

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“**Agreement**”) is made and entered into as of the date stated on City’s signature page below (the “**Effective Date**”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (“**City**”), and **METRIX ADVISORS, LLC**, a Colorado limited liability company (“**Consultant**”) (collectively “**Parties**”).

WITNESSETH:

WHEREAS, City owns, operates, and maintains Denver International Airport (“**DEN**”); and

WHEREAS, City desires to obtain professional services for a “**Third Party Administrator**” or “**TPA**” for the “**Premium Value Concessions Program**” or “**PVC**” and the “**Services Premium Value Concessions Program**” or “**SPVC**” at DEN; and

WHEREAS, City has undertaken a competitive process to solicit and receive proposals for such services, and has selected the proposal submitted by the Consultant; and

WHEREAS, Consultant’s proposal was selected on the basis of its experience and demonstrated ability to perform the services contemplated herein; and

WHEREAS, Consultant is qualified, willing, and able to perform the services as set forth in this Agreement in a timely, efficient, and economical manner;

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE I LINE OF AUTHORITY

The Chief Executive Officer of the Department of Aviation (the “**CEO**”) authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to the Department of Aviation’s **Senior Vice President - Concessions** (“**SVP**”). The SVP will designate a Project Manager to coordinate Services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Consultant hereunder shall be processed in accordance with the Project Manager’s directions.

ARTICLE II DUTIES AND RESPONSIBILITIES OF CONSULTANT

A. Scope of Services. Consultant will provide professional services and provide deliverables for the City as designated by the Project Manager from time to time and as described in the attached **Exhibit A (“Scope of Work”)** and SaaS Services as described in the attached in **Exhibit B (“SaaS Services”)**, in accordance with schedules and budgets set by City. Generally, the TPA will facilitate the PVC and SPVC programs under DEN Rules 45 and 46; calculate program scoring performance metrics; facilitate any appeals process; produce monthly evaluation reports; and determine the program participants’ program benefit eligibility statuses. Consultant understands that Rule 45 and Rule 46 do not apply to concessions in

Jeppesen Terminal, however this contract may cover related services as directed by the related to concessions operating in the Terminal.

B. Standard of Performance. Consultant shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by competent professionals who perform work of a similar nature to the work described in this Agreement. Consultant hereby represents and warrants to City it will perform its services skillfully, carefully, diligently, and in a manner consistent with competent professionals. Consultant agrees and understands City, in its sole discretion, shall determine whether services are provided in a competent manner. Consultant acknowledges that time is of the essence in its performance of all work and obligations under this Agreement.

C. Key Personnel Assignments.

1. All key professional personnel identified in the Scope of Work, **Exhibit A**, will be assigned by Consultant or subconsultants to perform work under this Agreement. Only the key personnel identified in **Exhibit A** will perform work under this Agreement, unless otherwise approved in writing by the Project Manager. It is the intent of the Parties that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

2. If, during the term of this Agreement, the Project Manager determines that the performance of approved key personnel is not acceptable, the Project Manager shall notify Consultant, and may give Consultant notice of the period of time which the Project Manager considers reasonable to correct such performance. If the Project Manager notifies Consultant that certain of its key personnel will not be retained on this project, Consultant will use its best efforts to obtain adequate substitute personnel within ten days from the date of the notice. Such substitute personnel shall be approved in writing by the Project Manager. Failure to obtain the requisite approval shall be grounds for termination for cause in accordance with Article 3, Section B.

D. Subcontractors.

1. Although Consultant may retain, hire, and contract with outside subcontractors for work under this Agreement, no final agreement or contract with any such subcontractor shall be entered into without the prior written consent of the CEO. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subcontractor, and any other information requested by City. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of the contract.

Subcontractors approved as of the execution of this contract are as follows:

The Denver Retail Group – Program administration and management

LRA by Deloitte – Mystery shopping services

BBC Research & Consulting – Statistical modeling and research

Technical Reality, LLC – Software and technology support

Flahive Group, LLC – PVC Program appeal management

Ginsberg, Cohen & Company – Forensic accounting services

2. Because Consultant's represented qualifications are consideration to City in entering into this Agreement, the CEO shall have the right to reject any proposed outside subcontractor for this work deemed by the CEO, in the CEO's sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the CEO shall have the right to limit the number of outside subcontractors or to limit the percentage of work to be performed by them, all in the CEO's sole and absolute discretion.

