**CONTRACT FOR SOFTWARE LICENSE, HOSTING,
MAINTENANCE AND SERVICES**

This agreement ("**Agreement**") is made and entered into on September 6, 2017, ("**Effective Date**") by and between the City of Fresno – Airports Department located at 4995 E. Clinton Way, Fresno, California ("**Licensee**") and GCR Inc., located at 2021 Lakeshore Drive, Suite 500, New Orleans, Louisiana ("**GCR**") (Licensee and GCR each a "**Party**" and collectively the "**Parties**").

WHEREAS, Licensee desires GCR to provide those software modules identified on **Attachment A (Software)** as licensed to Licensee ("**Software**") and associated installation, hosting maintenance and other professional services in connection with the use of the Software at Fresno Yosemite International Airport ("**Site**");

In consideration of the mutual promises and agreements of the Parties herein, the Parties agree as follows:

ARTICLE 1 – LICENSE

1.1   **Grant**. Subject to the terms and conditions of this Agreement, GCR hereby grants to Licensee a nonexclusive, worldwide, and nontransferable license ("**License**") to use the Software, its derivatives, and documentation of the Software provided or made available to Licensee pursuant to this Agreement ("**Licensed Material**") solely for Licensee's internal business purposes at the Site. The License includes copying of the Licensed Material by Licensee with respect to its intended and licensed use, including copying of the Licensed Material for archival purposes. The Licensed Material may be used by Licensee on any or all of its computers simultaneously at such Site.

1.2   **License Term**. If the Software is indicated on **Attachment A (Software)** as licensed perpetually ("**Perpetual Software**"), then, following receipt by GCR of the payments contemplated by **Section 6.1.1 (One-Time)**, the License will extend until such time as no enforceable rights remain in the Perpetual Software; otherwise, the License will be limited to the term of this Agreement.

1.3   **Authorized Users**.   The License is extended to Licensee's employees, agents, subcontractors, contractors, outsourcing vendors, consultants and others who have a need to use and copy the Licensed Material ("**Authorized Users**") in accordance with the terms of this Agreement. Licensee will be responsible for the Authorized Users, and any acts or omissions of any Authorized User which if done by Licensee would constitute a breach of this Agreement by Licensee, will be deemed a breach of this Agreement by Licensee.

1.4   **Ownership**. Licensee acknowledges, agrees, and understands that GCR is the sole and exclusive owner of the Licensed Material.

1.5   **Prohibited Uses**. Licensee shall not do, shall not permit any third party to do, and shall use commercially reasonable efforts to prohibit any Authorized Users or other third parties from

doing any of the following: (a) using any Licensed Material in a manner that violates this Agreement or any applicable laws and regulations, or to send unsolicited bulk email or "spam", (b) reverse engineering, translating, decompiling or disassembling the object code of the Licensed Material, or (c) copying (other than for archival purposes as described in **Section 1.1 (Grant)**), modifying, creating derivative works of, sublicensing, selling, leasing, loaning, renting, distributing, conveying, pledging as security, or otherwise encumbering the Licensed Material.

1.6   **No Implied Licenses**. No different, other or further right or license, other than what is granted in this **ARTICLE 1 (LICENSE)**, is intended or granted by this Agreement, whether by express or implied means or by estoppel, and this Agreement does not assign any right, title or interest in any of the Licensed Materials. All rights and interests not expressly granted under this Article 1 are reserved to GCR, Inc.

1.7   **Additional Modules**. By written notice to GCR, Licensee may add additional modules identified on **Attachment A (Software)** to the Software; if Licensee provides such notice, the Parties will execute an amendment updating **Attachment A (Software)**.

ARTICLE 2 – HOSTING

2.1   **Hosting Services**. Throughout the term of the Agreement, GCR shall provide hosting services as set forth in **Attachment B (Hosting)** ("**Hosting**").

2.2   **De-Hosting**. Upon request by Licensee following termination of the Hosting, GCR will install a copy of the hosted data and any hosted Perpetual Software in an environment not hosted by GCR. Any such installation services will be subject to mutual agreement on the price of such services and to GCR's confirmation that the intended environment is compatible with GCR's standard technical requirements.

