



Date: December 10, 2024

To: Randy Randell, Interim City Manager

Via: James Harris, Airport Director 
JH

From: James Garduño, Airport Project Manager 
JM

Subject: Airport Parking Access Revenue Control System

Vendor Name: Windcave Inc.

Vendor Number: 8616

ITEM AND ISSUE:

The Santa Fe Regional Airport respectfully requests your review and approval for Amendment #1 for Parking Access Revenue Control System request for the Approval of Service Agreement that will not exceed \$195,000 including NMGRS for real time payment processing solutions; (Windcave/Santa Fe Regional Airport); James Garduño, Project Manager, jdgarduno@santafenm.gov, 505-670-3232; James Harris, Airport Manager, jcharris@santafenm.gov, 505-955-2901

Action Requested: Request approval of Amendment #1 for service agreement term change.

BACKGROUND AND SUMMARY:

The Santa Fe Regional Airport is installing a state-of-the-art Parking Access and Revenue Control System (PARCS) in the airport parking lots. For patron convenience the system will feature pay stations where customers can pay for their parking with a credit card before exiting the lot. That credit card functionality will require the services of a system certified payment processor, Windcave Inc.

Under this agreement Mountain Parking Equipment (MPE) is installing a state-of-the-art Parking Access and Revenue Control System (PARCS) in the airport parking lots. To utilize the PARCS credit card cashing functionality an agreement with a credit card processing clearinghouse is needed for the parking lots. Windcave Inc. is the credit card processor certified by MPE to work with PARCS. The revenue collected will cover the cost for the services provided.

This Amendment #1 will allow change the term down to two months.

PROCUREMENT METHOD:

This work is being procured via Sole Source.

Chief Procurement Officer Approval:  _____ **Date:** Dec 11, 2024

Comment/Exceptions: NMSA 1978, Section 13-1-126

Supporting Information:

CONTRACT NUMBER:

The FY25 Munis contract number is 3250223

\$\$\$\$\$ SOURCE/REVENUE: ☐Expense ☒Revenue

If the project is grant funded? List grant award number: NA

Grant Manager / Accounting Officer Approval: NA Date:
Comment/Exceptions: _____

Project Ledger #: NA

Budget Officer Approval: Andy Hopkins Date: Dec 11, 2024
Comment/Exceptions: _____

CAPITAL ASSET (will this procurement result in a tangible item that costs more than \$5,000?):

☐Yes | ☒ No

(if known): _____

Repair or Replacement of Existing Equipment:

☐Yes | ☒ No

If yes -> ☐Repair | ☐ Replacement

Please explain: _____

Capital Project:

(New and improvement projects that are going to cost \$10,000 or more)

☐ Yes | ☒ No

Project Ledger #: NA

Anticipated length of project: NA

Asset Manager Approval: NA Date:
Comment/Exceptions: _____

Department Approvals:

IT Components: ☐ Yes | ☒ No

Vehicles: ☐ Yes | ☒ No

Facilities, Furniture, Fixtures, Equipment: ☐ Yes | ☒ No

Approval: _____ **Title:** _____ **Date:** _____

Approval: _____ **Title:** _____ **Date:** _____

Comment & Exceptions: _____

Department Contract Administrator Contact Info:

James Garduño, Project Manager

jdgarduno@santafenm.gov

505-670-3232

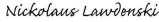

ATTACHMENTS:

Services Agreement

Certificate of Liability Insurance


CPO Determination

Sole Source Determination


WINDCAVE INC. – AMENDMENT TO AGREEMENT FOR THE WINDCAVE SOLUTION City of Santa Fe Santa Fe Regional Airport	
DATED this December 10 th 2024	
PARTIES	
<p>WINDCAVE INC. (Windcave) Contact Details for Notices: Physical Address: 1601 N. 7th St., Suite 420, Phoenix, Arizona 85006 Postal Address: P.O. Box 45498, Los Angeles, CA 90045-0498 Email: contracts@windcave.com Phone: +1 310 670 7299 Fax: +1 310 670 7298</p> <p style="text-align: right;">CustID: 126616</p> <p>Car Park Inc. (Customer) Contact Details for Notices: Physical/ Postal Address: 121 Aviation Dr. Santa Fe, New Mexico 87507 Email: jdgarduno@santafenm.gov Phone: 505-955-2906</p>	
AGREEMENT	
<ol style="list-style-type: none"> 1. Windcave is a provider of real time payment processing solutions in the USA. Windcave has agreed to supply solutions to Customer in accordance with the terms and conditions set out in the agreement between the Parties described below ("Agreement"), which this document (hereafter the "Amendment") amends. 2. This Amendment to the original Agreement consists of this agreement page, and Schedule 2, which contains the Amendment to the Agreement for the Windcave Solution. 3. It is intended that further supplies of solutions may be made and will be governed by the Agreement and this Amendment. The attached schedules, or any schedules completed and signed after the date of this Agreement but referring to this Agreement, are a part of this Agreement 	
TERM	
AGREEMENT START DATE: July 1 st 2024 AMENDMENT DATE: December 10 th 2024 TERM: 2 MONTHS	
EXECUTION	
SIGNED for and on behalf of WINDCAVE INC. by:  Signature Nickolaus Lawdenski Inside Sales Manager - NA Name/Title Dec 10, 2024 Date	SIGNED for and on behalf of City of Santa Fe by:  Randy Randall (Dec 11, 2024 16:13 MST) Signature Randy Randall, Interim City Manager Name/Title (Director / Authorized Signatory) Dec 11, 2024 Date

CRS# _____ REGISTRATION # _____

ATTEST:


 Randy Randall (Dec 11, 2024 14:26 MST)

INTERIM CITY MANAGER: RANDY RANDALL



 Kevin L. Nault (Dec 10, 2024 16:00 MST)

ASSISTANT CITY ATTORNEY


 ANDREA SALAZAR (Jan 01, 2025 17:18 MST)

CITY CLERK

XIV



FINANCE DIRECTOR

SCHEDULE 2 –AMENDMENT TO THE AGREEMENT FOR THE WINDCAVE SOLUTION

1. GENERAL	
<p>This Amendment ("Amendment") is made to the Windcave Agreement dated July 1st 2024 (the "Agreement"). This Amendment is effective as of December 10th 2024 ("Amendment Effective Date") by and between City of Santa Fe ("Customer") and Windcave Inc. ("Windcave"); collectively referred to as the "Party" or "Parties".</p> <p>WHEREAS, the Parties desire to clarify, amend and modify certain terms and conditions of the Agreement as set forth in this First Amendment.</p> <p>NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:</p> <p><u>Establishment fee: \$250.00</u> <u>Minimum Monthly Fee: \$2,000.00 per calendar month. Includes 25,000 Transactions per calendar month. Additional Transactions in each calendar month charged at the rate of \$0.08 per Transaction.</u> <u>Customer will be charged a \$6.00 SAP fee per calendar month charge per connected card reader for unattended and attended card reader devices.</u> <u>Maximum contract value:</u> The maximum Customer can be required to pay during the Term of this contract is seventy nine thousand dollars (\$79,000.00) including New Mexico Gross Receipts Tax.</p> <p>1. <u>Capitalized Terms.</u> Unless otherwise provided herein, all capitalized or defined terms shall have the same meanings set forth in the Agreement.</p> <p>2. <u>Conflict.</u> In the event of any conflict or inconsistency between the terms of this Amendment and the Agreement, the terms of this Amendment shall govern and control.</p> <p>3. <u>Full Force and Effect.</u> Except as specifically modified and amended in this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.</p> <p>4. <u>Counterparts.</u> This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.</p>	
2. EXECUTION	
<p>SIGNED for and on behalf of WINDCAVE INC. by:</p> <p><i>Nickolaus Lawdenski</i></p> <p>_____ Signature</p> <p>Nickolaus Lawdenski Inside Sales Manager - NA</p> <p>_____ Name/Title</p> <p>Dec 10, 2024</p> <p>_____ Date</p>	<p>SIGNED for and on behalf of City of Santa Fe by:</p> <p>_____ Signature</p> <p>Randy Randall, Interim City Manager</p> <p>_____ Name/Title (Director / Authorized Signatory)</p> <p>_____ Date</p>