3. Consultant is subject to D.R.M.C. § 20-112 wherein Consultant is to pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from City. Any late payments are subject to a late payment penalty as provided for in the prompt pay ordinance (§§ 20-107 through 20-118).

E. Ownership and Deliverables. Upon payment to Consultant, all records, data, deliverables, and any other work product which have been entered into the SaaS Services by Consultant and/or the City shall become the sole property of the City with the exception that Consultant shall be granted a license to use such inputted data provided that Consultant has removed all identifying information. Consultant, upon request by the City, or based on any schedule agreed to by Consultant and the City, shall provide City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Consultant or otherwise saved or maintained by Consultant as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Consultant and the City. Consultant also agrees to allow the City to review any of the procedures the Consultant uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to three years after termination of this agreement. Upon written request from the City, the Consultant shall deliver any information requested pursuant to this Article II, Section F within 10 business days in the event a schedule or otherwise agreed upon timeframe does not exist. Notwithstanding anything to the contrary herein, the City acknowledges that the Consultant shall have the right to retain and use all records and data compilations with respect to airports other than DEN.

F. License for OWLe. Consultant and the City agree and acknowledge that Consultant is providing both the Services described in Exhibit A – Scope of Work Services and the SaaS Services described in Exhibit B – SaaS Service. The OWLe software that is part of the SaaS Services is licensed to the City in accordance with the terms of Exhibit B – SaaS Services.

ARTICLE III TERM AND TERMINATION

A. Term. The Term of this Agreement shall commence on July 1, 2017, and shall terminate June 30, 2022, unless sooner terminated in accordance with the terms stated herein (“**Expiration Date**”). Should for any reason the Term expire prior to the completion by Consultant, in the CEO’s sole discretion this Agreement shall remain in full force and effect to permit completion of any services commenced prior to the Expiration Date.

B. Termination.

1. City has the right to terminate this Agreement without cause on thirty (30) days prior written notice to Consultant, and with cause on ten (10) days prior written notice to Consultant. In the event of termination by City for cause, Consultant shall be allowed five (5) days to commence remedying its defective performance, and in the event Consultant diligently cures its defective performance to City’s satisfaction, within a reasonable time as determined solely by City, then this Agreement shall not terminate. However, nothing herein shall be construed as giving Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the CEO.

2. If Consultant is discharged before all the services contemplated hereunder have been completed, or if Consultant's services are for any reason terminated, stopped or discontinued because of the inability of Consultant to provide services in accordance with the terms of this Agreement, Consultant shall be paid only for those services deemed by the CEO satisfactorily performed prior to the time of termination.

3. Upon termination of this Agreement by City, Consultant shall have no claim of any kind whatsoever against City by reason of such termination or by reason of any act incidental thereto, except as follows: if the termination is for the convenience of City, Consultant shall be entitled to reimbursement for the reasonable cost of the work to the date of termination, and reasonable costs of orderly termination, provided request for such reimbursement is made no later than six (6) months from the effective date of termination. Consultant shall not be entitled to loss of anticipated profits or any other consequential damages as a result of any such termination for convenience, and in no event shall the total sums paid exceed the Maximum Contract Liability.

4. Upon the effective date of termination of the Agreement, (i) the City will cease all use of the SaaS Services and the license for the SaaS Services will terminate unless another agreement is entered into for a new license (a request by the City for a license will not be unreasonably denied or withheld, and will be made available at reasonable cost); and (ii) Consultant shall provide the City, at the City’s option and at the City’s sole cost and expense which will be paid in advance, a copy of all City data that is stored in the SaaS Service.

ARTICLE IV COMPENSATION AND PAYMENT

A. Maximum Contract Liability. Notwithstanding any other provision of this

Agreement, in no event shall City be liable for payment for services rendered and expenses incurred by Consultant under the terms of this Agreement for any amount in excess of the sum of Two Million Seven Hundred Fifty Seven Thousand Dollars (\$2,757,000.00) (“**Maximum Contract Liability**”). Consultant (1) will be performing the services on a time and material basis; and (2) will invoice the City for a monthly fee for the Licensed Software up to the Maximum Contract Amount.