ARTICLE 3 - WARRANTY

3.1   **Warranty**. GCR shall faithfully perform the Services using the degree of care, skill, training, diligence and judgment ordinarily exercised under similar circumstances by competent members of the profession which GCR practices or industry or business in which GCR works. GCR warrants that the Software will perform in accordance with and in the manner described by related documentation, training manuals, and by Software functional design specifications.

3.2   **Correction**. GCR agrees to promptly re-perform, repair or replace, at Licensee's option and at GCR's cost and expense, any Software or Service which fails to conform to such warranties. Correction of any error in the manner described above shall constitute complete fulfillment of all obligations and liabilities of GCR for nonconforming Software or Services, whether the claims of the Licensee are based in contract, warranty, tort (including, but not limited to, negligence and strict liability), or otherwise. This exclusive remedy is Licensee's sole remedy for any failure of GCR to comply with its warranty obligations. The warranty period shall end 90 days from the delivery of the Software or completion of the Services, as applicable.

ARTICLE 4 – MAINTENANCE

4.1   **Maintenance Services**. Throughout the term of the Agreement, GCR shall provide maintenance services as set forth in **Attachment C (Maintenance)** ("**Maintenance**").   In general, the maintenance services consist of (a) prompt customer support on-site or by telephone, fax or email; and (b) Software updates, new releases, and enhancements reflecting on-going development at GCR and as made generally available to GCR's customers of the Software.

4.2   **Licensee Cooperation**.   Licensee acknowledges that GCR's ability to provide Maintenance is dependent on the cooperation of Licensee and the quantity of information that Licensee can provide. Licensee will use commercially reasonable efforts to reproduce all reported problems and gather troubleshooting information as requested by GCR. If Licensee cannot reproduce such problems or gather requested information, Licensee will provide GCR temporary login access on Licensee's system to identify and address reported problems. GCR will have no responsibility for failure to provide Maintenance as a result of Licensee's failure to cooperate with GCR.

ARTICLE 5 – SERVICES

5.1   **Scope of Work**.   GCR shall perform the services and provide Software and the deliverables as described in **Attachment D (Services)** ("**Services**").

5.2   **Change Orders**. Either Party shall have the right to request, in writing, changes in the Services. GCR shall not perform any such change in the Services unless compensation, schedule and scope of work are mutually agreed by the Parties in writing.

5.3   **Schedule**. The Services shall commence upon the Effective Date. GCR agrees to diligently perform the Services and exercise commercially reasonable efforts to meet any estimated schedule set forth in **Attachment D (Services)**. Notwithstanding the above, it is expressly understood and agreed that GCR shall not be liable as a guarantor of the estimated schedule.

5.4   **Acceptance**. Except where this Agreement provides different criteria, Services will be accepted if they have been performed in accordance with the specifications applicable to the Services.   Upon notification by GCR that a Service (or associated deliverable) has been completed and is available for review and acceptance, Licensee will use commercially reasonable efforts to review within 7 business days after the notification, but in no event later than 10 business days after the notification. GCR will correct any unaccepted Services as described in **ARTICLE 3 (WARRANTY)**. If no notification is delivered to GCR within the foregoing period, the Service will be deemed accepted. All accepted and deemed accepted Services remain subject to the terms of **ARTICLE 3 (WARRANTY)**.

ARTICLE 6 – COMPENSATION

6.1   **Licensee Fee**.

6.1.1   One-Time.   Licensee will make the payments for the Software identified on **Attachment A (Software)** as "One-Time" on the Effective Date.

6.1.2   Annually.   Licensee will make the payments for the Software identified on **Attachment A (Software)** as "Annual" on the Effective Date and each anniversary thereafter.

6.1.3   Monthly.   Licensee will make the payments for the Software identified on **Attachment A (Software)** as "Monthly" on the Effective Date and each month thereafter.

