employees. ARDF agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth in this Agreement. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, ARDF shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If ARDF chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if ARDF is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. ARDF's failure to comply with the HCAO shall constitute a material breach of this agreement. The City shall notify ARDF if such a breach has occurred. If, within 30 days after receiving the City's written notice of a breach of this Agreement for violating the HCAO, ARDF fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, ARDF fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

d. Any subcontract entered into by ARDF shall require the subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. ARDF shall notify the City's Office of Contract Administration when it enters into such a subcontract and shall certify to the Office of Contract Administration that it has notified the subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on subcontractor through the subcontract. Each ARDF shall be responsible for its subcontractors' compliance with this Chapter. If a subcontractor fails to comply, the City may pursue the remedies set forth in this Section against ARDF based on the subcontractor's failure to comply, provided that the City has first provided ARDF with notice and an opportunity to obtain a cure of the violation.

e. ARDF shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City with regard to ARDF's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. ARDF represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. ARDF shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. ARDF shall keep itself informed of the current requirements of the HCAO.

i. ARDF shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on subcontractors.

j. ARDF shall provide the City with access to records pertaining to compliance with HCAO after receiving a written request from the City to do so and being provided at least ten business days to respond.

k. ARDF shall allow the City to inspect ARDF's job sites and have access to ARDF's employees in order to monitor and determine compliance with HCAO.

l. The City may conduct random audits of ARDF to ascertain its compliance with HCAO. ARDF agrees to cooperate with the City when it conducts such audits.

m. If ARDF is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but ARDF later enters into an agreement or agreements that cause ARDF's aggregate amount of all agreements with the City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between ARDF and the City to be equal to or greater than \$75,000 in the fiscal year.

8.15 First Source Hiring Program. This Section incorporates the requirements of the First Source Hiring Program pursuant to San Francisco Administrative Code Chapter 83 (entitled "First Source Hiring Program"). ARDF agrees to participate and comply with the provisions of the First Source Hiring Program. As part of the ARDF's Agreement with the City, ARDF shall incorporate provisions of the First Source Hiring Program into any Joint Venture Partnership and shall require subcontractors to do the same. The Mayor's Office of Economic and Workforce Development is the ARDF's main contact for the First Source Hiring Program. For more information regarding First Source Hiring Program, please go to: <http://www.workforcedevelopmentsf.org/>.

a. Definitions. The provisions of Chapter 83 of the San Francisco Administrative Code apply to this Agreement. ARDF shall comply fully with, and be bound by,

all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided in this Agreement. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

i. Entry Level Position: Any non-managerial position that requires either: (a) no education above a high school diploma or certified equivalency; or (b) less than two years training or specific preparation; and (c) shall include temporary positions and paid internships.

ii. Trainee: An economically disadvantaged worker identified by the First Source Hiring Program as having the appropriate training, employment background and skill set for an available Entry Level Position specified by ARDF.

b. First Source Hiring Goals.

i. Over the life of the Agreement, ARDF shall make good faith efforts to hire a minimum number of Trainees referred by the First Source Hiring Program to fulfill available Entry Level Positions based on the Contractor Fee Schedule below:

Contractor Fee Schedule	Minimum Number of Trainees to be Hired (over the life of the contract)
\$0 – \$499,999	0
\$500,000 – \$899,999	1
\$900,000 – \$1,999,999	2
\$2,000,000 – \$4,999,999	3
\$5,000,000 – \$7,999,999	4
\$8,000,000 – \$10,999,999	5
\$11,000,000 – \$13,999,999	6
(> = \$14M, for each additional \$3 million in Contractor fees, add one additional Trainee)	

ii. ARDF may decline to hire a Trainee if ARDF considers the Trainee in good faith and deems the Trainee is not qualified. The final decision to hire a Trainee shall be made by ARDF.

iii. ARDF shall hire the Trainee on a full-time basis for at least 12 months or on part-time basis for 24 months.

iv. Trainees must be obtained through the First Source Hiring Program and ARDF must consider all Trainees fairly and equally and comply with the non-discrimination provisions pursuant to local, state and federal laws. No existing employee may count toward the total number of Trainees hired.

c. Procedures.

i. Within 30 days of award of contract, ARDF will email the First Source Hiring Administrator and schedule to meet with staff from the First Source Hiring Program. At the meeting, ARDF will provide information on Entry Level Positions, number of Trainees to be hired, job description, start date and rate of pay. If ARDF cannot quantify the numbers of