Consultant’s fee shall be a flat-monthly fee for program management and actual unit cost or hourly rates for mystery shopping, approved professional services, and SaaS Services licensing fee as stated in **Exhibit C**. Approved subconsultant and reimbursable expenses shall be paid in accordance with **Exhibit C**.

B. The obligations of City under this Agreement shall extend only to monies encumbered for the purposes of this Agreement. Consultant acknowledges and understands City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City.

C. Payment under this Agreement shall be paid from City and County of Denver Airport Revenue Fund and from no other fund or source. City has no obligation to make payments from any other source. City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is City under any obligation to amend this Agreement to increase the Maximum Contract Liability above.

D. Payment Schedule. Subject to the Maximum Contract Amount set forth in section 3.A. of this Agreement, Consultant’s fees and expenses and the SaaS Services licensing fee shall be paid in accordance with this Agreement. Unless otherwise agreed to in writing, Consultant will invoice the City on a regular basis in arrears, and the City will pay each invoice in accordance with Denver’s Prompt Pay Ordinance, Denver Revised Municipal Code (“**D.R.M.C.**”) § 20-107, *et seq.*, subject to the Maximum Contract Liability set forth above. Consultant understands and agrees interest and late fees shall be payable by City only to the extent authorized and provided for in City’s Prompt Payment Ordinance. Travel and any other expenses are not reimbursable unless Consultant receives prior written approval of the Project Manager, and be related to and in furtherance of the purposes of the Consultant’s engagement.

E. Invoices. Payments shall be based upon monthly progress invoices and receipts submitted by Consultant, audited and approved by City, in accordance with **Exhibit B**, and this Section 3.C., as follows:

(1) An executive summary and status reports that describe the progress of the services and summarize the work performed during the period covered by the invoice.

(2) A statement of hours spent where billing is based upon hourly rates. Time sheets shall be maintained by Consultant and shall be available for examination by City, at City’s request.

(3) The amounts shown on the invoices shall comply with and clearly reference the relevant services, the hourly rate and multiplier where applicable, and allowable reimbursable expenses.

(4) Consultant shall submit itemized business expense logs or copies of receipts for all allowable reimbursable expenses, including fees and charges associated with approved Subcontractor's scope of services, where billing is based upon such items.

(5) The signature of an officer of Consultant, along with such officer's certification they have examined the invoice and found it to be correct, shall be included on all invoices.

City reserves the right to reject and not pay any invoice or part thereof where the CEO determines the amount invoiced exceeds the amount owed based upon the work performed. City, however, shall pay any undisputed items contained in an invoice. Disputes concerning payments under this provision shall be resolved by administrative hearing pursuant to the procedures of D.R.M.C. § 5-17.

F. Carry Over and Carry Back. If Consultant's total fees for any of the services described above are less than the amount budgeted for, the amount by which the budget exceeds the fee may be used, with the written approval of the CEO or their designee, to pay fees for additional and related services rendered by Consultant in any other services if in the CEO or her designee's judgment, such fees are reasonable and appropriate.

ARTICLE V INSURANCE, INDEMNIFICATION, AND DISPUTE RESOLUTION

A. Insurance.

1. Consultant shall obtain and keep in force during the entire term of this Agreement, all of the insurance policies described in City's form of insurance certificate which is attached to this Agreement as **Exhibit D** and incorporated herein. Such insurance coverage includes workers' compensation and employer liability, commercial general liability, business automobile liability, and professional liability. Upon execution of this Agreement, Consultant shall submit to City a fully completed and executed original of the attached insurance certificate form, which specifies the issuing company or companies, policy numbers and policy periods for each required coverage. In addition to the completed and executed certificate, Consultant shall submit a copy of a letter from each company issuing a policy identified on the certificate, confirming the authority of the broker or agent to bind the issuing company, and a valid receipt of payment of premium.

2. City's acceptance of any submitted insurance certificate is subject to the approval of City's Risk Management Administrator. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by City's Risk Management Administrator.

3. Consultant shall comply with all conditions and requirements set forth in the insurance certificate for each required coverage during all periods in which coverage is in effect.

4. Unless specifically excepted in writing by City's Risk Management Administrator, Consultant shall include all subcontracts performing services hereunder as insureds under each required policy or shall furnish a separate certificate (on the form certificate provided), with authorization letter(s) for each subcontractor, or each

subcontractor shall provide its own insurance coverage as required by and in accordance with the requirements of this section of the Agreement. All coverages for subcontractors shall be subject to all of the requirements set forth in the form certificate and Consultant shall insure that each subcontractor complies with all of the coverage requirements.