WINDCAVE AGREEMENT FOR City of Santa Fe Santa Fe Regional Airport	
DATED this 25 th day of June 2024	
PARTIES	
WINDCAVE INC. (Windcave) Contact Details for Notices: Physical Address: 1601 N. 7th St., Suite 420, Phoenix, AZ 85006 Postal Address: 1601 N. 7th St., Suite 420, Phoenix, AZ 85006 Email: contracts@windcave.com Phone: +1 310 670 7299 Fax: +1 310 670 7298 <div style="text-align: right; margin-top: 20px;">CustID: 126616</div>	
City of Santa Fe (Customer) Contact Details for Notices: Physical Address: 121 Aviation Dr. Santa Fe, New Mexico 87507 Postal Address: 121 Aviation Dr. Building 3003 Santa Fe, New Mexico 87507 Email: jdgarduno@santafenm.gov Phone: 505-955-2906 Fax:	
AGREEMENT	
1. Windcave is a provider of real time payment processing solutions in the USA. Windcave has agreed to supply solutions to Customer in accordance with the terms and conditions set out in this Agreement. 2. This Agreement is structured in two parts, namely Part A (Specific Terms) and Part B (General Terms). Part A contains the specific terms relevant to each supply of solutions to Customer and may include one or more Schedules. Part B sets out Windcave's general terms and conditions which will apply to all supplies of solutions. 3. It is intended that further supplies of solutions may be made and will be governed by this Agreement by way of the parties signing a further Part A Schedule for each supply. The attached schedules, or any schedules completed and signed after the date of this Agreement but referring to this Agreement, are a part of this Agreement. All purchase orders between the parties are subject to this Agreement's terms.	
EXECUTION	
SIGNED for and on behalf of WINDCAVE INC. by: <div style="border-bottom: 1px solid black; margin-top: 5px; min-height: 1.2em;"> <i>Nickolaus Lawdenski</i> </div> Signature <div style="border-bottom: 1px solid black; margin-top: 5px;"> Nickolaus Lawdenski / Inside Sales Manager - NA </div> Name/Title <div style="border-bottom: 1px solid black; margin-top: 5px;"> Sep 25, 2024 </div> Date	SIGNED for and on behalf of City of Santa Fe by: <div style="border-bottom: 1px solid black; margin-top: 5px; min-height: 1.2em;"> </div> Signature <div style="border-bottom: 1px solid black; margin-top: 5px;"> City Manager </div> Name/Title (Director / Authorized Signatory) <div style="border-bottom: 1px solid black; margin-top: 5px; min-height: 1.2em;"> </div> Date
CRS# _____ REGISTRATION # _____	

ATTEST:

John Blair
John Blair (Oct 21, 2024 13:40 MDT)

CITY MANAGER: JOHN BLAIR

Kevin L. Nault
Kevin L. Nault (Sep 25, 2024 15:04 MDT)

ASSISTANT CITY ATTORNEY**INTERIM CITY CLERK**

Emily K. Oster

FINANCE DIRECTOR

PART A – SPECIFIC TERMS

SCHEDULE 1 – SERVICES ACCESS ARRANGEMENT

1.	SERVICES ACCESS ARRANGEMENT		
(a)	Windcave: Windcave grants to Customer a non-exclusive, non-transferable licence to use the Windcave Solution for the Term solely for the purposes of the Permitted Use. Customer must not sub-license, transfer, assign, rent or sell the Windcave Solution or the right to use the Windcave Solution.		
2.	TERM		
(a)	Commencement Date: July 1 st 2024, Such Commencement Date may be postponed in writing, at Windcave's sole discretion, until the date Windcave receives a copy of the Agreement countersigned by Customer.		
(b)	Initial Term: 36 months beginning on the Commencement Date, unless earlier terminated under Part B, clause 12.		
(c)	Renewal Term: 12 consecutive months, unless earlier terminated under Part B, clause 12 if neither party gives three month's advance notice of nonrenewal.		
(d)			
3.	FEES		
(a)	Establishment Fee: \$100.00		
(b)	Minimum Monthly Fee: \$1,250.00 per calendar month. Includes 25,000 Transactions per calendar month. Additional Transactions in each calendar month charged at the rate of \$0.055 per Transaction.		
(c)	Additional Fees: Additional users to the Payment Manager can be set up, but will incur a one-time fee of \$30.00. If Windcave needs to configure or change additional electronic merchant numbers on the Windcave Host, there is a fee of \$100.00 per merchant account. Customer will be charged a \$5.00 SAP fee per calendar month charge per connected card reader for unattended and attended card reader devices.		
(d)	Price Adjustment: Windcave shall have the right to vary the Fees enumerated in Part A of this Agreement during the Renewal Term of this Agreement by providing Customer at least 30 calendar days' written notice before or during the Renewal Term. If Windcave exercises its right to modify the Fees, Customer shall thereafter have the right to terminate the Agreement with 30 days' written notice to Windcave within 60 days of Windcave's written notice that it is modifying the Fees.		
(e)	Maximum Contract Value: The maximum Customer can be required to pay during the Term of this contract is fifty-five thousand dollars (\$55,000.00) including New Mexico Gross Receipts Tax.		
4.	PAYMENT TERMS		
(a)	Purchase Order Payments: Customer will pay Windcave the Fees by fees by purchase orders to be provided by Customer to Windcave upon receipt of a Windcave invoice noting the relevant purchase order number on the dates specified below.		
(b)	Due Date for Payment of Set Up Fees: Customer will pay Windcave the Establishment Fee immediately when Windcave makes the Windcave Solution available to customer.		
(c)	Due Date for Payment of Monthly Fees and Additional Fees: Customer will pay Windcave the Monthly Fees and Additional Fees within 30 days of the date of Windcave's invoice for those Fees		
5.	SUPPORT SERVICES		
(a)	Online Help and General Support: Windcave will provide the Support Services to Customer as set out in Part B.		
6.	SPECIAL CONDITIONS		
(a)	This agreement shall only apply to the City of Santa Fe site Santa Fe Regional Airport located at 121 Aviation Dr., Santa Fe, New Mexico 87507		
7.	EXECUTION		
<p>The parties acknowledge and agree that this Schedule is governed by the Agreement between the parties containing Windcave's General Terms and Conditions.</p>			
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>SIGNED for and on behalf of WINDCAVE INC. by:</p> <p><u>Nickolaus Lawdenski</u></p> <p>Signature</p> <p><u>Nickolaus Lawdenski / Inside Sales Manager - NA</u></p> <p>Name/Title</p> <p><u>Sep 25, 2024</u></p> <p>Date</p> </td> <td style="width: 50%; vertical-align: top;"> <p>SIGNED for and on behalf of City of Santa Fe by:</p> <p><u>John Blair</u></p> <p>Signature</p> <p><u>City Manager</u></p> <p>Name/Title (Director / Authorized Signatory)</p> <p><u>Oct 21, 2024</u></p> <p>Date</p> </td> </tr> </table>		<p>SIGNED for and on behalf of WINDCAVE INC. by:</p> <p><u>Nickolaus Lawdenski</u></p> <p>Signature</p> <p><u>Nickolaus Lawdenski / Inside Sales Manager - NA</u></p> <p>Name/Title</p> <p><u>Sep 25, 2024</u></p> <p>Date</p>	<p>SIGNED for and on behalf of City of Santa Fe by:</p> <p><u>John Blair</u></p> <p>Signature</p> <p><u>City Manager</u></p> <p>Name/Title (Director / Authorized Signatory)</p> <p><u>Oct 21, 2024</u></p> <p>Date</p>
<p>SIGNED for and on behalf of WINDCAVE INC. by:</p> <p><u>Nickolaus Lawdenski</u></p> <p>Signature</p> <p><u>Nickolaus Lawdenski / Inside Sales Manager - NA</u></p> <p>Name/Title</p> <p><u>Sep 25, 2024</u></p> <p>Date</p>	<p>SIGNED for and on behalf of City of Santa Fe by:</p> <p><u>John Blair</u></p> <p>Signature</p> <p><u>City Manager</u></p> <p>Name/Title (Director / Authorized Signatory)</p> <p><u>Oct 21, 2024</u></p> <p>Date</p>		