Trainees to be hired, ARDF must still meet with the First Source Hiring Program and present a workforce plan of good faith efforts towards the First Source Hiring Goals.

ii. ARDF is required to notify the First Source Hiring Program of all available Entry Level Positions.

iv. ARDF will designate a representative to monitor all employment related activity and be the main contact for the First Source Hiring Program.

v. ARDF will maintain documentation and records supporting good faith efforts toward the First Source Hiring Program.

d. As-Needed Contracts. If ARDF is awarded As-Needed contracts it shall follow the provisions of the First Source Hiring Program. However, the First Source Hiring Goals will not be based on each individual Contract Service Order (CSO) but rather from the total number of CSOs issued to ARDF. If ARDF does not know when or how many CSOs will be issued, ARDF shall hire Trainees only if the increase in CSOs creates entry-level employment opportunities.

e. Noncompliance. Failure to meet the criteria of the First Source Hiring Program does not impute bad faith but rather will trigger a review for compliance. If the City deems ARDF to be noncompliant and have acted in bad faith towards the First Source Hiring Program, then the City may withhold progress payments and assess liquidated damages as defined in San Francisco Administrative Code Chapter 83.

8.16 Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, ARDF may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. ARDF agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated in this Agreement by this reference. In the event ARDF violates the provisions of this Section, the City may, in addition to any other rights or remedies available under this Agreement, (i) terminate this Agreement, and (ii) prohibit ARDF from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider ARDF's use of profit as a violation of this Section.

8.17 Preservative-treated Wood Containing Arsenic. ARDF may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. ARDF may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude ARDF from

purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

8.18 Labor Peace / Card Check Rule. Without limiting the generality of other provisions in this Agreement requiring ARDF to comply with all rules prescribed by the Airport, ARDF shall comply with the Airport's Labor Peace / Card Check Rule, adopted on February 1, 2000, pursuant to Airport Commission Resolution No. 00-0049 (the "Labor Peace / Card Check Rule"). Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule. To comply with the Labor Peace/Card Check Rule, ARDF shall, among other actions: (a) Enter into a Labor Peace/Card Check Rule Agreement with any Labor Organization which requests such an agreement and which has registered with the Airport Director or his / her designee, within thirty (30) days after Labor Peace/Card Check Rule Agreement has been requested; (b) Not less than thirty (30) days prior to the modification of this Agreement, ARDF shall provide notice by mail to any Labor Organization or federation of labor organizations which have registered with the Airport Director or his / her designee (registered labor organization"), that ARDF is seeking to modify or extend this Agreement; (c) Upon issuing any request for proposals, invitations to bid, or similar notice, or in any event not less than thirty (30) days prior to entering into any subcontract, ARDF shall provide notice to all registered Labor Organizations that ARDF is seeking to enter into such subcontract; and (d) ARDF shall include in any subcontract with a subcontractor performing services pursuant to any covered Contract, a provision requiring the subcontractor performing services pursuant to any covered Contract, a provision requiring the subcontractor to comply with the requirements of the Labor Peace/Card Check Rule. If Airport Director determines that ARDF violated the Labor Peace/Card Check Rule, Airport Director shall have the option to terminate this Agreement, in addition to exercising all other remedies available to him / her.

8.19 Federal Non-Discrimination Provisions. ARDF for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that ARDF shall maintain and operate the Airport facilities and services in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended. ARDF, for itself, its personal representatives, successors in interest, and assigns, agrees that ARDF in its operation at and use of San Francisco International Airport, covenants that (1) no person on the grounds of race, color, national origin or sex shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under the Airport and the furnishing of services thereon, no person on the grounds of race, color, national origin or sex shall be excluded from participation or denied the benefits of, or otherwise be subject to discrimination, (3) that ARDF shall use all City premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A – Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. These Regulations are incorporated as though fully set forth in this Agreement. ARDF agrees to include the above statements in any subsequent contract that it enters into with

subcontractors and cause those agreements to similarly include the statements, and cause those businesses to include the statements in further agreements. Failure by ARDF to comply with the requirements of this Section is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Airport deems appropriate.

8.20 Protection of Private Information. ARDF has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated in this Agreement as if fully set forth. ARDF agrees that any failure of ARDF to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against the ARDF pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar ARDF.