5. City in no way warrants and/or represents the minimum limits contained herein are sufficient to protect Consultant from liabilities arising out of the performance of the terms and conditions of this Agreement by Consultant, its agents, representatives, or employees. Consultant shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Consultant is not relieved of any liability or other obligations assumed or pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. In no event shall City be liable for any: (i) business interruption or other consequential damages sustained by Consultant; (ii) damage, theft, or destruction of Consultant's inventory, Improvements, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

6. The Parties hereto understand and agree that City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to City and County of Denver, its officers, officials and employees.

B. Defense and Indemnification.

1. Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("**Claims**"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Consultant or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

2. Consultant's duty to indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Consultant's duty to indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

3. In addition to the duty to indemnify and hold harmless, Consultant will have the duty to defend City, its agents, employees, and officers from all liabilities, claims, expenses, losses, costs, fines, and damages (including but not limited to attorney's fees and court costs) and causes of action of every kind and character. The duty to defend under this paragraph is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Consultant,

City, and any indemnified party. The duty to defend arises immediately upon written presentation of a claim to Consultant.

4. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for City's protection.

5. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

C. DISPUTE RESOLUTION. Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in D.R.M.C. §5-17. The parties agree that the determination resulting from said administrative hearing shall be final, subject only to Consultant's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

ARTICLE VI GENERAL TERMS AND CONDITIONS

A. Status of Consultant. It is agreed and understood by and between the parties hereto that the status of Consultant shall be an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in §9.1.1(E)(x) of the Charter of City and County of Denver, and it is not intended, nor shall it be construed, Consultant or its personnel are employees or officers of City under D.R.M.C. Chapter 18 for any purpose whatsoever.

B. Assignment. Consultant shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the Project Manager. Any attempt by Consultant to assign or transfer its rights hereunder without such prior written consent shall, at the option of the Project Manager, automatically terminate this Agreement and all rights of Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the Project Manager.

C. Compliance with all Laws and Regulations. All of the work performed under this Agreement by Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the charter, ordinances and rules and regulations of City and County of Denver.

D. Compliance with Patent, Trademark and Copyright Laws.

1. Consultant agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. Consultant will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission and all releases and other necessary documents. If Consultant prepares any documents which specify any material, equipment, process or procedure which is protected, Consultant shall disclose such patents, trademarks and copyrights in the construction drawings or specifications.

2. Consultant further agrees to release, indemnify and save harmless City, its officers, agents and employees, pursuant to Article V, Section I, "Defense and Indemnification," from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

3. The City agrees and acknowledges that Consultant shall retain full intellectual property rights, including, but not limited to, patent, trademark, and copyright rights, in the SaaS Services.

E. Notices. Notwithstanding the above, notices concerning termination of this Agreement, notices of alleged or actual violations of the terms of this Agreement, and other notices of similar importance shall be made as follows:

by Consultant to:

Chief Executive Officer
Denver International Airport
Airport Office Building
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

And by City to:

Rob McDaniel, President
Metrix Advisors, LLC
2499 Washington Street
Denver, CO 80205

(303) 641-3443

Said notices shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification thereof.

F. Rights and Remedies Not Waived. In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of covenant or default which may then exist on the part of Consultant, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any other breach.

G. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to City and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on this Agreement. It is the express intention of City and Consultant that any person other than City or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

H. Governing Law; Bond Ordinances; Venue.

1. This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision or condition herein is subject to the provisions of Colorado law, the Charter of City and County of Denver, and the ordinances and regulations enacted pursuant thereto.

2. This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.

3. Venue for any action arising hereunder shall be in City and County of Denver, Colorado.

ARTICLE VII STANDARD CITY PROVISIONS

A. Diversity and Inclusiveness.

1. The City encourages the use of qualified small business concerns doing business within the metropolitan area that are owned and controlled by, economically or socially disadvantaged individuals.

2. The Consultant is encouraged, with respect to the goods or services to be provided under this Contract, to use a process that includes small business concerns, when considering and selecting any subcontractors or suppliers.