PART B – GENERAL TERMS & CONDITIONS

1. Definitions and Interpretation (Not all defined terms are applicable to all goods and services provided under the Agreement)

1.1 Definitions: In this Agreement, unless the context indicates otherwise:

Acquirer means a bank or any financial institution or a card issuer of financial or non-financial transactions which receives and transmits Transactions via the Windcave Solution;

Agreement means this Agreement, including the Application Form, each of Part A and its Schedule(s) and Part B, and any attachments that may be agreed between the parties, as each may be amended in writing from time to time;

Application Form means Customer's online the Windcave Solution application form submitted to Windcave via the Windcave Website. Where no separate Part A is entered into, the Application Form will constitute Part A of this Agreement for the purposes of this Part B;

Business Day means any day of the week except Saturday, Sunday or a day on which banks are authorized or required to be closed in Arizona;

Chargeback means the procedure by which a sales record or other indicia of a card transaction (or disputed portion thereof) is denied or returned to Acquirer or the card issuer after it was entered into the appropriate settlement network for payment, in accordance with the rules of Visa, MasterCard or a similar card association ("Rules"), for failing to comply with the Rules, including, without limitation by reason of cardholder disputes, the liability for which is Customer's responsibility and Customer agrees to pay.

Commencement Date means the commencement date recorded in Part A in one or more Schedules; Such Commencement Date may be postponed in writing, at Windcave's sole discretion, until the date Windcave receives a copy of the Agreement countersigned by Customer.

Confidential Information means, in relation to either party, any information:

- (a) relating to the terms of this Agreement;
- (b) relating directly or indirectly to research or development by, accounting for, or the marketing of, the business of that party or its suppliers or customers;
- (c) disclosed by that party to the other party on the express basis that such information is confidential; or
- (d) which might reasonably be expected by the other party to be confidential in nature;

Customer means the customer specified in this Agreement and where applicable includes its employees, contractors and agents.

Default Interest Rate means an interest rate of 1.5% per month;

Delivery takes place when the Customer receives the Goods from Windcave, or, in the case of returns, when the Goods arrive at Windcave's premises;

Documentation means any user, training or system manuals for the Windcave Solution (whether in printed or electronic form) which describes and provides guidance on the use of the Windcave Solution (or any aspect of the Windcave Solution);

Emergency Support Services means telephone support that Windcave may provide (but is not obligated to provide unless it agrees to do so in a separate written agreement) for emergency breakdowns resulting in repeated failures in the transmission of Transactions and is available 24 hours a day, seven days a week by calling 310 670 7299 outside of Support Hours. If applicable, Windcave will use reasonable efforts to respond to any emergency phone call within 30 minutes of receiving the support request;

Fees means and includes each of the fees detailed in the Schedule(s) contained in Part A;

Goods means the Goods and/or Devices (if any) recorded in Part A in one or more Schedules;

Intellectual Property means registered and unregistered trade marks (including logos and trade files), domain names, copyright, patents, petty patents, utility models, registered and unregistered designs, circuit layouts, rights in computer software, databases and lists, Confidential Information, software (whether in object code or source code), and all other rights anywhere in the world resulting from intellectual activity;

Payment Manager means Payline Portal which Customer is able to access by logging onto the Windcave Website with an assigned username and password;

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;

Permitted Use means the transmission to, and receipt from, an Acquirer of data relating to Windcave Supported Transactions and expressly excludes, without limitation, use for the processing of transactions of, or for the benefit of, any person other than Customer;

Security Standards means each of:

- (a) any data protection or data security standards issued by an Acquirer which receives and accepts Windcave Supported Transactions from Customer; and
- (b) the PCI Standards;

Software means the software and other related Windcave products which:

- (a) form part of the Windcave Solution; and
- (b) is owned or licensed by or developed by, or on behalf of, Windcave and supplied to Customer, including all upgrades, updates, alterations and modifications and other changes to such software by or on behalf of Windcave from time to time, but excluding any third party software and firmware forming part of, or supplied with, the Windcave Solution;

Special Conditions means the special conditions (if any) recorded in Part A in one or more Schedules;

Support Hours means the period from 8am to 9pm (PST) on any Business Day and 9am to 5pm (PST) on non-Business Days;

Support Services means and includes:

- (a) **Online Help:** from time to time Windcave may display Frequently Asked Questions and Answers on the Windcave Website;
- (b) **General Support:** enquiries may be sent to: support@windcave.com or made by telephone to 310 670 7299. Windcave will respond to such enquiries during Support Hours;

Term means the Initial Term recorded in Part A in one or more Schedules and includes any Renewal Terms as recorded in Part A in one or more Schedules and defined in clause 2(b);

Tokenized Data means data for which Windcave has substituted a sensitive data element with a non-sensitive equivalent that has no extrinsic or exploitable meaning or value; and

Transaction means a message pair consisting of a message relating to a Windcave Supported Transaction transmitted by Customer to an Acquirer through the Windcave Solution and a response to that message from the Acquirer to Customer through the Windcave Solution;

Windcave means Windcave Inc., a California corporation with offices in Phoenix, Arizona;

Windcave Host means the host server known as Windcave Host to which Customer may be connected using the Software and which is in turn linked to an Acquirer to enable Windcave Supported Transactions to be processed in real time;

Windcave Logo means the Windcave logo supplied (in electronic format) by Windcave to Customer (as may be updated from time to time by Windcave);

Windcave Solution means the solution provided by Windcave for the transmission of data relating to Windcave Supported Transactions between a Customer and an Acquirer, incorporating the Software and including access (via the internet) to the Windcave Host and the Support Services;

Windcave Supported Transactions means transactions from Customers:

- (a) accepting payment for goods and services by means of credit card, debit card, prepaid card, gift card or any other means of payment which Windcave agrees to support through the Windcave Solution from time to time;
- (b) accepting loyalty cards, rewards cards, points cards, discount cards or club cards; or
- (c) providing services in relation to the sale and use of any of the cards referred to in paragraphs (a) and (b) above including the issue of such cards and the crediting or debiting of value to such cards;

Windcave Website means the website maintained by Windcave and accessible by Customer for viewing Transactions, data entry, refunding, report generating and other features related to Transactions;

1.2 Interpretation: In this Agreement, unless the context indicates otherwise:

- (a) the singular includes the plural and vice versa;
- (b) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (c) the term **includes** or **including** (or any similar expression) is deemed to be followed by the words without limitation;
- (d) references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (f) all monetary amounts are stated exclusive of applicable taxes if any and in US dollars; and
- (g) in the event of any inconsistency between the terms of any of the following, they will have precedence in the descending order of priority set out below:

- (i) Part A – Specific Terms and Schedules;

- (ii) Part B – General Terms and Conditions;
- (iii) The Application Form.

