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CONTRACT MA-280-27010205
WITH
WINDCAVE INC. FOR
CREDIT CARD PROCESSING GATEWAY SERVICES

This Agreement, hereinafter referred to as "Contract," is made and entered into as of the date fully executed by and between the County of Orange, John Wayne Airport ("JWA"), a political subdivision of the State of California, hereinafter referred to as "County", and Windcave Inc., hereinafter referred to as "Contractor," which are sometimes individually referred to as "Party," or collectively referred to as "Parties."

RECITALS

WHEREAS, Contractor desires to enter into a Contract for Credit Card Processing Gateway Services; and

WHEREAS, Contractor agrees to provide services, as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and

WHEREAS, County agrees to pay Contractor the fees as more specifically described in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW THEREFORE, Parties mutually agree as follows:

ARTICLES

COUNTY GENERAL TERMS AND CONDITIONS

A. **Governing Law and Venue**: This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

B. **Entire Contract**: This Contract, including Attachments which are attached hereto and incorporated herein by this reference, when accepted by Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee.

C. **Amendments – Changes/Extra Work**: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by Parties; no oral understanding or agreement not incorporated herein shall be binding on either of Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on either Party unless authorized by both Parties in writing. Contractor shall make no changes to this Contract without County's written consent. County shall make no changes to this Contract without Contractor's written consent. In the event that there are new or unforeseen requirements, County with Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, Contractor's ability to deliver goods, Contractor shall give County written notice no later than seven (7) calendar

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days from the date the law or regulation went into effect or the date the change was proposed by County and Contractor was notified of the change. Such changes shall be agreed to in writing by both Parties and incorporated into a Contract amendment. Said amendment shall be issued by County assigned DPA, shall require the mutual consent of all Parties, and may be subject to approval by County Board of Supervisors. Nothing herein shall prohibit Contractor from proceeding with the work as set forth in this Contract.

No adjustments made to the scope of work will be authorized or paid for without prior written approval of (1) County assigned Deputy Purchasing Agency (DPA) and (2) an employee of Contractor.

D. **Intentionally left blank**.

E. **Delivery**: Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the descriptions, or services that do not conform to the prescribed Scope of Work. Delivery shall not be deemed to be complete until all goods and/or services have actually been received and accepted in writing by County.

F. **Acceptance/Payment**: Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all services have actually been received to the satisfaction of County and 2) payment shall be made in accordance with Attachment B.

G. **Warranty**: Contractor expressly warrants that services covered by this Contract comply with the requirements of this Contract.

H. **Patent/Copyright Materials/Proprietary Infringement**: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third Party. Contractor agrees that, in accordance with the more specific requirement contained in Article "II", it shall indemnify, defend and hold County and County harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses for such claim(s), including, but not limited to, attorney's fees and costs and expenses. County shall notify Contractor of any claim or threat of claim of which County becomes aware and that may give rise to a request for, or duty of indemnification under this section, within thirty-five (35) business days. Contractor shall have discretion to actively participate in the defense of a claim and all related settlement negotiations. County shall give Contractor the assistance, information and authority necessary to help defend and/or settle the claim. County, per the terms of this clause, shall not make any admission of liability with respect to any claim, make an offer of settlement, or settle any claim for which it seeks indemnity from Contractor without Contractor's express written permission.

I. **Assignment or Subcontracting**: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or subcontract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract. Notwithstanding the provisions set forth above in this Section I, Contractor shall have the right to assign this Contract to (i) Windcave Inc., a California corporation and affiliate of the Contractor, and (ii) to any successor by merger, any purchaser of substantially all of the Contractor's assets, or any purchaser of a 51% or greater equity interest in the Contractor; provided, that County shall have the right to approve any assignment described in this clause (ii) (such approval not to be unreasonably withheld, delayed or conditioned).

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J. **Non-Discrimination**: In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any Subcontractor's to engage in discrimination in employment of persons because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.

K. **Termination**: In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Contractor has the right to terminate this Contract without penalty immediately with cause or after 90 days' written notice without cause. Cause shall be defined as any breach of Contract, or any misrepresentation or fraud on the part of Contractor or County. Exercise by either Party of its right to terminate the Contract shall relieve such Party of all further obligations.