B. City's Non-Discrimination Policy. In connection with the performance of Services under this Agreement, Consultant agrees not to refuse to hire, discharge, promote, demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, and/or physical and mental disability. Consultant further agrees to insert the foregoing provision in all subcontracts hereunder

C. Advertising and Public Disclosures. Consultant shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Project Manager. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by City, and designs and renderings, if any, which have been accepted by City. The CEO shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Consultant's use of this contract and its component parts in GSA form 254 or 255 presentations, or the transmittal of any information to officials of City, including without limitation, the Mayor, the CEO, any member

or members of City Council, and the Auditor. The City agrees and acknowledges that this section does not apply to any City data that is aggregated with all indentifying information removed as stated in Article 2E.

D. Colorado Open Records Act. Consultant acknowledges that City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes § 24-72-201 et seq., and Consultant agrees that it will fully cooperate with City in the event of a request or legal process arising under such act for the disclosure of any materials or information which Consultant asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments and other documents incorporated into this Agreement by reference, all materials, records and information provided by Consultant to City shall be considered confidential by City only to the extent provided in the Open Records Act, and Consultant agrees that any disclosure of information by City consistent with the provisions of the Open Records Act shall result in no liability of City.

In the event of a request to City for disclosure of such information, time, and circumstances permitting, City will make a good faith effort to advise Consultant of such request in order to give Consultant the opportunity to object to the disclosure of any material Consultant may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Consultant objects to disclosure, City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed prior to City's application, City will tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Consultant agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Consultant does not wish disclosed. Consultant agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Consultant's objection to disclosure, including prompt reimbursement to City of all reasonable attorney fees, costs, and damages City may incur directly or may be ordered to pay by such court.

E. Examination of Records.

1. In connection with any services performed hereunder on items of work toward which federal funds may be received the City, the Federal Aviation Administration ("FAA"), the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Consultant which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Consultant further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

2. Consultant agrees until the expiration of three (3) years after the final payment under this Agreement, any duly authorized representative of City, including the CEO, City's Auditor or their representatives, shall have the right to examine any pertinent books, documents, papers and records of Consultant involving transactions related to this Agreement, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

F. Use, Possession or Sale of Alcohol or Drugs. Consultant shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use,

possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in City's barring Consultant from City facilities or participating in City operations.

G. City Smoking Policy. Consultant and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

H. Conflict Of Interest. Consultant agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees will not engage in any transaction, activity or conduct which would result in a conflict of interest. Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions or work of Consultant by placing Consultant's own interests, or the interest of any party with whom Consultant has a contractual arrangement, in conflict with those of City. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this agreement if such a conflict exists, after it has given Consultant written notice which describes such conflict.

Consultant shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to City.

I. Prohibition Against Employment Of Illegal Aliens To Perform Work Under this Agreement.

1. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes and Den. Rev. Municipal Code 20-90 and the Consultant is liable for any violations as provided in said statute and ordinance.
2. The Consultant certifies that:
 - (a) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
 - (b) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
3. The Consultant also agrees and represents that:
 - (a) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (b) It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (c) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
 - (d) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement and it has complied with all

federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.

(e) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and City within three days. The Consultant will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor or subconsultant provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.

(f) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of §8-17.5-102(5), C.R.S. or City Auditor under authority of D.R.M.C. §20-90.3.

J. Ownership of Work Product. Except as specifically provided in this agreement, all plan, drawings, reports, other submittals, and other documents submitted to the City or its authorized agents by the Consultant shall become and are the property of the City, and the City may, without restriction, make use of such documents and underlying concepts as it sees fit.

ARTICLE VIII STANDARD FEDERAL PROVISIONS

A. Sensitive Security Information. Consultant acknowledges that, in the course of performing its work under this Agreement, Consultant may be given access to Sensitive Security Information (“**SSI**”), as material is described in federal regulations, 49 C.F.R. part 1520. Consultant specifically agrees to comply with all requirements of the applicable federal regulations specifically, 49 C.F.R. Parts 15 and 1520. Consultant understands any questions it may have regarding its obligations with respect to SSI must be referred to the DEN’s Security Office.

B. DEN Security. Consultant, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Consultant or City by the FAA or TSA. If Consultant, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Consultant covenants to fully reimburse City any fines or penalties levied against City, and any attorney fees or related costs paid by City as a result of any such violation. This amount must be paid by Consultant within fifteen (15) days from the date of the invoice or written notice.