6.2   **Hosting Fees.**

6.2.1   One-Time.   Licensee will make the payments for the Hosting identified on **Attachment B (Hosting)** as "One-Time" on the Effective Date.

6.2.2   Annually.   Licensee will make the payments for the Hosting identified on **Attachment B (Hosting)** as "Annual" on the Effective Date and each anniversary thereafter.

6.2.3   Monthly.   Licensee will make the payments for the Hosting identified on **Attachment B (Hosting)** as "Monthly" on the Effective Date and each month thereafter.

6.3   **Maintenance Fees**.

6.3.1   One-Time.   Licensee will make the payments for the Maintenance identified on **Attachment C (Maintenance)** as "One-Time" on the Effective Date.

6.3.2   Annually.   Licensee will make the payments for the Maintenance identified on **Attachment C (Maintenance)** as "Annual" on the Effective Date and each anniversary thereafter.

6.3.3   Monthly.   Licensee will make the payments for the Maintenance identified on **Attachment C (Maintenance)** as "Monthly" on the Effective Date and each month thereafter.

6.4   **Services Fee**.   Licensee will make payments for Services as set forth in **Attachment D (Services).**

6.5   **Payment Terms**.   GCR will invoice Licensee for fees as they become payable pursuant to this **ARTICLE 6 (COMPENSATION)**. on the schedules shown above.   All payments by

Licensee to GCR shall be made within 30 days of Licensee's receipt of GCR's invoice. GCR assumes all responsibility for payment of taxes from the funds received under this Agreement.

ARTICLE 7 – INDEMNIFICATION AND LIABILITY

To the furthest extent allowed by law GCR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of GCR, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If GCR should subcontract all or any portion of the services to be performed under this Agreement, GCR shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

7.2 Insurance requirements

INSURANCE REQUIREMENTS
MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4. Technology Liability (Errors and Omissions) insurance appropriate to GCR'S profession. Coverage shall be sufficiently broad to respond to duties and obligations as is undertaken by GCR in this agreement and shall include but not

be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

MINIMUM LIMITS OF INSURANCE

GCR, or any party the GCR subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**

    (i) $1,000,000 per occurrence for bodily injury and property damage;
    (ii) $1,000,000 per occurrence for personal and advertising injury;
    (iii) $2,000,000 aggregate for products and completed operations; and,
    (iv) $2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**:

    $1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY**:

    (i) $1,000,000 each accident for bodily injury;
    (ii) $1,000,000 disease each employee; and,
    (iii) $1,000,000 disease policy limit.

5. **TECHNOLOGY PROFESSIONAL LIABILITY** insurance with limits of not less than:

    (i) $3,000,000 per claim/occurrence; and,
    (ii) $6,000,000 policy aggregate

UMBRELLA OR EXCESS INSURANCE

In the event GCR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

GCR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and GCR shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

(i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or

(ii) GCR shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The *General Liability and Automobile Liability insurance policies* are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. GCR shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.

3. For any claims relating to this Agreement, GCR'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of GCR'S insurance and shall not contribute with it. GCR shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The *Workers' Compensation insurance policy* is to contain, or be endorsed to contain, the following provision: GCR and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the *Technology Liability insurance policy* is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by GCR.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by GCR, GCR must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.

4. A copy of the claims reporting requirements must be submitted to CITY for review.

5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. GCR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, GCR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, GCR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these polices will be twice the above stated limits.

The fact that insurance is obtained by GCR shall not be deemed to release or diminish the liability of GCR, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by GCR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of GCR, its principals, officers, agents, employees, persons under the supervision of GCR, vendors, suppliers, invitees, Consultants, sub-Contractors, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If GCR subcontracts any or all of the services to be performed under this Agreement, GCR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no side agreement is required, GCR shall require and verify that

subcontractors maintain insurance meeting all the requirements stated herein and GCR shall ensure that CITY, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with GCR, and CITY, prior to commencement of any work by the subcontractor.