Termination for Default: If Contractor is in default of any of its obligations under this Contract and has not commenced cure within 10 days after receipt of a written notice of default from County and cured such default within the time specified in the notice, County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. If County is in default of any of its obligations under this Contract and has not commenced cure within 30 days after receipt of a written notice of default from Contractor and cured such default within the time specified in the notice, Contractor shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of Contract with Contractor, County may begin negotiations with a third-party Contractor to provide goods and/or services as specified in this Contract.

The right of either Party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

L. **Consent to Breach Not Waiver**: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Remedies**: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

N. **Independent Contractor**: Contractor shall be considered an independent Contractor and neither Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither Contractor, employees nor anyone working for Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.

O. **Performance**: Contractor shall perform all work under this Contract in accordance with the terms of this Contract.

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Insurance Provisions: Prior to the provision of services under this Contract, Contractor shall carry all required insurance at Contractor's expense, including all endorsements required herein. Contractor agrees to keep such insurance coverage current and provide a Certificate of Insurance and endorsements to the County during the entire term of this Contract.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer. Any failure on the part of the County to monitor or enforce compliance with any of the insurance requirements shall not be construed as a waiver of any required insurance provisions herein.

Evidence of Insurance
Insurance certificates and all endorsements shall be forwarded to the County agency/department. The name of the Insured Party on the Certificate of Insurance shall match the name of the Contractor identified in the Contract.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Procurement or the agency/department procurement division, award may be made to the next qualified vendor.

Failure to maintain and/or provide evidence of insurance acceptable to the County for the full term of this Contract shall constitute a material breach, upon which the County may terminate this Contract.

Cancellation and Changes in Insurance
Contractor shall provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

Insurance requirements are subject to periodic review by County. County retains the right to require additional types of insurance coverage or higher limits throughout the term of this Contract. Any change will be deemed by County Risk Manager as appropriate to adequately protect County's risk. County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not provide acceptable Certificates of Insurance and endorsements to County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

Subcontractor Insurance Requirements
All subcontractors performing work on behalf of Contractor pursuant to this Contract shall be included under Contractor's insurance as an Additional Insured or shall maintain insurance subject to the same requirements as Contractor *(unless specified below)*. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. Contractor shall provide the insurance requirements to every subcontractor and shall be responsible for verifying each subcontractor complies with the required insurance prior to allowing any subcontractor to begin work. Evidence of subcontractor's insurance must be maintained by Contractor through the entirety of this Contract for inspection by County at any reasonable time.

Self Insured Retention (SIR)
All SIR's shall be clearly stated on the Certificate of Insurance.

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Qualified Insurer
The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com).

Waiver of subrogation
All insurance policies required by this Contract shall waive all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees, and agents*** when acting within the scope of their appointment or employment.

Umbrella or Excess Insurance
If Contractor utilizes combination of umbrella or excess policies to satisfy the required insurance, these policies must "follow form" and afford no less coverage than the primary policy**.**

Insurance Coverages and Limits:
Contractor shall maintain throughout the contract the minimum limits and coverage as set forth below.

1. **Commercial General Liability**
   Shall be written on occurrence basis utilizing Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad. The policy shall contain a severability of interests "separation of insureds" clause and include coverage for products completed operations, personal and advertising, and contractual liability.

   A. Minimum Limits $1,000,000 per occurrence; $2,000,000 aggregate

   B. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees, and agents*** as Additional Insureds, or provide blanket coverage which shall state As Required by Written Contract.

   C. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

2. **Auto Liability**
   The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad. The policy shall include coverage for owned or scheduled (if applicable), non-owned , and hired vehicles.

   A. Minimum Limits $1,000,000 combined single limit each accident

3. **Worker's Compensation and Employer's Liability**
   Coverage is required for all employees providing services pursuant to the Contract. Worker's Compensation coverage shall have statutory limits and meet all the requirements of the State of California Labor Code.