2. Term

2.1 Initial Term: This Agreement commences on the Commencement Date and will continue for the Initial Term, unless earlier terminated under Part B, clause 12.

2.2 Renewal: Upon expiry of the Initial Term, this Agreement will automatically continue for further periods of the number of consecutive months recorded in Part A in one or more Schedules (each such further period being a **Renewal Term**) on the same terms and conditions unless either party gives the other party not less than 3 months' notice in writing prior to the expiry of the Initial Term or the then current **Renewal Term** that it does not wish this Agreement to continue beyond the Initial Term or that **Renewal Term** as the case may be.

3. Payment

3.1 Fees: Customer will pay Windcave the Fees without setoff or deduction within 30 days of the date of Windcave's invoice for those Fees.

3.2 Taxes: Customer is responsible for all applicable taxes, duties and levies on the rental, loan or purchase or sale of goods and services (other than Windcave's income tax) assessed in connection with Customer's use of the Windcave Solution and the provision of services under this Agreement. To the extent that any Fees paid by Customer under this Agreement exclude any taxes or duties payable in respect of the Goods or Services provided under this Agreement in the jurisdiction where the payment is either made or received, where any such taxes or duties are payable by Windcave, Customer agrees to pay to Windcave the amount of such taxes or duties in addition to any Fees owed under this Agreement. Notwithstanding the foregoing, you may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, you will have the right to provide to Windcave with evidence of any such exemption information, in which case Windcave will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

3.3 Default Interest for Late Payment: Subject to Part B, clause 3.4(c)(ii), Customer must pay Windcave interest at the Default Interest Rate on any overdue amounts under this Agreement, calculated daily from thirty days after the date Customer accepts the invoice until the actual date of payment.

3.4 Disputed Invoices: Where Customer has reasonable grounds to dispute any portion of any amount invoiced by Windcave to Customer under this Agreement (**disputed portion**):

- (a) Customer will notify Windcave of such dispute and the grounds for such dispute within 5 Business Days of receiving the invoice;
- (b) any undisputed portion of the invoice will remain payable on the due date for payment;
- (c) provided that Customer has complied with clause 3.4(a), Customer will not be required to pay:
 - (i) the disputed portion until the parties' dispute has been resolved by agreement between the parties or in accordance with Part B, clause 19.2; or
 - (ii) any interest under clause 3.3 on the disputed portion unless the dispute is resolved with the effect that Customer is required to pay all (or part) of the disputed portion, in which case Customer will pay the interest on the disputed portion (or that part of that disputed portion) in accordance with clause 3.3. Interest will be payable from the date that payment would have been due under clause 3.1 but for the dispute until the date that disputed portion is paid to Windcave in full.

3.5 Termination and Suspension: If Customer does not timely pay Fees due and owing pursuant to this Agreement, Windcave may terminate this Agreement under Part B, Clause 12.2. Alternatively, Windcave may temporarily suspend the provision of the Windcave Solution to Customer. Customer agrees that Windcave will have no liability for such termination or suspension.

4. Mutual Responsibilities

Each party represents and agrees:

- 4.1 Power and Authority:** that it has full power and authority necessary to validly enter into and perform all its obligations under this Agreement; and
- 4.2 Requirements:** to comply with the other party's reasonable security, confidentiality and operational requirements of which it has been given reasonable notice.

5. Customer Responsibilities

Customer represents and agrees that it:

- 5.1 Suitability:** has made, and will continue to make, its own assessment of the suitability, adequacy, compatibility and appropriateness of the Windcave Solution for its purposes;
- 5.2 Comply with Instructions:** will comply with Windcave's restrictions, instructions and Documentation in relation to the use of the Windcave Solution, including those set out in this Agreement;
- 5.3 Use by Others:** will ensure that only authorized persons use the Windcave Software and that the Windcave Software is used only for the Permitted Use and as expressly authorized under this Agreement;
- 5.4 Responsibility for Use:** will accept all responsibility for the reliance on and use of the Windcave Solution by Customer and its employees, contractors and agents;
- 5.5 Obtain Equipment etc.:** will obtain and maintain all equipment, software and services needed to enable it to receive and use the Windcave Solution;
- 5.6 Accurate Customer Information:** warrants that all information provided by Customer to Windcave in the Application Form is accurate and correct, and that Customer will notify Windcave in writing if such information changes or ceases to be accurate in any way;
- 5.7 Provide Sufficient Information:** will ensure that sufficient information is given to Windcave to enable Windcave to comply with its obligations under this Agreement and that such information is timely, complete and accurate;
- 5.8 Personal Information:** acknowledges that any personal information concerning Customer or its personnel which is provided to Windcave by or on behalf of Customer may be:
 - (a) used by Windcave for the purpose of providing the Windcave Solution, the Support Services and any other services to Customer; and
 - (b) disclosed by Windcave to its affiliates and other services providers to enable Windcave to provide the Windcave Solution, the Support Services and any other services to Customer;
- 5.9 Notify of Third Party Infringement:** will immediately notify Windcave upon becoming aware of any third party infringing Windcave's Intellectual Property rights in any manner;
- 5.10 Responsible for Connecting to Windcave Host:** is responsible for all charges and costs associated with connecting to the Windcave Host to operate the Windcave Solution. Windcave will provide Customer with reasonable technical information and Software necessary to enable Customer to connect to the Windcave Host;
- 5.11 Requisite Review of Payline Portal:** Customer shall be required, on a daily basis, to review with due care Customer's payline portal, established by Windcave, to review Transactions for errors. If an error is discovered by Customer, Customer must notify Windcave in writing within three (3) Business Days of the date an error occurs; provided, that Windcave will have no liability or obligations of any kind with respect to errors that are not reported to Windcave within such three (3) Business Day period. In addition, Customer shall be required to, on a daily basis review with due care bank settlement files to ensure deposits occur without error. If an error is discovered by Customer, Customer must notify Windcave in writing within three (3) Business Days of the date an error occurs; provided, that Windcave will have no liability or obligations of any kind with respect to errors that are not reported to Windcave within such three (3) Business Day period. Windcave's liability under this Section 5.11 (Requisite Review of Payline Portal) of the Agreement is governed by, and fully subject to, the terms of Section 10 of this Agreement.
- 5.12 Comply with Law Generally:** will comply with all relevant laws in its use of the Windcave Solution and carrying out its obligations under this Agreement.
- 5.13 Improperly Deposited Funds:** will return funds that Windcave deposits in Customer's bank account(s) that do not rightfully belong to Customer ("Improperly Deposited Funds") without offset or delay. Customer will return all Improperly Deposited Funds to Windcave within five (5) calendar days of a written request to do so by Windcave. If Customer fails to comply with the terms of this Section, Windcave may immediately suspend services to Customer until Customer returns the Improperly Deposited Funds. Customer will be liable to Windcave for the Improperly Deposited Funds, and costs incurred by Windcave in recovering the Improperly Deposited Funds.
- 5.14 Return of Old Goods:** For Goods that Customer ceases using for the Permitted Use ("Unused Goods"), Customer will return such Unused Goods to Windcave within 30 calendar days. Unused Goods include, but are not limited to, Goods Customer has ceased using due to the Goods becoming obsolete, Goods that no longer operate, and Goods that are replaced per the warranty set forth in Part B, clause 7.3 of this Agreement. Customer will pay all shipping and restocking fees and costs associated with returning the Unused Goods to Windcave. Alternatively, instead of returning Unused Goods to Windcave, Customer may provide Windcave a secure destruction certificate evidencing

that the Unused Goods were destroyed in compliance with the Security Standards within the same 30 calendar day period.