VERIFICATION OF COVERAGE

GCR shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, GCR shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

ARTICLE 8 – CONFIDENTIALITY

8.1   **Confidentiality Generally**. Licensee acknowledges, agrees, and understands that the Licensed Material contains certain information that is and must be kept confidential. To ensure the protection of such information, and to preserve any confidentiality necessary under intellectual property law, including trade secret laws, Licensee agrees not to disclose the Licensed Material to anyone unless allowed by GCR or required to do so by law. Licensee's confidentiality obligation does not extend to (a) information that is known to Licensee prior to obtaining the same from GCR; (b) information that is, at the time of disclosure by GCR, then in the public domain; or (c) information that is obtained by Licensee from a third party who did not receive same directly or indirectly from GCR and who has no obligation of secrecy with respect thereto. To the extent any Authorized Users have access to Licensed Material for the benefit of Licensee, such Authorized Users will be obligated to agree to protect the confidentiality of the Licensed Material to the same extent this Agreement obligates Licensee to protect the confidentiality of the Licensed Material and Licensee will ensure that such Authorized Users are bound by confidentiality obligations consistent with those of this **Section 8.1 (Confidentiality Generally)**. Licensee agrees to be liable for any breaches of such Authorized Users of the confidentiality of the Licensed Material.

ARTICLE 9 – TERM AND TERMINATION

9.1   **Term**. The Agreement is effective as of the Effective Date and continue for a period of 1 year (the "**Initial Term**") from the Effective Date.   Thereafter, this Agreement will

automatically renew for successive 1 year periods (each a "**Renewal Term**"), unless either Party gives the other Party written notice of its intention not to renew this Agreement not less than 90 days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable.

9.2   **Termination/Suspension for Default**.   In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement by giving 30 days' prior written notice to the breaching Party; provided, however, that this Agreement shall not terminate if the breaching Party has cured the breach prior to the expiration of such 30-day period. In lieu of termination, the non-breaching Party may suspend performance under this Agreement by such written notice until the breaching Party has cured the breach.

9.3   **Termination for Insolvency**. If (a) insolvency, receivership or bankruptcy proceedings are instituted by or against a Party and are not terminated within 30 days, (b) a Party makes an assignment for the benefit of creditors or (c) a Party admits an inability to pay its debts as they come due, then in any such event the other Party may in its sole discretion terminate this Agreement without notice.

9.4   **License Post-Expiration or Termination**.

     9.4.1   Paid Perpetual License.   If the Software is indicated on **Attachment A (Software)** as licensed perpetually, and Licensee has made the payments to GCR contemplated by **Section 6.1.1 (One-Time)**, then the License, along with **Section 1.1 (Grant)** through **Section 1.6 (Prohibited Uses)** will survive any expiration or termination of this Agreement.

     9.4.2   Unpaid Perpetual License.   If the Software is indicated on **Attachment A (Software)** as licensed perpetually, and Licensee has not made the payments to GCR contemplated by **Section 6.1.1 (One-Time)**, then the License, along with **Section 1.1 (Grant)** through **Section 1.6 (Prohibited Uses)** will be terminated with any expiration or termination of this Agreement.

     9.4.3   Non-Perpetual License.   If the Software is not indicated on **Attachment A (Software)** as licensed perpetually, then the License, along with **Section 1.1 (Grant)** through **Section 1.6 (Prohibited Uses)** will be terminated with any expiration or termination of this Agreement.

9.5   **Disposition of Licensed Material on Termination**. Upon any expiration or termination of this Agreement which includes termination of the License as contemplated by **Section 9.4.2 (Unpaid Perpetual License)** or **Section 9.4.3 (Non-Perpetual License)**, Licensee shall immediately: (a) return the Licensed Materials to GCR; (b) purge all copies of the Software or any portion thereof from all computers and from any computer storage medium or device on which Licensee has placed or permitted others to place the Software; and (c) give GCR written certification that through its best efforts and to the best of its knowledge, Licensee has complied with all of its obligations under this paragraph.