   A. Employer's Liability policy with minimum limits of $1,000,000 per accident or disease

   B. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees, and agents*** or provide blanket coverage, which will state As Required by Written Contract.

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C. If Contractor has no employees, it may certify to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code by signing a County waiver. The waiver shall be reviewed and will require approval by County Risk Manager or designee.

4. Network Security & Privacy Liability

Coverage may be standalone or combined with a Cyber Liability policy. If combined, the Certificate of Insurance must indicate "Network Security & Privacy Liability" with the required limits shown.

The policy shall include coverage to sufficiently cover all the actions of the Contractor including but not limited to claims for Network Security, Privacy Liability, Media Liability, Cyber Extortion, Regulatory Proceeding, Data Breach, System Failure, Electronic Data Recovery, and Payment Card Industry Data Security Standard (PCI-DSS), and Social Engineering. Coverage shall also include breach response costs, credit monitoring and regulatory fines.

A. Minimum Limits $1,000,000 per occurrence or claims made; $2,000,000 aggregate.

5. Technology Errors & Omissions

A. Minimum Limits $1,000,000 per claims made and aggregate

Claims Made Coverage

If any required coverage is written on a Claims Made basis, Contractor shall agree to the following:

1) The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.

2) Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services.

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 contract services, Contractor must purchase a claim extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract services.

P. **Bills and Liens**: Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release.

Q. **Changes**: See Article C.

R. **Change of Ownership**: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract.

S. **Force Majeure**: Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause as set forth below beyond its reasonable control.

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i. County acknowledges that Contractor relies on third-party providers in the delivery of its services, including, but not limited to, wireless data network providers, cellular radio service provided by third parties that is available only when within the operating range of cellular systems, and cellular service is subject to transmissions limitations and dropped or interrupted transmissions. Cellular service may be temporarily refused, limited, interrupted, or curtailed because of government regulations or orders, atmospheric and/or topographical conditions, and cellular system modifications, repairs, and upgrades. County agrees that Contractor shall not be liable for, and to hold Contractor harmless for any losses, damages, or business interruptions sustained as a result of interruptions caused by its wireless data network providers or any other third-party provider.

ii. Neither Party (the "**Affected Party"**) shall be liable for any default or delay in the performance of its obligations under this Contract if and to the extent such default or delay is caused, directly or indirectly, by

(a) fire, flood, elements of nature or other acts of God;
(b) any outbreak or escalation of hostilities, war, riots or civil disorders in any country;
(c) any act or omission of the other party or any government authority;
(d) any labor disputes (whether or not employees' demands are reasonable or within the Party's power to satisfy); or
(e) the nonperformance by a third party for any similar cause beyond the reasonable control of such Party, including without limitation, failures or fluctuations in telecommunications or other equipment such as described in clause.

iii. In any such event, the Affected Party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable, provided that:

(a) Notice: whenever the Affected Party becomes aware that such a result has occurred or is likely to occur, the Affected Party will, as soon as practicable, notify the other party by written notice accordingly, but no longer than 36 hours after the start of delay;
(b) Continued Performance: each Party will continue to use commercially reasonable efforts to perform its obligations as required under this Contract; and
(c) No Deemed Acceptance of Extra Costs: neither Party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other party in complying with this clause or otherwise resulting from such act, omission or failure; and
(d) Charges: this clause 14 will not apply in respect of County's obligation to pay any charges or Fees payable under this Agreement.

T. **Intentionally left blank**.

U. **Confidentiality**: Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

V. **Compliance with Laws**: Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance.

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W. **Freight (F.O.B. Destination)**: Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.

X. **Pricing**: Contract price, as more fully set forth in Attachment B – Contractor's Pricing, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.

Y. **Intentionally left blank**.

Z. **Terms and Conditions**: Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract. County also acknowledges that it has read and agrees to all terms and conditions included in this Contract.

AA. **Headings**: The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

BB. **Severability**: If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

CC. **Calendar Days**: Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

DD. **Attorney's Fees**: In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

EE. **Interpretation**: This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.