ARTICLE 9

Miscellaneous Provisions

9.1 Insurance.

a. Without in any way limiting ARDF's liability pursuant to Section 9.2 [Indemnification] of this Agreement, ARDF shall maintain in force, during the term of this Agreement, insurance in the following amounts and coverages:

i. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

ii. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

iii. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

i. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

ii. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 9.22 [Notices] of this Agreement.

d. Should any of the required insurance be provided under a claims-made form, ARDF shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. The lapse of any insurance required under this Agreement shall constitute an Event of Default without notice or opportunity to cure.

f. Before commencing any Licensee Services, ARDF shall furnish to the City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to the City, in form evidencing all coverages set forth above. Approval of the insurance by the City shall not relieve or decrease ARDF's liability hereunder.

9.2 Indemnification. ARDF shall indemnify and save harmless the City, its boards, commissions, officers and employees ("Indemnitees") from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims for injury to or death of a person, including employees of ARDF or loss of or damage to property, arising directly or indirectly from ARDF's performance of this Agreement, including, but not limited to, ARDF's use of the Licensed Product and performance of the Licensee Services, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Indemnitees, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Indemnitees and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on ARDF or its agents or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the City's costs of investigating any claims against the Indemnitees. In addition to ARDF's obligation to indemnify Indemnitees, ARDF specifically acknowledges and agrees that it has an immediate and independent obligation to defend Indemnitees from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to ARDF by the City and continues at all times thereafter. ARDF's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

9.3 Confidentiality.

a. Confidential Information. 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" as defined in Exhibit B, 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.

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.

b. Non-Confidential Information. Notwithstanding the provisions of Section 9.3(a), 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.

9.4 Taxes.

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of ARDF.

b. ARDF recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not

created unless this Agreement entitles the ARDF to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

i. ARDF, on behalf of itself and any permitted successors and assigns, recognizes and understands that ARDF, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

ii. ARDF, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. ARDF accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

iii. ARDF, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). ARDF accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

iv. ARDF further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

9.5 No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties and no other person or entity, including any ABCT Provider or Participating Airport shall be entitled to rely upon or receive any benefit from this Agreement or any term hereof.

9.6 Assignment. The services to be performed by ARDF are personal in character and neither this Agreement nor any duties or obligations under this Agreement may be assigned or delegated by ARDF unless first approved by the City by written instrument executed and approved in the same manner as this Agreement.

9.7 Subcontracting. ARDF is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by the City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

9.8 Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

9.9 Other Airport Intellectual Property. Pursuant to Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. ARDF may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

9.10 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

9.11 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

9.12 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

9.13 Entire Agreement; Modification. This contract sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

9.14 Compliance with Laws. ARDF shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable local, state and federal laws as they may be amended from time to time.

9.15 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

9.16 Independent Contractor; Payment of Taxes and Other Expenses.

a. Independent Contractor. ARDF or any agent or employee of ARDF shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the City under this Agreement. ARDF, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. ARDF or any agent or employee of ARDF shall not have employee status with the City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that the City may

offer its employees. ARDF or any agent or employee of ARDF is liable for the acts and omissions of itself, its employees and its agents. ARDF shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to ARDF's performing services and work, or any agent or employee of ARDF providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the City and ARDF or any agent or employee of ARDF. Any terms in this Agreement referring to direction from the City shall be construed as providing for direction as to policy and the result of ARDF's work only, and not as to the means by which such a result is obtained. The City does not retain the right to control the means or the method by which ARDF performs work under this Agreement. ARDF agrees to maintain and make available to the City, upon request and during regular business hours, accurate books and accounting records demonstrating ARDF's compliance with this Section. Should the City determine that ARDF, or any agent or employee of ARDF, is not performing in accordance with the requirements of this Section, the City shall provide ARDF with written notice of such failure. Within five (5) business days of ARDF's receipt of such notice, and in accordance with ARDF policy and procedure, ARDF shall remedy the deficiency. Notwithstanding, if the City believes that an action of ARDF, or any agent or employee of ARDF, warrants immediate remedial action by ARDF, the City shall contact ARDF and provide ARDF in writing with the reason for requesting such immediate action.

b. Payment of Taxes and Other Expenses. Should the City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that ARDF is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be increased by amounts equal to both the employee and employer portions of the tax due. The City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by ARDF for the City, upon notification of such fact by the City, ARDF shall promptly remit such amount due or arrange with the City to have the amount due added to future payments to the City under this Agreement. A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, ARDF shall not be considered an employee of the City. Notwithstanding the foregoing, ARDF agrees to indemnify and save harmless the City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorney's fees, arising from this Section.