9.6   **Survival**. Except as set forth to the contrary herein, the Parties understand and agree that all terms and conditions of this Agreement, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term or otherwise) shall survive such termination and shall continue to be enforceable as provided herein), including **Section 1.4 (Ownership)**, **Section 1.6 (No Implied Licenses)**, Section 2.2 **(De-Hosting)** (subject to the mutual agreement described in that Section), **Section 3.2 (Correction)** (for the time period set forth in that Section), **ARTICLE 6 (COMPENSATION)** (to the extent any payments are due but not yet paid as of expiration or termination), **ARTICLE 7 (INDEMNIFICATION AND LIABILITY)**, **ARTICLE 8 (CONFIDENTIALITY)**, **Section 9.4 (License Post-Expiration or Termination)**, **Section 8.5 (Disposition of Licensed Material on Termination)**, this **Section 9.6 (Survival)**, and **ARTICLE 10 (MISCELLANEOUS)**.

ARTICLE 10 – MISCELLANEOUS

10.1   **Governing Law**. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding any choice of law provisions that may direct the application of any laws of any other jurisdiction. Subject to **Section 10.2 (Mediation)**, the exclusive venue for any dispute or controversy between the Parties will be the state and federal courts located in Fresno County, California, United States. The Parties hereby irrevocably consent to jurisdiction and venue in such courts for this purpose, and the Parties waive objection to the jurisdiction and venue being in such courts.

10.2   **Mediation**. If during the course of this Agreement the Parties are unable to resolve any dispute or controversy arising out of or relating to the Agreement, such claims shall first be subject to non-binding mediation as a condition precedent to the initiation of any legal action (either court action or arbitration).. Any such mediation will be located in Fresno County, California, United States. Demand for mediation shall be made in writing. The Parties agree to share equally the mediator's fee and any filing fees. Any agreement reached in mediation shall be enforceable and binding upon both Parties. Each Party agrees to bear its own attorneys' fees associated with the mediation.

10.3   **Assignment**. Neither Party shall assign any interest in this Agreement by assignment, transfer, or novation, without prior written consent of the other Party; provided, however, that GCR may assign this Agreement (a) to any affiliate of GCR or (b) in connection with an assignment of all or substantially all of GCR's assets to which this Agreement relates. This provision shall not be construed to prohibit a Party from assigning to any banking, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished to the other Party.

10.4   **Force Majeure**. Neither Licensee nor GCR shall be considered in default in the performance of the obligations hereunder, except with respect to payment of monies hereunder, if such performance is prevented or delayed because of unavailability of labor, war, hostilities, revolution, civil commotion, acts of terrorism, strike, epidemic, accident, fire, wind, flood; or because of any act of God; or for any cause, whether similar or dissimilar, now or hereafter

existing, beyond the reasonable control of the Party affected. The Party suffering a delay in its performance caused by an above described occurrence shall give notice thereof to the other Party as soon as reasonably possible thereafter, and shall use reasonable efforts to overcome such delay. In the event of such an occurrence, the Parties shall consult to determine how to overcome the effect on the Project and shall mutually agree to any equitable adjustment to the compensation due GCR hereunder.

10.5   **Export**. Licensee agrees to abide by any restrictions or conditions respecting the export, re-export, or other transfer of the Licensed Material disclosed and/or licensed to Licensee in accordance with this Agreement that are in effect now or are hereafter imposed by the United States Government, and will not export, re-export, or otherwise transfer the Licensed Material, except in full compliance with all relevant U.S. laws and regulations.

10.6   **Specific Performance**. The Parties agree that irreparable damage would occur if the obligations of **Section 1.4 (Ownership)**, **Section 1.5 (Prohibited Uses)**, or **Section 8.1 (Confidentiality Generally)** were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that GCR will be entitled to an injunction or injunctions to prevent breaches of those Sections and to enforce specifically the performance of the terms and provisions of those Sections without proof of actual damages, this being in addition to any other remedy to which GCR is entitled at law or in equity. Licensee further agrees that GCR will not be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this **Section 10.6 (Specific Performance)**, and Licensee irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

10.7   **Miscellaneous**. This Agreement is the entire agreement of the Parties on the subject matter hereof. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Licensee and GCR with respect to the subject matter hereof. In addition, this Agreement may not be modified or amended unless agreed by the Parties, reduced to writing, and signed by both the Licensee and GCR. Further, if any part of this Agreement is adjudged invalid, illegal or unenforceable, the remaining parts shall not be affected and shall remain in full force and effect. Headings in this Agreement are for convenience only and shall not affect the interpretation thereof.