FF. **Authority**: Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

GG. **Employee Eligibility Verification**: Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State

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statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

HH. **Indemnification**: Contractor will indemnify County against liability, loss, damage or cost (including reasonable legal costs) suffered or incurred by County arising from (i) any third party claim ("Claim") against County that Contractor's Windcave software solution infringes any patent, trademark, copyright, trade secret or other intellectual property right of that third party;

II. **Remedy:** To the maximum extent permitted by law and subject to Clause KK (Exclusions) below, in no event will Contractor's aggregate liability arising out of or related to the Agreement exceed the lesser of (a) the amount paid by County to Contractor under this Agreement in the 3 months following execution of this Agreement or (b) $50,000.

JJ. **Exclusions:** In no event will Contractor be liable to County whether in Contract, tort (including negligence) or otherwise in respect of any:

a. Punitive, incidental, indirect, or consequential damages, damages for loss of profits, business interruption, loss of data, loss of goodwill, arising out of, or in connection with, this Agreement, in each case even if such party has been advised of the possibility of such damages;

b. Loss, damage, cost or expense suffered or incurred by County, to the extent this results from any act or omission by County; or

c. Any event described in Clause T (Force Majeure).

KK. **Audits/Inspections**: Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to certain books, accounts, records, reports, files, financial records, supporting documentation, including certain payroll and accounts payable/receivable records, and certain other papers or property of Contractor for the purpose of auditing or inspecting aspects of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of Contract including, but not limited to, the costs of administering Contract. County will provide reasonable notice of such an audit or inspection.

County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law.

Should Contractor cease to exist as a legal entity, Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

Notwithstanding anything set forth in this Clause JJ or this Contract, County agrees that if PCI Standards (as defined in clause JJ) conflict with or prohibit Contractor's compliance with any of its obligations and/or County's rights set forth in this Section JJ (as reasonably determined by Contractor), then such PCI Standards shall control and, in such circumstance, Contractor shall not be required to perform the conflicting obligation set forth above and County shall not be entitled to exercise its conflicting rights as set forth above.

"PCI Standards" means the Payment Card Industry standards, requirements and guidelines issued by the Payment Card Industry Data Security Council from time to time including the Payment Card Industry Data Security Standard PIN Entry Device requirements and guidelines, and the Payment Application Data Security Standard.

ADDITIONAL TERMS AND CONDITIONS

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1. **Scope of Services**: This Contract, including Attachments, specifies the Contractual terms and conditions by which County will procure services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as Attachment A to this Contract.
2. **Contract Term**: This Contract shall be effective December 19, 2026 through July 31, 2028 ("the Term").
3. **Breach of Contract**: Failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
   i. Terminate Contract immediately without penalty, pursuant to Article "K" herein;
   ii. Afford Contractor written notice of the breach and 10 calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
   iii. Discontinue payment to Contractor for and during the period in which Contractor is in breach; and
4. **Conditions Affecting Work**: Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by County are expressly stated in the Contract.
5. **Conflict of Interest – Contractor's Personnel**: Contractor shall exercise reasonable care and diligence to prevent its employees and agents from making, receiving, providing, or offering payments, gifts, entertainment, loans, or other considerations to any County agent, employee, or relative that could be deemed to influence such individual(s) to act contrary to the best interests of County.
6. **Conflict of Interest – County Personnel**: County's Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
7. **Contingency of Funds**: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, State of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
8. **Contingent Fees**: Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of Contractor or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.

   For breach or violation of this warranty, County shall have the right to terminate this Contract in accordance with the termination clause and at its sole discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from Contractor.
9. **Contractor's Expense**: Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during performance of work

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and services under this Contract. County will not provide free parking for any service on County property.

10. **Contractor's Personnel** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract and possess sufficient experience and/or education to perform the services requested by County. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by County.

11. **Contractor's Power and Authority**: Contractor warrants that it has the full power and authority to grant the rights herein granted and will hold County hereunder harmless from and against any loss, cost, liability and expense, including reasonable attorney fees, arising out of any breach of this warranty. Further, the Contractor waivers that it will not enter into any arrangement with any third party which might abridge any rights of County under this Contract.

12. **Contractor's Records**: Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored for a period of three (3) years after final payment is received from County.