9.17 Qualified Personnel. Licensee Services performed under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of ARDF. ARDF will comply with the City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at the City's request, must be supervised by ARDF. ARDF shall commit adequate resources to complete the Licensee Services within the time frames specified in this Agreement.

9.18 Responsibility for Equipment. The City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment, including but not

limited to the Licensed Product, used by ARDF, or by any of its employees, even though such equipment be furnished, rented, loaned or licensed to ARDF by the City.

9.19 Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim shall be liable to the City for the statutory penalties set forth in those sections. A contractor, subcontractor, supplier, consultant or subconsultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9.20 Audit and Inspection of Records. Without limiting the other audit and inspection provisions of this Agreement, ARDF agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its services under this Agreement. ARDF will permit the City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. ARDF shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon the City by this Section.

9.21 Force Majeure. Neither party shall be in breach of this Agreement in the event that it is unable to perform its obligations under this Agreement as a result of interruption and delay due to causes beyond its reasonable control including, but not limited to, acts of God, acts of any government, legal restrictions, governmental regulations or orders, embargoes, blockages, war, acts of terror, or other hostility, civil disorder, riots, the elements, fire, flood, explosion, power failure, failure of equipment not under the control of either party, transmission line or communications failure or unavailability, commercially unreasonable acts by a third party, industrial or labor dispute, strikes, industrial disturbances, inevitable accidents, inability to obtain necessary supplies or any cause beyond the control of the party. Notwithstanding the foregoing, the parties shall use diligent efforts to resume performance should any such event occur.

9.22 Notices. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: San Francisco International Airport
International Terminal, North Shoulder Bldg., 5th Floor
Attn: John L. Martin, Airport Director
P. O. Box 8097
San Francisco, CA 94128
Fax No. (650) 821-5005
Tel. No. (650) 821-5000

To ARDF: Airport Research and Development Foundation
Attn: Todd J. Hauptli, President and CEO
601 Madison Street, Suite 200
Alexandria, Virginia 22314
Fax No. (703) 820-1395
Tel. No. (703) 824-0504

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a receipt notice. Any notice of default must be sent by registered mail.

[Remainder of Page Intentionally Blank – Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

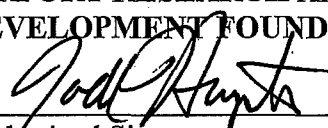

CITY AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	AIRPORT RESEARCH AND DEVELOPMENT FOUNDATION  Authorized Signature
By: _____ John L. Martin, Airport Director	<u>TODD HAUPTLI</u> Printed Name
Attest:	<u>Secretary/Treasurer</u> Title
By _____ Jean Caramatti, Secretary Airport Commission	<u>ARDF</u> Company Name
Resolution No: _____	<u>6000-96905</u> City Vendor Number
Adopted on: _____	<u>601 Madison St.</u> Address
Approved:	<u>Alexandria, VA 22314</u> City, State, ZIP
By _____ Jaci Fong, Director of the Office of Contract Administration and Purchaser	<u>703-824-0504</u> Telephone Number
Approved as to Form:	<u>52-1594261</u> Federal Employer ID Number
Dennis J. Herrera City Attorney	
By  Deputy City Attorney Luke Bowman	

EXHIBIT A

DESCRIPTION OF LICENSED PRODUCT

A management system for an airport or its appointed designee to monitor and track application-based commercial ground transportation (ABCT) Provider activity through the ABCT-Driver's mobile device, the ABCT-Provider's app, the ABCT-Provider's computer systems, and the PA's electronically-enabled geo-fence, all without the need for specialized hardware such as transponders or other tracking equipment. Each mobile communication device associated with an ABCT-Vehicle continually transmits information to an ABCT-Provider Information and Communications Technology ("ICT") System associated with an ABCT-Provider when an application on the mobile communication device is active. The information transmitted by the mobile communication device enables the ABCT-Provider ICT System to identify and monitor the ABCT-Driver's identity, the vehicle information, the geographic locus, and/or the ABCT-Vehicle's activity data.

