

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

Modification No. 1

THIS MODIFICATION (this "Modification") is made as of December 17, 2019 in San Francisco, California, by and between **SITA Information Networking Computing USA Inc., 3100 Cumberland Boulevard, Suite 900, Atlanta, GA 30339** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Airport Commission, hereinafter referred to as "**Commission.**"

RECITALS

- A. City and Contractor have entered into the Agreement for the San Francisco International Airport (the "Airport" or "SFO") (as defined below); and,
- B. The Commission is authorized to enter into all contracts which relate to matters under its jurisdiction; and
- C. On November 20, 2018, by Resolution No. 18-0366 the Commission awarded this Agreement to the Contractor for the term of January 1, 2019 through December 31, 2023 for a not-to-exceed amount of \$9,966,543; and
- D. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount, update the scope of work and calculation of charges, and update standard contractual clauses; and
- E. On December 17, 2019, by Resolution No. 19-0320, the Commission approved this Modification to the Agreement increasing the contact amount by \$5,928,253 for a new not-to-exceed amount of \$15,894,796; and
- F. On [insert date], by Resolution No. [insert resolution number], the Board of Supervisors approved the Agreement under San Francisco Charter Section 9.118; and
- G. Approval for this Agreement was obtained when the Civil Service Commission approved PSC No. 46785-16/17 on June 19, 2017; and
- H. The Commission desires to modify the Agreement for administrative changes required by recently enacted San Francisco contracting ordinances; and
- I. The Contractor represents and warrants that it is qualified to perform the services required by City under this Agreement; and

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

1. Article 1. Definitions, 1.1 Agreement has been revised. The definition "Agreement" shall mean the Agreement dated January 1, 2019 between Contractor and City.

2. **Article 1. Definitions, 1.10 Other Terms** is now added to the Agreement as follows:

1.10 Other Terms. Terms used and not defined in this Modification shall have the meanings assigned to such terms in the Agreement.

3. **New Section 1.11 City Data** is hereby added to the Agreement to read as follows:

1.11 City Data. "City Data" or "Data" includes all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. This includes data that is provided by a third-party for use under this Agreement, but shall exclude Contractor Intellectual Property.

4. **New Section 1.12 Confidential Information** is hereby added to the Agreement to read as follows:

1.12 Confidential Information. "Confidential Information" means any and all nonpublic information, whether written, electronic, or oral, concerning or relating to Airport technology, computer, or data systems, processes, or procedures, or that is subject to local, state, or federal laws or regulations restricting its disclosure, including but not limited to Private Information as defined under San Francisco Administrative Code Chapter 12M (Chapter 12M), or Critical Infrastructure Information or Protected Critical Infrastructure Information as defined under the Homeland Security Act of 2002 and 6 CFR §29.2, which information or access to such information is supplied by the Airport or on behalf of the Airport to Contractor or otherwise acquired by Contractor during the course of dealings with the Airport and regardless of whether such information is in its original form, a copy, or a derivative product. "Derivative" means written or electronic material created from or with, or based on Confidential Information (i.e., a report analyzing Confidential Information shall also be considered Confidential Information). Confidential Information shall also mean proprietary, trade secret or other protected information, identified as Confidential Information by the Airport.

5. **Article 3. Financial Matters, 3.3. Compensation, Section 3.3.1 Payment** is hereby amended to increase the total compensation payable by an amount not to exceed \$5,928,253 for a new total not-to-exceed amount of \$15,894,796.

6. **Article 4. Services and Resources, 4.1 Services Contractor Agrees to Perform, 4.1.1 Task Orders** is hereby replaced in its entirety with **New Section 4.1.1** to read as follows:

4.1.1. Task Orders. The City has established a fund to compensate Contractor for as-needed services during the term of this Agreement. This amount is included in total not-to-exceed amount Section 3.3.1 "Payment." As-needed services are typically discovered during the course of a contractor's execution of the work and are intended to cover unanticipated, discrete, time-limited additional work. In the event as-needed services are requested by the City during the period Contractor executes the Scope of Services set forth in Appendix A, the Parties shall cooperate in developing a written task order for such additional work. Each task order shall be made a part of and incorporated into the Agreement as though fully set forth in this Agreement without the need for a formal amendment to the Agreement. All task orders shall include a description of the as-needed services, the deliverables, schedule for performance, cost, and method and timing of payment. The total amount of the as-needed services is in Appendix B.