13. **Contractor's Responsibility**: Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other commodities/services furnished by Contractor under this Contract. Contractor shall perform such professional services as may be necessary to accomplish the work required to be performed under and in accordance with this Contract.

    Contractor shall supply all licenses and permits required to perform this work in accordance with local restrictions and shall pay all fees resulting there from.

14. **Contractor's Uniforms/Badges/Identification**: All Contractor's employee shall be required to wear uniforms, badges or other means of identification which are to be issued and provided by Contractor and must be worn at all times while working on County property.

15. **Contractor's Work Hours and Safety Standards**: Contractor shall ensure compliance with all safety and hourly requirements for employees in accordance with Federal, State and County safety regulations and laws.

16. **County's Project Manager**: County shall appoint a Project Manager, as specified in Article "31" Notices, to act as liaison between County and Contractor during the term of this Contract. County's Project Manager, or his designee, shall coordinate the activities of County staff assigned to work with Contractor.

17. **Default – Reprocurement Costs**: In case of default by Contractor, County may procure goods and/or services from other sources.

18. **Offline Mode:** County hereby authorizes Contractor to enable offline mode for processing credit cards in the event of an internet failure. Additionally, County authorizes Contractor to put service in offline mode until internet service is restored for a maximum of forty-eight (48) hours per event. Offline mode transactions for parking are capped at one-thousand dollars ($1,000.00) maximum per transaction per card, a maximum of one-thousand (1,000) transactions processed per device per Offline Mode event, and a maximum of thirty-thousand dollars ($30,000.00) per device per Offline Mode event. Contractor will not be responsible for Chargebacks or unsuccessful transactions that are a direct result of offline transaction processing.

19. **Requisite Review of Payline Portal:** County shall be required to review with due care County's payline portal, established by Contractor, to review for transaction errors. If an error is discovered by

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County, County shall promptly notify Contractor. County shall also be required to review with due care its bank settlement files to ensure deposits occur without error. If an error is discovered by County, County shall promptly notify Contractor.

20. **Breach of License Terms:** It is expressly acknowledged and agreed by County that Contractor's goods, software and documentation provided per this Agreement are for business and commercial purposes only. Any use of Contractor's goods, software, or documentation by County for any purpose other than those specified in this Agreement will be deemed a material breach of this Agreement which is not reasonably capable of remedy.

21. **Disputes – Contract:**

    1. Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by Contractor's and County's Project Manager, such matter shall be brought to the attention of the County's Purchasing Agent by way of the following process:

        i. Contractor shall submit to JWA assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.

        ii. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the County is liable.

    2. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

    Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by County's Purchasing Agent or his designee. If County fails to render a decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision by County adverse to Contractor's contentions. County's final decision shall be conclusive and binding regarding the dispute unless Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of County's final decision or one year following the accrual of the cause of action, whichever is later.

22. **Errors and Omissions**: All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by Contractor and Contractor personnel attached hereto, prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

23. **Existing Site Conditions**: Information respecting the site of the work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct,

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but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.

24. **Gratuities**: Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County shall have the right to terminate Contract, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

25. **Interpretation of Contract**: In the event of a conflict or question involving the provisions of any part of this Contract, interpretation and clarification as necessary shall be determined by County's assigned DPA. If disagreement exists between Contractor and County's assigned DPA in interpreting the provision(s), final interpretation and clarification shall be determined by County's Purchasing Agent or his designee.

26. **News/Information Release**: Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from County through County's Project Manager.

27. **Ownership of Documents**: County has permanent ownership of all directly connected and derivative materials produced under this Contract by Contractor and provided to County. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become, and remain, the sole property of County and may be used by County as it may require without additional cost to County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by Contractor without the express written consent of County.

28. **Precedence**: Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

29. **Publication**: No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. Notwithstanding the terms of this Clause 28, Contractor may release such documents to its related entities, Windcave Inc. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by County unless otherwise agreed to by both Parties.

30. **Title to Data**: All materials, documents, data or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of County. At County's request, all materials, documents, data or information, including copies, must be returned to County at the end of this Contract.