EXHIBIT B

LICENSEE SERVICES

I. Description of Services. The following description of services (referred to as “Licensee Services” under the Agreement) is to be used as a general guide and is not intended to be a complete list of all the work necessary to maintain and support the City’s ABCT Permits at the Airport. ARDF shall perform the Licensee Services with respect to each ABCT Provider as designated in writing by City to ARDF from time to time during the term of this Agreement (collectively, the “Designated ABCT Providers”).

A. Data Collection and Storage. For each “ABCT Driver,” ARDF shall obtain the “Required Data” upon each of the “Triggering Events”.

1. Required Data:
 - a. transaction type (i.e., entry, exit, drop-off, pick-up);
 - b. ABCT Provider identification;
 - c. date;
 - d. time;
 - e. geographical location;
 - f. unique driver identifier;
 - g. vehicle license plate number; and
 - h. number of active rides in the vehicle following the triggering event (based on a value of “0” (no active rides) or “1” (active ride)).

2. ABCT Driver. An individual who has been approved by a Designated ABCT Provider to transport passengers using a Designated ABCT Provider’s online-enabled application where such driver is within the Airport Geo-Fence by reason of the driver’s relationship with a Designated ABCT Provider, regardless of whether the driver is carrying a passenger. The term “Geo-Fence” is a polygon whose points are geographic coordinates on Airport property designated by the City (as may be amended by the City from time to time) pursuant to City’s ABCT Permits with Designated ABCT Providers.

3. Triggering Events:
 - a. upon entry into the Geo-Fence;
 - b. upon completion of a passenger drop-off within the Geo-Fence;
 - c. upon pick-up of a passenger within the Geo-Fence; and
 - d. upon exit of the Geo-Fence.

4. Data Storage: ARDF acknowledges and agrees that the Required Data is proprietary to the City and is subject to the provisions of Section 9.3 [Confidentiality] of this Agreement. Accordingly, and without limiting ARDF’s obligations under Section 9.3, ARDF shall not disclose such Required Data to any ABCT Provider, any Participating Airport or any other third party without the written consent of the City. ARDF further agrees to store the Required Data in as secure of a manner as it would its own confidential or proprietary data and use its best efforts to prevent dissemination or leakage of the Required Data.

B. ABCT Permit Fees Collection; Payment.

1. ABCT Permit Fees Collection. ARDF shall establish procedures for billing and collection with each Designated ABCT Provider consistent with the City's ABCT Permits. Within thirty (30) days of the close of each calendar month, ARDF shall invoice each Designated ABCT Provider for the fees owed under the City's ABCT Permits for the previous calendar month ("ABCT Permit Fees"), which ABCT Permit Fees shall be consistent with the Required Data received by ARDF for such month.

2. ABCT Permit Fees Payment. Within thirty (30) days of the invoicing deadline outlined above, ARDF shall pay to the City the ABCT Permit Fees collected by ARDF from all Designated ABCT Providers for the calendar month invoiced, which amounts shall be consistent with each Designated ABCT Provider's payment obligations under its respective ABCT Permit with the City and the Required Data received by ARDF.

3. Payment Method; Late Charge. The ABCT Permit Fees shall be paid by ARDF to the City in lawful money of the United States, free from all claims, demands, setoffs, or counterclaims of any kind. ABCT Permit Fees not paid when due shall be subject to a service charge equal to the lesser of the rate of one and one-half percent (1.5%) per month, and the maximum rate permitted by law. Acceptance of any service charge shall not constitute a waiver of ARDF's default on the overdue amount or prevent the City from exercising any of the other rights and remedies available to the City.

4. Monthly Report. Concurrent with its payment of the ABCT Permit Fees, ARDF shall submit to the City a data report for the previous calendar month, which shall be in an agreed-upon format and shall include the Required Data for each Designated ABCT Provider.