6. Windcave's General Responsibilities

Windcave agrees that it will:

6.1 Good Faith: comply with all relevant laws and co-operate with Customer (and Customer's service providers) in connection with the Windcave Solution;

6.2 No Requirement to Decrypt Tokenized Data: be under no obligation to decrypt and transmit Tokenized Data to Customer or any third party.

7. Windcave Warranties

7.1 Security Standards: Windcave confirms that Windcave will throughout the term of this Agreement comply with the requirements of the Security Standards.

7.2 Limitations on Warranties: To the fullest extent permitted by law, except as expressly set out in this Agreement, Windcave disclaims and excludes all warranties, conditions, terms, representations or undertakings, whether express, implied, statutory or otherwise, including any condition or warranty of merchantability or fitness for a particular purpose. Windcave does not warrant that:

- (a) the Windcave Solution, the Goods, the Software or the Documentation will meet Customer's requirements; or
- (b) the Windcave Solution the Goods, the Software and the Documentation will be uninterrupted or error free, or that all errors will be corrected; or
- (c) that the Goods will be free of defects in design, materials or workmanship or will comply with any applicable equipment manufacturer's or software developer's specifications.

Customer understands and acknowledges that an authorization obtained through the Windcave Solution only confirms the availability of the cardholder's credit at the time of the authorization. It does not warrant that the person presenting the card is the rightful cardholder, nor is it an unconditional promise, guarantee or representation by Acquirer, processor or Windcave that a transaction is or will be deemed valid and not subject to dispute, debit or chargeback.

7.3 Supply Warranty: Windcave warrants that the Goods to be delivered under this Agreement will be free from defects in workmanship (labour and parts included, but transport excluded) during a warranty period commencing on the Commencement Date and concluding twelve (12) calendar months later ("Original Warranty Period"). As to repaired or exchanged Goods, during the Original Warranty Period here above mentioned, the warranty period on the exchanged or repaired Goods shall expire at the conclusion of the Original Warranty Period. With respect to Windcave's supply warranty:

- (a) Any defective Goods, under warranty, shall be replaced or repaired, free of charge, at Windcave's discretion (to the exclusion of compensation for any other damage), and the work shall be carried out at Windcave or its partner's or subcontractor's premises. Customer will pay the costs of transport of the Goods (including insurance) to Windcave.
- (b) Windcave has the choice to repair the Goods with spare parts or new parts. The defective elements, repaired, will become the property of Windcave.
- (c) The time when the Goods are repaired or unavailable during the warranty period will not give rise to an extension of the warranty period as set forth in this Section, subject to legal mandatory provisions.
- (d) Customer must return warranted Goods that are replaced subject to this warranty back to Windcave within 30 calendar days of replacement Goods being shipped to Customer. Customer shall pay the shipping and restocking fees to return the old, warranted Goods back to Windcave.

7.4 Exclusions to Supply Warranty: Windcave will have no liability under the Supply Warranty described in Section 7.3 in respect of:

- (a) Defects, breakdowns, or malfunctions due to failure to properly follow the installation process and instructions for use or an external cause to the Goods (including, but not limited to, shock, lightning fire, vandalism, malicious action, contacts with various liquids or vermin or water damage of any nature, and inappropriate electric voltage); or modifications to the Goods made without the written approval of Windcave; or a lack of every day maintenance (as described in the Documentation); or a lack of supervision or care; or improper storage or poor environmental conditions, particularly those related to temperature and hygrometry effects of variations of electric voltage from the electric network; or from the earth or repair work; or maintenance of the Goods by persons not authorized by Windcave;
- (b) Damage due to insufficient or bad packaging of the Goods when returned to Windcave;
- (c) Wear and tear from normal use of the Goods and accessories;

- (d) Communication problems related to an unsuitable environment, including problems accessing the Internet, transmission faults, local network faults, and modification of the parameters of the relevant cellular network after sale of the Goods;
- (e) Supply of new versions of Software. If, for example, Windcave produces new Software that is not necessary to fulfil its obligations under this Agreement, Windcave is not required to make such Software available to Customer;
- (f) Malfunction due to the use of products or accessories that are non-compatible with the Goods;
- (g) Goods returned to Windcave without Windcave's prior consent or that Windcave has not had an opportunity to troubleshoot;
- (h) Defects, breakdowns, or malfunctions due to **obstructing material** being placed on or into the Goods. Examples of obstructing material include, but is not limited to, paper, plastic, and metal objects.

8. Intellectual Property

All Intellectual Property rights in the Windcave Solution, the Goods, the Software, the Documentation and any work or thing developed or created by or on behalf of Windcave under or in connection with this Agreement (such work or thing being **Developed Works**), are **exclusively owned** by Windcave (or Windcave's licensors or suppliers). Customer acknowledges that there is no transfer of title, Intellectual Property rights or ownership of:

- (a) the Windcave Solution, the Goods, the Software, the Documentation or any part thereof; or
- (b) any Developed Works; to Customer under this Agreement and Customer will not dispute Windcave's (or Windcave's licensors or suppliers) ownership of the property referred to in this clause 8.

9. [Reserved]

10. Liability

To the fullest extent permitted by applicable law:

10.1 Remedy: Subject to clauses 10.2 and 10.3, Customer's sole and exclusive remedy for breach of any warranty or of any of Windcave's obligations under this Agreement is (at Windcave's option) the supply or re-supply of the Windcave Solution, the Goods, the Software, or the Documentation or the refund or waiver of Fees for the relevant part of the Windcave Solution, the Goods, the Software, or the Documentation which is the subject matter of, or directly related to, the breach.

10.2 Limitation: In no event will Windcave's total liability to Customer under this Agreement for any one or more defaults as described in clause 10.1 exceed the amount paid by Customer to Windcave under this Agreement in the 3 months following execution of this Agreement.

10.3 Exclusion: In no event will Windcave be liable to Customer whether in contract, tort (including negligence) or otherwise in respect of any:

1. **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;**
2. **loss, damage, cost or expense suffered or incurred by Customer, to the extent this results from any act or omission by Customer; or**
3. **any event described in Part B, clause 14 (Force Majeure).**

11. Commercial Purpose

It is expressly acknowledged and agreed by Customer that the Windcave Solution, the Goods, the Software and the Documentation are supplied to Customer for business and commercial purposes.

12. Termination

12.1 Termination Upon Notice:

- (a) Windcave may terminate this Agreement at any time on not less than 3 months' prior written notice to Customer.
- (b) Customer may terminate this Agreement at any time on not less than 3 months' prior written notice to Windcave.

12.2 Termination for Cause: Either party (the **First Party**) may terminate this Agreement at any time and with immediate effect by written notice to the other party (**Second Party**) if the Second Party:

- (a) is in material breach of any of its obligations under this Agreement, and has failed to remedy the breach within 10 Business Days of receiving written notice from the First Party to remedy the breach; or
- (b) goes into voluntary or involuntary bankruptcy or liquidation or has a receiver appointed; or is unable to pay its debts as they fall due.

12.3 Breach of License Terms: Without limiting clause 12.2, any use of the Windcave Solution, the Goods, the Software, or the Documentation by Customer for any purpose other than the Permitted Use, or any breach by

Customer of the provisions of Part B, clause 16 will be deemed to be a material breach of this Agreement which is not reasonably capable of remedy.