7. **New Section 4.1.4 Flexible Staffing** is hereby added to the Agreement to read as follows:

4.1.4. Flexible Staffing. The City has established a fund to compensate Contractor for increases to the level of service resulting from installation and activation of new equipment. This amount is included in total not-to-exceed amount Section 3.3.1 "Payment." In the event changes to the staffing levels are needed during the period Contractor executes the Scope of Services set forth in Appendix B, the

Parties shall mutually agree on appropriate staffing changes including duration and associated costs. The total amount of the Flexible Staffing services is in Appendix B.

8. Section 4.5 Assignment is hereby deleted in its entirety and replaced with **New Section 4.5 Assignment** to read as follows:

4.5 Assignment. The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

9. New Section 7.3 Withholding is hereby added to the Agreement to read as follows:

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

10. Section 8.2.1(a) is amended to include 10.20 Management of City Data and Confidential Information to the table.

11. Section 8.4.1 is amended to include 10.20 Management of City Data and Confidential Information to the table.

12. Section 10.11 Limitations on Contributions is hereby deleted in its entirety and replaced with **New Section 10.11** to read as follows:

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

Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

13. New Section 10.20 Management of City Data and Confidential Information is hereby added to the Agreement to read as follows;

10.20 Management of City Data and Confidential Information

10.20.1 Access to City Data. City shall at all times have access to and control of City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

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

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

14. New Section 10.21 Consideration of Salary History is hereby added to the Agreement to read as follows:

10.21 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such

applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history> . Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section

15. Article 11. General Provisions, 11.1 Notices to the Parties is hereby replaced in its entirety with **New Section 11.1** to read as follows:

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

To City: Enrique.Guadamos
Terminal Systems & Wayfinding
San Francisco International Airport
P.O. Box 8097, San Francisco, CA 94128
Email: Enrique.Guadamos@flysfo.com
Phone: (650) 821-5145

To Contractor: SITA Information Networking Computing USA Inc.
3100 Cumberland Boulevard, Suite 900, Atlanta, GA 30339
Attn: Contract Management
Email: Diana.Oldag@sita.aero
Phone: (470) 439-7991

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

16. New Section 11.14 Incorporation of Recitals is hereby added to the Agreement to read as follows:

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

17. New Section 11.15 Notification of Legal Requests is hereby added to the Agreement to read as follows:

11.15 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (“Legal Requests”) related to all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), or which in any way might reasonably require access to City’s Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

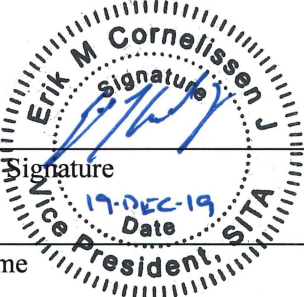
18. Appendix A – Scope of Services, has been replaced in its entirety with Appendix A-1.

19. Appendix B – Calculation of Charges, has been replaced in its entirety with Appendix B-1.

20. Effective Date. Each of the changes set forth in this Modification shall be effective on and after March 1, 2020.

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

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

CITY	CONTRACTOR
AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	
By: _____ Ivar C. Satero, Airport Director	
Attest:	Authorized Signature _____ Printed Name _____
By _____ C. Corina Monzón, Secretary Airport Commission	Title _____
Resolution No: <u>19-0320</u>	<u>SITA Information Networking Computing USA Inc.</u> Company Name
Adopted on: <u>December 17, 2019</u>	<u>0000030095</u> City Supplier ID
Approved as to Form: Dennis J. Herrera City Attorney	<u>3100 Cumberland Boulevard, Suite 900</u> Address
By _____ Stacey A. Lucas Deputy City Attorney	<u>Atlanta, GA 30339</u> City, State, ZIP
Approved:	<u>(470) 439-7991</u> Telephone Number
By _____ Alaric Degrafinried, Director of the Office of Contract Administration and Purchaser	<u>52-2086529</u> Federal Employer ID Number