31. **Validity**: The invalidity in whole or in part of any provision of this Contract shall not void or affect the validity of any other provision of the Contract.

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32. **Notices**: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County:	JWA/Finance and Administration Attention: Rosanne Jin 3160 Airway Avenue Costa Mesa, CA 92626 rjin@ocair.com (949) 252-5198
cc:	JWA/ Finance Administration, Procurement contract Specialist Attention: Thang Bernard, DPA 3160 Airway Avenue Costa Mesa, CA 92626 tbernard@ocair.com (949) 252-6074
Contractor:	Windcave Inc. Attention: Nickolaus Lawdenski 1225 West Washington Street Tempe, Arizona 85281 Nickolaus.Lawdenski@windcave.com (323) 676-8378 office

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IN WITNESS WHEREOF, Parties hereto have executed this Contract on the dates shown below their respective signatures below.

WINDCAVE INC.:

Signed by: Nickolaus Lawdenski B677900183D0426...	Nickolaus Lawdenski	Inside Sales Manager	10/13/2026
Signature	Name	Title	Date
Signed by: Justin Drake 62CEB3E26C734B7...	Justin Drake	Chief Financial Officer	10/13/2026
Signature	Name	Title	Date

If Contractor is a corporation, signatures of two specific corporate officers are required as further set forth:

- ***The first signature must be one of the following: a) Chairman of the Board; b) President; or c) any Vice President.***
- ***The second signature must be one of the following: a) Secretary; b) Chief Financial Officer; c) any Assistant Secretary; or d) any Assistant Treasurer.***
- ***In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.***

COUNTY AUTHORIZED SIGNATURE:

		Deputy Purchasing Agent	
Signature	Name	Title	Date

APPROVED AS TO FORM:

County Counsel

DocuSigned by: Mark Sanchez 5EE66EC8DA7B48F...	Mark Sanchez	**Deputy**	10/13/2026
Signature	Name	Title	Date

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ATTACHMENT A
SCOPE OF WORK

This Contract is for a real time credit card transaction payment processing solution service Contract for credit card payments. This service will process customer's credit card transactions for all of the parking structures and parking lots at John Wayne Airport (JWA) and may also be utilized for other compatible Airport payment applications.

A. **Scope of Work**

Contractor is to provide:

1. An integrated payment gateway capable of Europay, MasterCard and Visa (EMV) EMV (also known as chip and pin) for JWA's Parking and Revenue Control System (PARCS) SKIDATA platform with the following features;
    a. Secured processing of all parking customers' credit card transactions, including Visa, MasterCard, American Express and Discover
    b. Secured transmission of credit card information to JWA's merchant service providers, First Data and American Express
    c. EMV certification with JWA's merchant service providers, First Data and American Express
    d. Point-to-point and End-to-end encryption for all credit card transactions
    e. EMV Point-to-point encryption through JWA's merchant service providers, First Data and American Express
    f. Level 1 PCI compliant and certification
    g. Batching of all credit card transactions when PARCS goes offline and processing of the offline batch when service is restored
    h. Batch size sufficient to process daily processing
    i. Chip reading capability
    j. Near field communications (NFC) enable for Apple Pay and other contactless payment offerings
    k. Rapid transaction processing time – typically, sub 6-8 second online authorization
    l. Software updates and new features to be deployed remotely
    m. EMV upgradable
    n. Pin-pad upgradable
    o. Credit card in and out capability
    p. Reporting module capable of producing the following reports in a format that must be exportable to Microsoft Excel:
        i. Customer Daily Detail Transaction Report including customer card number (last 4), card type, transaction date and time, amount and location.
        ii. Daily Summary Transaction Report summarizing daily credit card transactions by credit card type, number of transactions and amount.
        iii. Monthly Summary Transaction Report summarizing credit card transactions by credit card type, number of transactions and amount.
        iv. Offline Detail Transaction Report for the transactions processed offline, report should include customer card number (last 4), card type, transaction date and time, amount and location.
2. 2. Payment gateway services may be utilized for other Airport payment applications that are compatible with Windcave's gateway platform, as authorized by the Airport

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ATTACHMENT B
CONTRACTOR'S PRICING

I. **Compensation**:

This is Contract between County and Contractor, as set forth in Attachment "A" Scope of Work.