12.4 Consequences:

- (a) Amounts owing at termination: If this Agreement is terminated by Windcave for cause prior to the expiry of the Term, Customer must pay the unpaid balance of the Fees due under this Agreement for services received the effective date of the termination as well as third party debt collection costs incurred by Windcave in enforcing the Agreement (if any). Customer is not liable for incidental damages from Customer's breach.
- (b) Expiry or termination of this Agreement will not affect the rights or obligations of the parties which have accrued prior to or accrue on termination or which by their nature are intended to survive termination (including Part B, clauses 3, 5, 7, 8, 9, 10, this 12.4, 13, 16, 17 and 19, together with those clauses which are incidental to, and required in order to give effect to, those clauses).

13. Confidentiality

13.1 Confidential Information: Each party will maintain as confidential at all times, and will not at any time, directly or indirectly:

- (a) disclose or permit to be disclosed to any person;
 - (b) use for itself or to the detriment of the other party;
- any Confidential Information of the other party except as, and then only to the extent:
1. required by law;
 2. that the information is already or becomes public knowledge, otherwise than as a result of a breach, by the receiving party, of any provision of this Agreement;
 3. that the information is disclosed to the receiving party, without restriction, by a third party and without any breach of confidentiality by the third party;
 4. that the information is developed independently by the receiving party without reliance on any of the Confidential Information of the other party;
 5. authorized in writing by the other party; or
 6. reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information of the other party only to those of its officers, employees or professional advisers on a "need to know" basis, as is reasonably required for the implementation of this Agreement).

13.2 Windcave's Intellectual Property: Customer acknowledges and agrees that the computer programs, computer software, specifications, databases, images, designs, codes, and configurations, ("Software") contained in or utilized by the Equipment and Windcave's network are proprietary and confidential to Windcave and protected under United States copyright law. Customer shall not copy, modify, adopt, translate, merge, reverse engineer, decompile, or disassemble, the equipment or Software, or create any derivative works based on the Equipment, Windcave network or Software. Without limiting the effect of clause 13.1, Customer will treat information about Windcave's Intellectual Property as the Confidential Information of Windcave.

14. Force Majeure

14.1 Customer acknowledges that Windcave 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. Customer agrees that Windcave shall not be liable for, and to hold Windcave 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.

14.2 Neither party (the "Affected Party") shall be liable for any default or delay in the performance of its obligations under this Agreement 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 14.1.

14.3 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;
- (b) Continued Performance: each party will continue to use commercially reasonable efforts to perform its obligations as required under this Agreement; 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 Customer's obligation to pay any charges or Fees payable under this Agreement.

15. License

15.1 Grant of License: Windcave grants to Customer a non-exclusive, non-transferable license to use the Windcave Solution, the Goods, the Software and the Documentation for the Term of this Agreement solely for the Permitted Use. Any other use or dealings with the Windcave Solution, the Goods, the Software or the Documentation without the prior written consent of Windcave will be a material breach of this Agreement. Except to the extent specifically authorized under this Agreement, Customer must not sub-license, transfer, assign, rent or sell any of the Windcave Solution, the Goods, the Software or the Documentation or the right to use the Windcave Solution, the Goods, the Software or the Documentation.

15.2 Windcave Warranty: Windcave warrants that Windcave has the right and authority to grant to Customer the license set out at clause 15.1, in accordance with the terms of this Agreement.

16. Terms of Use

16.1 Adequacy: Customer must satisfy itself as to the adequacy, appropriateness and compatibility of the Windcave Solution and/or the Goods for its requirements. Without limiting the foregoing, Customer acknowledges that it has not relied on any statements or representations on the part of Windcave as to performance or functionality, verbal or otherwise, except as expressly recorded in this Agreement.

16.2 Windcave Logo: If Customer uses a capture method for credit or debit card processing using a system which is not hosted by Windcave, Customer agrees to display the Windcave Logo in a readily visible position on the user interface of Customer's system where the credit or debit card data is captured. The Windcave Logo must not be altered or used for any other purpose without the prior written consent of Windcave.

16.3 Compliance: If Customer is not compliant with one or more of the Security Standards, Customer must not capture or store any credit or debit card number or expiry date locally on Customer's or a non-compliant third party's system.

16.4 No Right to Copy, Alter or Modify: Customer may make a reasonable number of copies of the Software for backup and disaster recovery purposes only. Except for such back-up copies, Customer must not, and must not permit any other person to, copy, reproduce, translate, adapt, vary, repair or modify all or any part of the Windcave Solution, the Goods, the Software or the Documentation by any means or in any form without Windcave's prior written consent.

16.5 Permitted Use: Customer may not:

- (a) use the Windcave Solution, the Goods, the Software or the Documentation for any purpose other than the Permitted Use; or
- (b) use the Software independently of the other components of the Windcave Solution unless Windcave has given prior written consent to do so.

If this Agreement is terminated, Customer's right to use the Windcave Solution, the Software and the Documentation will automatically terminate and Customer must immediately remove all copies of the Software from its system(s) and return the Windcave Solution, the Goods, the Software and the Documentation to Windcave

16.6 Reverse Engineering: Customer must not, and must not permit any other person to, reverse assemble or decompile the whole or any part of the Software.

16.7 No Third Party Use: Except as expressly provided for in this Agreement, the Customer must not provide, or otherwise make available, the Windcave Solution the Goods, the Software or the Documentation or any component

thereof in any form to any person (a "Third Party") without the prior written consent of Windcave. If Windcave grants such consent, Customer must ensure that the Third Party complies with the provisions of clauses 8, 13, 15 and 16 (so far as those provisions relate to Customer) as if the Third Party were a party to this Agreement. Customer will be liable to Windcave for all acts or omissions of any Third Party in contravention of the provisions of clauses 8, 13, 15 and 16.

16.8 Installation: Customer will be responsible for, and all bear all costs associated with, the installation, operation, maintenance and support of the Goods.

16.9 Windcave Testing Prior to Launch: Prior to any permitted use of Windcave products and/or Software by Customer or any third party, Windcave shall be entitled to test all Windcave products and Software that Customer purchases, rents, or intends to use for at least seven (7) Business Days ("Pre-launch Testing"). Such Pre-launch Testing shall also entitle Windcave to at least three (3) Business Day to test transaction processing and settlement.

16.10 Labels: Customer will not remove or deface any labels affixed by Windcave to the Goods. Customer will not affix any label to the Goods.

17. Rental/Loan of Goods

Where Customer agrees to rent or borrow Goods from Windcave, the following terms and conditions apply:

- (a) **Ownership:** Legal and beneficial ownership of, and title to, the Windcave Solution, the Goods, the Software and the Documentation remains at all times with Windcave;
- (b) **Risk:** Customer will bear the risk of, and be responsible for, all loss (including theft) of or damage to, the Goods from the time that they are first delivered to Customer until the time that they are delivered back to Windcave;
- (c) **Maintain Goods:** Customer must take reasonable steps to avoid exposure of the Goods to excessive heat, dust and moisture, liquids and electrical and physical shock;
- (d) **License Terms:** Customer must comply with all manufacturer's license terms applicable to the Goods (as supplied with the Goods or otherwise notified by Windcave to Customer from time to time);
- (e) **Theft, Seizure, Loss, Damage, Repairs:** If for any reason the Goods are stolen, seized, lost, damaged or require repairs, Customer must immediately advise Windcave of the theft, seizure, loss, damage or repairs required. Customer must pay all costs and comply with Windcave's directions in connection with replacing or recovering the Goods, repairing any damage or the replacing of any parts (fair wear and tear excepted). Customer must continue to pay the Fees while the Goods are being replaced or repaired or, in the event of theft, seizure or loss, while the Goods are missing. Windcave will not be liable for any loss or damage in relation to the unavailability of the Goods;
- (f) **No Dealing or Modifying or Security Interests:** Customer must not sell, lend, lease, transfer, modify or otherwise deal with the Goods without first obtaining Windcave's written consent. Customer must not create, or allow to be created, a security interest over the Goods;
- (g) **Inspection:** Customer must allow Windcave to inspect the Goods at any time during normal business hours, provided that Windcave first gives Customer not less than 2 Business Days notice;
- (h) **Return of Goods:** When this Agreement ends (either by completion of the Term or by way of termination), Customer will, at Customer's expense, return the Goods, in good working order and undamaged condition (fair wear and tear excepted) to Windcave's place of business. If the Customer fails to return the Goods within 14 Business Days of the end of the Agreement, Customer will pay Windcave the fair value of the Goods as at the completion of the Term;
- (i) **Repossession:** If Customer does not return the Goods when required hereunder, Windcave may (subject to compliance with applicable law) enter any premises where Windcave reasonably believes that the Goods may be located and Customer will provide all reasonable authority and assistance to enable recovery of those Goods by Windcave. Customer will be liable to Windcave for costs incurred by Windcave in recovering the Goods; and
- (j) **Further supply:** The rental of Goods by Windcave to Customer does not guarantee Customer that Windcave will supply Goods beyond the Initial Term.

18. Windcave Support Services

18.1 Support: Windcave will provide the Support Services to Customer.

18.2 Emergency Support Services and Other Services: Windcave may make available the Emergency Support Services. If Customer requires Emergency Support Services and/or services additional to the Support Services Windcave may, if it agrees to provide those services to Customer, charge Customer for

those services on a time and materials basis and on such other terms and conditions as may be agreed between the parties.

18.3 Alterations to Software: Windcave may, at its sole discretion, alter, upgrade, update or change the Windcave Solution at any time during the Term of this Agreement. Customer acknowledges and agrees that, if Customer fails to promptly install all updates to any software forming part of the Windcave Solution supplied by Windcave in connection with this Agreement, Customer may be unable to process Transactions and that:

- (a) Windcave will not be liable to Customer under this Agreement in respect of such inability; and
- (b) Windcave will be released from any obligation to supply the Support Services during any period which Customer has failed to install any such update.

18.4 Windcave Website: Customer acknowledges and agrees that Windcave may, at its sole discretion, determine what information, data, features and functionality is made available to Customer via the Windcave Website. Customer agrees to comply with any terms that Windcave may specify in relation to Customer's use of the Windcave Website. In the event of any inconsistency between the terms and conditions of this Agreement and those on the Windcave Website, the terms and conditions of this Agreement will apply to the extent of that inconsistency. Windcave will supply user names and passwords to enable authorized users of Customer to access the Windcave Website. Customer must keep such user names and passwords secure and made known only to authorized users and will be responsible for all use of the Windcave Website through use of Customer's user names and passwords. If Customer breaches any term of this Agreement or the terms of use of the Windcave Website, Windcave may disable Customer's user names and passwords.

18.5 Refunds: Customer authorizes Windcave to process repayment transactions to its patrons, who have previously made payment using Windcave solutions, on a one-to-one matching basis ("Refund Transactions"). Customer shall be solely responsible for auditing Refund Transactions and determining that a one-to-one match is made between a transaction and its matching Refund Transaction. Customer accepts all liability for Refund Transactions. Windcave shall not be liable for any losses or damages incurred as a result of a Refund Transaction.

18.6 Offline Mode: Customer authorizes Windcave to enable processing of credit cards offline in the event of an internet failure ("Offline Mode"). In addition, Customer authorizes Windcave to enact service in Offline Mode until internet service is restored for a maximum of 4 hours per event. Transactions in Offline Mode are capped at \$50 dollars maximum per transaction per card and a maximum of 500 transactions processed per device per Offline Mode event. Transactions in Offline Mode are also capped at \$1,000 per device per Offline Mode event. Customer and Windcave agree and acknowledge that Windcave is not liable for unsuccessful transactions that are a result of Offline Mode transaction processing. Customer is responsible with acquiring approval from its banking partner for operation of Offline Mode. Windcave is not liable if the terms of this Clause or the operation of Offline Mode causes Customer's account to be downgraded, shut down, disrupted, or otherwise adversely impacted in any way.

19. General

19.1 Entire Agreement: This Agreement including all schedules hereto records the entire arrangement between the parties relating to all matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.

19.2 Disputes: The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place. If the parties fail to negotiate a resolution to a dispute within a reasonable time (not exceeding 20 Business Days from formal notice of the dispute being given by one party to the other), either party may require that the dispute be submitted to mediation through JAMS. A mediator shall be selected by mutual agreement or through procedures provided by JAMS. In such case:

- (a) the mediator will not be acting as an expert or as an arbitrator;
- (b) the mediator will determine the procedure and timetable for the mediation; and
- (c) the parties will share equally the cost of the mediation.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

Neither party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with the dispute resolution process above. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this clause 19.2 above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

- 19.3 Waiver:** No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.
- 19.4 Severance:** Any provision in this Agreement which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other provision which shall remain in full force and effect.
- 19.5 Assignment:** Windcave may assign all or any of its rights and obligations under this Agreement to any person without Customer's consent. Customer may not transfer or assign any of its liabilities or rights under this Agreement to any other person without Windcave's prior written consent (such consent not to be unreasonably withheld, provided Windcave is satisfied as to the suitability of the assignee and Customer pays to Windcave its reasonable costs incurred in connection with the assignment).

19.6 Amendment: Except as expressly provided for in this Agreement, no amendment to this Agreement will be valid unless recorded in writing and signed by a duly authorized senior representative of each party.

19.7 Governing Law and Jurisdiction: This Agreement is governed by the laws of New Mexico. Subject to the terms of clause 19.2, the parties submit to the jurisdiction of the District Court of the State of New Mexico in respect of all matters relating to this Agreement.

19.8 Remedies: The rights, powers and remedies provided in this Agreement are not exclusive of any rights, powers or remedies provided by law.

19.9 Subcontracting: Windcave may appoint subcontractors to perform any of its obligations under this Agreement with written approval of the Airport Manager, which shall not be unreasonably withheld.

19.10 Counterparts and Copies: This Agreement may be signed in any number of counterpart copies which, read together, will constitute one and the same document. Any facsimile copy of this agreement or copy of this agreement sent via email in PDF format (including any facsimile copy or copy sent via email in PDF format, of any document evidencing either party's signature of this agreement) may be relied upon by the other party as if it were an original copy. This Agreement may be entered into on the basis of an exchange of such facsimile or PDF copies.

19.11 Notices: Any notice or other communication to be given under this Agreement must be in writing and must be served by one of the following means and in respect of each is deemed to have been served as described:

- (a) By personal delivery – when received by the party.
- (b) By post by registered or ordinary mail – on the second working day following the date of posting in the United States mail to the addressee's registered office.
- (c) By email – when acknowledged by the party orally or by return email or otherwise in writing.

The addresses for the parties for Notices shall be as set out on Page 1 of this Agreement or such other address as either party specifies by notice in writing to the other given in accordance with this clause 19.11.

19.12 Conflicts: In the event of any conflict or inconsistency between this Agreement and the terms of a purchase order made by Customer to Windcave, this Agreement shall govern and control.

The parties acknowledge and agree that this Schedule is governed by the Agreement between the parties containing Windcave's General Terms and Conditions.