C. Federal Rights. This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to City for DEN purposes and the expenditure of federal funds for the extension, expansion or development of the Denver Municipal Airport System.

ARTICLE IX CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

This agreement consists of Articles I through X which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Appendix A and E: Standard Federal Assurances
Exhibit A: Scope of Work – Services
Exhibit B: SaaS Services
Exhibit C: Rates
Exhibit D: Certificate of Insurance

In the event of an irreconcilable conflict between a provision of Articles I through X and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Appendix A and E
Articles I through X hereof
Exhibit A
Exhibit B
Exhibit C

ARTICLE X CITY EXECUTION OF AGREEMENT

A. City Execution. This Agreement is expressly subject to, and shall not become effective or binding on City, until it is fully executed by all signatories of City and County of Denver. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same, and it may be signed electronically by either party in the manner specified by City.

B. Electronic Signatures and Electronic Records. Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the city. The parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[SIGNATURE PAGES AND EXHIBITS FOLLOW]

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PLANE-201630022-00

Contractor Name: Metrix Advisors, LLC

By:  _____

Name: ROBERT C. MCDANIEL
(please print)

Title: PRESIDENT
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



APPENDIX A

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

NOTE: As used below the term "Contractor" shall mean and include Concessionaire, and the term "sponsor" shall mean the "City."

During the term of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations.** The Contractor will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Agreement and the Acts and Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The Contractor will provide all information and reports required by the Acts, Regulations or directives issued pursuant thereto and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the sponsor will impose such Contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the Contractor under this Agreement until the Contractor complies, and/or;
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Contractor will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations or directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX E

TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

As used below, the term "Contractor" will mean and include Concessionaire and the term "sponsor" will mean City.

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits' discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S. C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 1 00-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately

high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S. C. 1681 et seq).

Exhibit A – Scope of Work Services

Denver International Airport has created a Premium Value Concessions Program (the “PVC Program”) to encourage growth in concession revenues and promote excellence in customer service performance at Denver International Airport. Consultant will provide the following services to manage the PVC Program:

1. **Administrative Services.** Consultant will assist with the administrative demands of the PVC Program. This will include performing the information gathering, data evaluation, and reporting functions of the PVC Program, hiring contractors, issuing progress reports based on tallying scoring results, conducting store surveys, publishing findings and make determinations regarding scoring and granting of the Program Benefit.
2. **Data Gathering Services.** Consultant’s responsibilities include interaction with DIA information sources, systems, and concessions. Consultant will gather information including but not limited to agreements, compliance, sales, and customer service. Consultant will develop its own information management systems to support the efficient gathering and reporting of information. The City has developed or may develop procedures and forms for the administration and tracking of the Agreement and/or the PVC Program. Consultant agrees to abide by those procedures and use those forms.
3. **Secret Shopper Services.** Consultant will be responsible for the sub-contracting of the customer service “secret shopper” organization. Consultant is responsible to hire and oversee the Secret Shopper. Please see Denver International Airport Rules 45 and 46 for information related to Secret Shopper Scope of Work
4. **Attendance at Regular Meetings.** Consultant and City will schedule regular meetings of the key principals of City and Consultant in an effort to solve problems in a partnering atmosphere to facilitate the ability of the City and Consultant to meet its business objectives, so long as its business objectives are consistent with the successful completion of the PVC Program.
5. **Reporting.** Thirty days from the date information is provided to Consultant, Consultant will produce showing which concessionaires have received points during the month in question. Consultant shall all supporting documentation to justify the findings. Dissemination of findings to concessionaires shall be the responsibility of Consultant upon approval of the City.

City agrees and acknowledges that it will provide the following data to Consultant by the tenth of each month with information about the previous month:

1. Concessions “Default Report” will include the following: the name of the concession (legal and doing business as name), agreement number, reason for the default, date the default was issued, and date the default was cured.
2. An excel version of the Finance Report (also located on the FlyDenver.com website).
3. Passenger statistics by concourse.
4. List of all concessions with a column indicating participation, expiration date, PVC square footage, major and minor merchandise categories.