5. Books and Records.

a. Audit and Inspection of Records. ARDF agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Licensee Services, including but not limited to all Required Data. ARDF will permit the City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, records and other data related to all other matters covered by this Agreement. ARDF shall maintain such data and records, including but not limited to all Required Data in an accessible location and condition for a period of not less than five (5) years from the expiration of the Agreement. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon the City by this Section.

b. Reports. Without limiting ARDF's obligation to deliver the monthly report described in subsection 4 above, the City reserves the right to request any and all reports generated by ARDF in the performance of the Licensee Services at no cost to the City. These reports must be submitted within two (2) weeks from the date the request was made unless

instructed otherwise in writing from the City. Failure to submit reports on a timely basis may be considered a material breach of the Permit and grounds for termination.

c. Other Data. ARDF shall also maintain internal or third party information system reviews, audits, or specialized testing performed for three years (current fiscal year plus two preceding fiscal years) (e.g., Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization, from the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA)) and make such data available to the City upon request. Failure to provide complete and accurate reports on a timely basis may be considered a material breach of this Agreement and subject ARDF to any remedies in law or equity including the termination of this Agreement.

d. Reconciliation. Should any examination, inspection, and audit of ARDF's books and records by the City disclose an underpayment by ARDF of the ABCT Permit Fees, ARDF shall promptly pay the City the amount of such underpayment. If such underpayment exceeds five percent (5%) of the amounts due, ARDF shall reimburse the City for all costs incurred in the conduct of such examination, inspection, and audit. In the event that the City deems it necessary to use the service of legal counsel in connection with collecting the reimbursement for such examination, inspection, and audit, then ARDF shall reimburse the City for reasonable attorneys' fees and litigation expenses as part of the aforementioned costs incurred.

C. Audit of Designated ABCT Providers. Upon written request from the City specifying a Designated ABCT Provider and a specified period of time, ARDF will request records maintained by such Designated ABCT Provider relating to its operations at the Airport during such period in accordance with the City's audit rights under its applicable ABCT Permit and promptly furnish such information to the City. If the City so requests, ARDF will audit the Required Data provided by such Designated ABCT Provider by comparing the Required Data against the records provided by the Designated ABCT Provider under this Section. ARDF will provide the City with the results of such audit within fifteen (15) days of ARDF's receipt of the such records from the Designated ABCT Provider. Nothing in this Agreement shall prohibit or restrict in any way the City's right to audit ABCT Providers pursuant to the terms of its ABCT Permits.

D. "Real-Time" Data Delivery to the City. ARDF acknowledges and agrees that it is imperative that the City have continuous access to the Required Data through "real-time" feed in order to manage the operation of the ABCT Providers at the airport and adequately protect the safety of Airport customers and the public. Accordingly, ARDF shall continuously (24 hours per day, 7 days per week) deliver the Required Data to the City in "real-time" as such Required Data is provided to ARDF by the Designated ABCT Providers. The Required Data shall be delivered in the form and substance as is reasonably determined by the City to be most desirable for Airport operations. Should "real-time" delivery of Required Data be interrupted for any reason, ARDF shall work with the City to immediately restore such "real-time" data delivery.

EXHIBIT C

CONSULTING SERVICES

I. Description of Services. The following description of services (referred to as “Consulting Services” under the Agreement) is to be used as a general guide and is not intended to be a complete list of all the work necessary to support the ARDF’s use of the Licensed Product and its performance of the Licensee Services.

A. The City will provide:

1. The infrastructure architecture design of the single-airport version of the ABCT solution.
2. A design of the systems operating environment of the single-airport version of the ABCT solution, including systems’ configurations, descriptions and diagrams.
3. The full software suite of the single-airport version of the ABCT solution.
4. Multi-airport ABCT solution design workshop with the Airport’s Chief Information Officer, ABCT Project Manager and Lead Architect.
5. Project scoping workshops with Airport’s ABCT Project Manager and Project Director.
6. Access to Airport ABCT Architect to support design of multi-airport version of ABCT solution.
7. Access to Airport Lead Systems engineer to support design of systems environment of multi-airport version of ABCT solution.
8. Access to Airport Lead Cyber-Security Engineer to support the Service Provider’s design of security features of multi-airport version of the ABCT solution.

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL**
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, SF Board of Supervisors	City elective office(s) held: Members, SF Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Airport Research and Development Foundation	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. (1) Board of Directors: Chairman – Mark Brewer; Vice-Chairman – Randall Berg; Secretary/Treasurer – Todd Hauptli (2) Management: Carter Morris – Operations; Steve Girona – Finance (3-5) N/A	
Contractor address: 601 Madison St., Alexandria, VA 22314	
Date that contract was approved:	Amount of contract:
Describe the nature of the contract that was approved: ARDF would license City intellectual property in order to provide trip fee collection and clearinghouse services to airports, including SFO.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer:	Contact telephone number: 0
Address:	E-mail:

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