SIGNED for and on behalf of **WINDCAVE INC.** by:

Nickolaus Lawdewski

Signature

Nickolaus Lawdewski

Name/Title

10/02/2024

Date

SIGNED for and on behalf of **City of Santa Fe** by:

John Blair
John Blair (Oct 21, 2024 13:40 MDT)

Signature

City Manager

Name/Title (Director / Authorized Signatory)

Oct 21, 2024

Date

ATTEST:

John Blair
John Blair (Oct 21, 2024 13:40 MDT)

CITY MANAGER: JOHN BLAIR

Kevin L. Nault
Kevin L. Nault (Oct 22, 2024 16:30 MDT)

ASSISTANT CITY ATTORNEY

[Signature]

xiv

INTERIM CITY CLERK

Emily K. Oster

FINANCE DIRECTOR



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/26/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER PCF Insurance Services 2200 Rimland DR, STE 305 Bellingham WA 98226	CONTACT NAME: Mallory Visser PHONE (A/C, No, Ext): (360) 734-1161 E-MAIL ADDRESS: malloryv@riceinsurance.com FAX (A/C, No): (360) 734-1173
INSURED Windcave INC. 1601 N 7th Street Suite 420 Phoenix AZ 85006	INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Fire Insurance Company INSURER B: Trumbull Insurance Company INSURER C: Hartford Casualty Insurance Co INSURER D: Rated by Multiple Companies INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:** CL2442221100**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			52UENBF2T99	04/19/2024	04/19/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
B	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			52UENCL7544	04/19/2024	04/19/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE			52XHUBF2YGF	04/19/2024	04/19/2025	EACH OCCURRENCE \$ 20,000,000 AGGREGATE \$ 20,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N <input type="checkbox"/>	N / A		52WEBF2T9K	04/19/2024	04/19/2025	<input checked="" type="checkbox"/> PER STATUTE E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

Evidence Only

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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City of Santa Fe, New Mexico

V2 2023



SOLE SOURCE REQUEST AND DETERMINATION FORM

This form must be submitted to the City of Santa Fe, Purchasing Division for authorization, determination, and processing by the Chief Procurement Officer (CPO).

Please ensure to complete this form in its entirety.

Date: 2/19/2024

Prepared By: James Garduno

Title: Project Administrator

Vendor Name: Windcave Inc.

Address: 8939 Sepulveda Blvd. Suite 520

City: Los Angeles

State: CA

Zip Code: 90045

Short Description of Goods/Services to be procured:

Credit card processing collection for parking revenue at SAF.

Estimated Extended Cost: 64000.00 Plus Tax

Term of Contract:

Four (4) years from award

One (1) to Four (4) years from date of award

Sole Source Request Justification Questions 1-3:

1. Explain the purpose/need of purchase. Ensure to include a thorough scope of work for the services (the SOW cannot differ on the resultant contract/purchase documents), construction or items of tangible personal property (if this is an amendment request to an existing contract, attach current contract).

The Santa Fe Regional Airport has new Mountain Parking Equipment (MPE) to match all City owned parking garages and Railyard paid parking equipment. For patron convenience that system will feature pay-stations where parking customers can pay for their parking with a credit card. That credit card functionality is provided using Windcave card scanners and only Windcave Inc... Windcave Inc. can serve as the processing gateway for transactions on these scanners. Additionally, only Windcave Inc. can provide the maintenance and software support.

In order to utilize PARCS' credit card cashiering functionality an agreement with credit card processor is needed for each gate. Windcave Inc. is the credit card processor certified by MPE to work with PARCS pay-stations.

2. Provide a detailed explanation of the criteria developed and specified by the department as necessary to perform and/or fulfill the contract.

X

The contractor has affirmed sole source for the services, construction or items of tangible personal property (*Attach memo from vendor*). Provide documentation of due diligence for other possible vendors/contractors to provide the requested services/goods proved unsuccessful; or

Other: explanation of the reasons, qualifications, proprietary rights or unique capabilities (*unique and how this uniqueness is substantially related to the intended purpose of the contract*) of the prospective contractor that makes the prospective contractor *the one source* capable of providing the required professional service, service, construction or item(s) of tangible personal property. (Please do not state the source is the “best” source or the “least costly” source. Those factors do not justify a “sole source.”) *Unique and how this uniqueness is substantially related to the intended purpose of the contract.*

3. Explain why other similar professional services, services, construction or item(s) of tangible personal property *cannot* meet the intended purpose of the contract.

Mountain Parking Equipment (MPE) is installing PARCS in all city owned garages and railyard. That system will feature multiple pay-stations where parking customers can pay with a credit card. That credit card functionality is provided using Windcave card scanners and only Windcave Inc. can serve as the processing gateway for transactions on these scanners. Additionally, only Windcave Inc. can provide the maintenance and software support.

In order to utilize PARCS’ credit card cashiering functionality an agreement with credit card processor is needed for each gate. Windcave Inc. is the credit card processor certified by MPE to work with PARCS pay-stations, and Windcave’ s proprietary card scanner come pre-installed in the PARCS pay-stations purchased from MPC.

Approvals:

Based on the above facts, the City of Santa Fe Purchasing Officer has made the determination that the justification for a Sole Source procurement is in accordance with NMSA 1978, § 13-1-126 and shall be posted for a 30-day period prior to award.



Travis Dutton-Leyda, CPO for the City of Santa Fe

Date: Mar 20, 2024

Department Approval by:



John Blair (Feb 19, 2024 16:08 MST)

John Blair, City Manager

Date: 2/19/2024



James Harris, Airport Manager

Date: 2/19/2024

Pursuant to NMSA 1978, § 13-1-126 Sole Source Procurement, the 30-day posting period of the Notice of Intent to Award this Sole Source request was met and no obligation to the award to the above referenced contractor were received. *This Sole Source determination will be valid for the term stated on the first page of this document.*



Travis Dutton-Leyda, CPO for the City of Santa Fe

Date: Apr 22, 2024

Required Attachments:

****Letter from Contractor acknowledging they are the only source (on their business letterhead and signed by the head of business or financial operations),***

****Quote from sole source Contractor***

****Agenda Item to be presented to City Council if over \$60,000 for Professional Services and \$60,000 for Goods and Non-Professional Services***

PRICING SCHEDULE

Consolidated Solution (Merchant Services & Gateway)

Plan	Monthly Fee	Monthly Included Transactions	Per Transaction Overage Fee	Term
Business (A)	\$80.00	1,000	\$0.07	24 months
SAP*	\$5.00	-	-	-

A one-time setup fee of \$100.00 will apply for new accounts.

*Service Access Package covers terminal management, technical support, remote software updates, compliance updates (per connected point of sale terminal).

Processing Fees

Payment network interchange, card scheme fees, and online debit network cost will be charged in addition to:				
Card Fees			Other Fees	
	Credit:	Debit:		
Interchange Discount Rate	.50%	.50%	Chargeback Fee – Per Occurrence	\$25.00
Blended Discount Rate			Retrieval Request Fee – Per Occurrence	\$10.00
			Authorization Fee	\$0.10
			Batch Fee – Per Occurrence	\$0.75
Interchange Fees	pass through	pass through	Statement Fee – Monthly	\$10.00
Card Scheme Fees	pass through	pass through	PCI-DSS Fee – Monthly	\$20.00

25-0039 Windcave, Inc.

Final Audit Report

2025-02-01

Created:	2025-01-31
By:	XAVIER VIGIL (xivigil@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_vf4rpZ_bbl7NocVA3mJg8NEB1MLO1HS

"25-0039 Windcave, Inc." History



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Document e-signed by ANDREA SALAZAR (asalazar@santafenm.gov)

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Agreement completed.

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