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, and insurance, vehicles, equipment, tools, materials, overhead, travel, etc. required for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder.

Contractor shall be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall pay the Contractor for all services used even if the actual total amount of fees exceed the estimated amount.

II. **Fees and Charges**:

County shall pay the following fees, without setoff or deduction, in accordance with the provisions of this Contract.

Total Estimated Contract Not To Exceed Amount $82,000.00

Estimated Contract Amount - Year 1: $50,000.00

The parties acknowledge that this Agreement provides the services described in Attachment A and Attachment B on a per transaction basis. If County's obligations to Contractor per the terms specified below exceed **Total Estimated Contract Amount** prior to expiry of this Agreement's Initial Term, and County does not timely make payments for the services described in this Agreement, Contractor shall be within its rights to terminate this Agreement with 30 days' written notice to County.

Annual Fee (Year 1 &2)		
Description	**Unit**	**Amount**
Enterprise Plan 1 (50,000 Transactions)	Month	$ 2,500.00
Fee for each additional Transaction in excess of 50K	Each	$ 0.050
Fee per Connected Card Reader	Month	$ 5.000
Fee to Setup Additional Users	Each	$ 30.000
Configure/Change Additional Electronic Merchant Numbers	Each	$ 125.00
Development/Testing Fee per Person	Hour	$ 125.00
Senior Developer Per Person	Hour	$ 175.00
Risk Management Fees for rules 1 to 5	Month	$ 100.00
Risk Management Fees for rules 6 to 10	Month	$ 175.00
Annual Fee (Year 3 & 4)		

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Description	Unit	Amount
Enterprise Plan 1 (50,000 Transactions)	Month	$ 2,750.00
Fee for each additional Transaction in excess of 50K	Each	$ 0.060
Fee per Connected Card Reader	Month	$ 5.000
Fee to Setup Additional Users	Each	$ 30.000
Configure/Change Additional Electronic Merchant Numbers	Each	$ 125.00
Development/Testing Fee per Person	Hour	$ 125.00
Senior Developer Per Person	Hour	$ 175.00
Risk Management Fees for rules 1 to 5	Month	$ 100.00
Risk Management Fees for rules 6 to 10	Month	$ 175.00
Annual Fee (Year 5)		
Description	**Unit**	**Amount**
Enterprise Plan 1 (50,000 Transactions)	Month	$ 3,000.00
Fee for each additional Transaction in excess of 50K	Each	$ 0.065
Fee per Connected Card Reader	Month	$ 5.000
Fee to Setup Additional Users	Each	$ 30.000
Configure/Change Additional Electronic Merchant Numbers	Each	$ 125.00
Development/Testing Fee per Person	Hour	$ 125.00
Senior Developer Per Person	Hour	$ 175.00
Risk Management Fees for rules 1 to 5	Month	$ 100.00
Risk Management Fees for rules 6 to 10	Month	$ 175.00

III. **Payments and Invoicing**:

Contractor shall reference Contract number on invoice. Payment shall be net 30 days after receipt of an invoice in a format acceptable to County and verified and approved by County and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with Contractor.

Billing shall cover services and/or goods not previously invoiced. Contractor shall reimburse County for any monies paid to Contractor for goods or services not provided or when goods or services do not meet Contract requirements.

Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

Contractor will provide an invoice on Contractor's letterhead for services rendered.

Each invoice shall include the following information:

1. Contractor's name and address
2. Contractor's remittance address (if different from above)
3. Contractor's Federal Taxpayer Identification Number
4. Contractor's Invoice Number

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5. Name of County agency department
6. County Contract number
7. Service date(s)
8. Service description
9. Total Invoice Amount

Invoices and support documentation are to be forwarded to (**not both**):

John Wayne Airport
Attention: Accounts Payable
3160 Airway Avenue
Costa Mesa, CA 92626

Or

Email to:

AccountsPayable@ocair.com