EXHIBIT B- SaaS Services

Consultant agrees and acknowledges to provide the following SaaS Services pursuant to the Agreement under the following terms and conditions:

1. **DEFINITIONS.** In this SaaS Software Exhibit, the following terms have the meanings set forth in this Article 1 (Definitions). Any capitalized terms used but not defined in this SaaS Services Schedule will have the meanings ascribed thereto in the Agreement.

1.1 **“Intellectual Property Rights”** means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.

1.2 **“SaaS Services”** is the Consultant’s quality assurance, contract, and regulatory compliance computer software made available through a software as a service model commonly known as the OWLe software and includes the software as it currently exists, any upgrades to the software, and any custom code added to the software even if created due to the City’s request.

2. **SAAS SERVICES.** Consultant shall provide City the following SaaS Services:

2.1 **SaaS Services.** Consultant grants to the City a worldwide, non-exclusive, non-transferable right and license to access and use, and to permit users to access and use, the SaaS Services during the term of the Agreement. Consultant shall provide the SaaS Services in accordance with and as otherwise set forth in the Agreement and the prices as set forth in Exhibit C to the Agreement. Consultant shall make available the SaaS Services, such that no tangible media passes to the City. City agrees and acknowledges that the SaaS Service is provided on a per-user basis.

2.2 **Restrictions.** Consultant and its licensors own and shall retain all right, title, and interest, including, without limitation, all Intellectual Property Rights, in and to the SaaS Services. The City shall have only those rights in and to the SaaS Services as are expressly granted to it pursuant to this Agreement.

2.3 **Hosting.** Consultant shall provide all the computer hardware, operating systems software, application programs, tools, databases, data storage, Internet and data access links, including the physical premises where such reside (including the electricity, heating, cooling, physical security and computer system security) necessary to host, operate, maintain and manage the SaaS Services, and provide City continuous access thereto, in accordance with the terms and conditions set forth in this SaaS

Services Schedule and the Agreement. City shall be entitled to unlimited storage in connection with the SaaS Services during the term of this Agreement.

2.4 **City Data Backup.** Consultant shall at its expense make and maintain a complete backup copy of the City Data on a daily basis (with a complete replication of City Data every forty-eight hours) and shall safeguard and securely store such copies. At any time as reasonably requested by City and at the City's expense provided at the actual cost to Consultant, Consultant shall promptly deliver to City a complete electronic copy of the then-current version of the City Data, including all electronic documents and related data, on a storage medium and in the format requested by City.

2.4 **Administration and Monitoring.** Consultant shall: (i) maintain all SaaS Services on Amazon Web Services servers; (ii) maintain redundant, backup and spare systems for all SaaS Services components to secure the continued availability of the SaaS Services in the event of the failure of any individual component through Amazon Web Services; (iii) perform continuous monitoring and management of the SaaS Services using automated tools to optimize availability; and (iv) ensure that Consultant personnel confirm or disconfirm any outages by a direct check of the SaaS Services.

3. **SERVICE LEVELS.** Consultant shall use all reasonable measures to ensure that the SaaS Services is available on a 24/7 basis. City agrees and acknowledges that the SaaS Services may be unavailable for scheduled downtimes and for emergency situations.

4. **LICENSES.** City agrees and acknowledges that the SaaS Services are provided on a per user basis. Additional charges apply for each additional users as listed in Exhibit C - Prices.

5. **TERMS OF USE.** City agrees and acknowledges that any users of the SaaS Services must agree to the terms of use in Schedule A – Terms of Use.

6. **PRIVACY POLICY.** City agrees and acknowledges that any users of the SaaS Services must agree to the privacy policy in Schedule B – Privacy Policy.

Schedule A – Terms of Use

Acceptance of Terms and Conditions

By using the MyOWLe application (the “Application”), you ("you") agree to the terms and conditions in this Agreement between you and DRG Metrix, LLC doing business as MyOWLe (hereinafter, “MyOWLe”). If you do not agree to the outlined terms and conditions (the "Terms of Use" or "Agreement"), your only recourse is to discontinue use of the Application.

The Application is for use by subscribers of the MyOWLe licensed software. MyOWLe reserves the right to make any changes to our Terms of Use and/or our Privacy Policy (which is incorporated herein by reference) without prior notification to you. If MyOWLe make changes to this Terms of Use and/or Privacy Policy MyOWLe shall subsequently notify Denver International Airport (the “Licensee”) and obtain Licensee’s agreement to and acceptance of the Terms of Use and Privacy Policy expressed herein. Any changes made by MyOWLe to the Terms of Use and Privacy Policy shall not be effective and binding upon Licensee until Licensee has affirmatively accepted such changes.