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CITY OF FRESNO,
A California municipal corporation

By: _____
    Kevin Meikle
    Director of Aviation

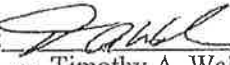ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
    Deputy
Date _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney's Office

By: _____
    Brandon M. Collet
    Deputy City Attorney
Date _____9/28/17_____

GCR, Inc.
 a Louisiana corporation

By: _____
Name: _Timothy A. Walsh_
Title: _Director, Aviation Services_
(If corporation or LLC, Board Chair,
Pres. Or Vice Pres.)

The following attachments constitute a part of this Agreement and are incorporated herein by this reference.

Attachment A – Software
Attachment B – Hosting
Attachment C – Maintenance
Attachment D – Services

ATTACHMENT A
SOFTWARE

Licensee Site:

City of Fresno – Airports Department
4995 E. Clinton Way, Fresno, California

Software Module	Licensed	Perpetual	One-time Price (including services and expenses)	Monthly Price	Annual Price
APM	Yes	Yes	$53,312	N/A	N/A
ABRM	Yes	Yes	$90,913	N/A	N/A

The APM license fee of $30,000 will be invoiced upon installation of the software for the City of Fresno – Airports Department on the GCR Microsoft Azure site. The APM license price is a one-time only fee. The $53,312 one-time price noted above for APM is inclusive of the $30,000 license fee and the $23,312 price for services and expenses.

The ABRM license fee of $52,000 will be invoiced upon installation of the software for the City of Fresno – Airports Department on the GCR Microsoft Azure site. The ABRM license price is a one-time only fee. The $90,913 one-time price noted above for ABRM is inclusive of the $52,000 license fee and the $38,913 price for services and expenses.

ATTACHMENT B
HOSTING

GCR agrees to provide Licensee with access to the Software through a hosted computing environment. Hosting of the Software is provided through the Microsoft Azure cloud.

Term

Hosting will continue during the term of the Agreement.

Pricing

Hosting services provided for the City of Fresno – Airports Department will be $14,400 per year. The hosting services pricing will increase by the CPI-U, with ceiling of 5% annually.

Licensee will be entitled to service level credits against annual and monthly Hosting fees as described in the Service Level Agreement below.

Security

Microsoft continuously monitors servers, networks, and applications to detect threats. Azure's multipronged threat-management approach uses intrusion detection, distributed denial-of-service (DDoS) attack prevention, penetration testing, behavioral analytics, anomaly detection, and machine learning to constantly strengthen its defense and reduce risks.

Azure is deployed in Microsoft regional datacenters, which are protected by layers of defense-in-depth security that include perimeter fencing, video cameras, security personnel, secure entrances, and real-time communications networks, continuing through every area of the facility to each physical server unit.

Further information about the security of the Azure cloud is available at https://www.microsoft.com/en-us/trustcenter/Security/AzureSecurity

Compliance

The Azure cloud complies with a wide variety of standards, including PCI-DSS, HIPAA/HITECH, IRS 1075, AICPA SOC 1, AICPA SOC 2, and AICPA SOC 3.

Further information about compliance of the Azure cloud is available at http://download.microsoft.com/download/1/6/0/160216AA-8445-480B-B60F-5C8EC8067FCA/WindowsAzure-SecurityPrivacyCompliance.pdf

Service Level Agreement ("SLA")

1. **Uptime Target**. Subject to specifically mentioned exceptions, GCR shall use commercially reasonable efforts to cause the Software to be available through the Hosting 99.5% of the time ("**Service Level Target**"), as measured on a monthly basis. In the event the Software and Hosting do not meet the Service Level Target, Licensee may be eligible to receive a Service Credit in accordance with the procedures described below.

2. "**Service Interruption**" is defined as either the total loss of Licensee availability to the Software, or the degradation of a specific element or component the Software to an extent by which the Software is not functional for their intended purpose, subject to the exceptions described below.

3. **Exceptions**. Any interruptions to the Service(s) caused by or during any of the following events or circumstances shall not constitute a Service Interruption hereunder and shall not to be considered and/or included in, or for the purpose of, calculating any Service Credits available under this SLA:

    a. During any period where Licensee's payment of fees for Hosting is more than 30 days past due or where GCR has suspended the Agreement for late payment as described in Section 9.2 of the Agreement;
    b. Incidents outside GCR's reasonable control, including those described in Section 10.4 of the Agreement;
    c. Scheduled maintenance of the Hosting and Software for which GCR has notified Licensee;
    d. Incidents caused by equipment, software or other technology provided by Licensee or by a third party on behalf of Licensee;
    e. Incidents caused by a violation of this agreement, negligence or willful misconduct by Licensee or Licensee agents or employees.

4. **Credit Request**. If Licensee experiences a Service Interruption, to receive consideration for a Service Credit, Licensee must provide written notice to GCR within 30 days of such Service Interruption. The request should include, at a minimum, the date, time and duration of the Service Interruption. In instances of uncertainty or dispute as to whether an actual Service Interruption has occurred, GCR shall make a final determination with respect to such uncertainty and/or dispute, in good faith, based on its review of data provided by system logs, monitoring reports and configuration records, which GCR shall make available to Licensee at Licensee's request.

5. **Service Credits**. For each month, GCR will calculate the percentage of time where the Software was available through the Hosting with no Service Interruptions for which the Licensee has requested credit pursuant to Section 4 of this Service Level Agreement ("**Uptime**"). For each tenth of a percent (0.1%) which the Uptime falls below the Service Level Target, Licensee will be entitled to a one percent (1%) reduction in the next monthly Hosting fees, or a one-twelfth of one percent (0.0833%) reduction in the next annual Hosting fees, as applicable (each such reduction, a "**Service Credit**"). For example, if the Uptime for

a month were 99.1%, 0.4% below the Service Level Target, Licensee would be entitled to a 4% Service Credit on the next monthly Hosting fees, or a 0.33% Service Credit on the next annual Hosting fees, as applicable.

6. **Service Credit Maximum**. The parties acknowledge and agree that (a) the maximum Service Credit Licensee may receive for Service Interruptions as described in this SLA shall be no more than 10% of the next monthly Hosting fees, or 10% of the next annual Hosting fees, as applicable, and (b) the Service Credits prescribed under this SLA shall be the sole and exclusive remedy for any and all such Service Interruptions, in each case notwithstanding anything to the contrary in this SLA or elsewhere in this Agreement.

ATTACHMENT C
MAINTENANCE

APM Maintenance and Support – Year One: $5,400 per year, to be invoiced upon airport acceptance of APM implementation.

ABRM Maintenance and Support – Year One: $28,080 per year, to be invoiced upon airport acceptance of ABRM implementation.

The prices shown above will increase by the CPI-U, with ceiling of 5% annually.

ATTACHMENT D
SERVICES

The pricing shown in Attachment A includes all Implementation Services and Expenses, including:

AirportIQ Project Manager (APM):

- 2 weeks of on-site work in assisting and training staff in creating project information, recording project payments, and in use of the APM reports and data analysis tools.
- Implementation assistance that will be performed off-site using conference calls and video conferencing tools.

AirportIQ Business and Revenue Manager (ABRM):

Implementation Services - Technical
Technical Installation
Initial Environment Configuration & Setups
Core / Base Data Migration

Implementation Services - Functional
Business User Training - Level 1
Business User Training - Level 2
Data Validation
Security Set-up
Landing Page Set-up
Workflow Set-up
Parallel Testing & UAT
Go-Live Transition
Project / Account Management

Integration and Custom Development
Invoices & A/R Statements
Export to General Ledger