If you have any questions about these terms, contact MyOWLe at support@MyOWLeapp.com

General Information

Account. While anyone can download the Application, you can only use the Application through an organization, company, and/or entity who has purchased a license to use the Application (a “Licensee”). You agree and acknowledge that you will not use the Application in any way that is a violation of City and County of Denver Contract Number 201630022-00 (referred to herein as the “Agreement”) between Licensee and MyOWLe or in violation of your local, state, or federal laws.

Users. As part of our agreements with our Licensees, all users must be 13 years of age and older.

Modified Terms. MyOWLe reserves the right at all times to modify any conditions of these Terms of Use and/or our Privacy Policy as MyOWLe deems necessary or desirable without prior notification to you, provided, however, that any changes to our terms will not be valid if the change is in conflict with the Licensee’s agreement with MyOWLe. Such changes may include, among other things, the adding or the deletion of certain rights, changes to the availability and terms of use for the Application, and the requirement of more information to use the Application. MyOWLe shall subsequently notify Licensee and obtain Licensee’s agreement to and acceptance of the Terms of Use and Privacy Policy expressed herein. Any such deletions or modifications shall not be effective and binding upon Licensee until Licensee has affirmatively accepted such changes.

Conflicts in Agreements. You agree and acknowledge that if there is a conflict between these Terms of Use and the agreement between Licensee and MyOWLe, the agreement between Licensee and My OWLe will prevail. As a user authorized to use this Application by Licensee,

you agree and acknowledge that you will abide by all terms of the agreement between Licensee and MyOWLe.

Account Information

Account Features. Unless otherwise agreed to in the Licensee agreement, MyOWLe shall have the right at any time to change or discontinue any aspect or feature of MyOWLe, including, but not limited to: the type of information that you must provide in order to use the Application, the ability to have your certain categories or information through the Application, the length of time content is available, and the equipment or software needed for access or use of the Application. MyOWLe may discontinue or eliminate features on the Application, change or eliminate any transmission method of change transmission speeds or other signal characteristics on the Application. Further, MyOWLe may request additional information at any time from you to enhance the benefits and/or use of the Application.

Account Information. Information about you may be released to MyOWLe and/or the Licensee, including, but not limited to, your location, information about your use of the Application, information about the device and network that you use, and information that you make available based on your preferences on your device.

Termination. You may terminate your use of the Application at any time. All information associated with your account will be stored as agreed to between MyOWLe and Licensee.

Termination by MyOWLe. Except as agreed to with Licensee, MyOWLe may terminate this Agreement at any time for any reason and may terminate any users for breach of these terms.

Use of Application

Your Use of the Application. You may use the Application only as permitted by these Terms of Use, as agreed to by Licensee, and only in a manner consistent with all applicable local, state, and federal laws, rules, and regulations, and generally accepted practices or guidelines in relevant jurisdictions, including any laws governing the export of data to or from the United States. MyOWLe reserves the right to take measures to prevent any such illegal activity. You further agree: (a) not to harvest or collect email addresses or other contact information of other users by electronic or other means for the purposes of sending unsolicited emails, or other unsolicited communications; (b) not to use the Application in any unlawful manner or in any other manner that could damage, disable, overburden, or impair the Application; (c) not to use automated scripts to collect information from or otherwise interact with the Application; (d) not to forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send to MyOWLe on or through the Application or any service offered on or through the Application; and/or, (e) not to impersonate or pretend that you are any other person or falsely claim you represent another person, (f) not independently, or through a third party, adopt, copy, merge, or otherwise duplicate the functionality of the Application

User Communications and User Content. By submitting material through our website or through the Application to MyOWLe specifically to MyOWLe (“User Communications”), including, but not limited to, information, suggestions, ideas, concepts, know-how, forum postings, comments

on blogs, techniques, questions, comments or other communication, whether such submission is by a public feature of the Application or by private transmission, you warrant that such content is original to you, that you own all applicable legal rights in such content, and that the content does not and will not infringe upon the rights of any other person or entity. Further, by submitting any User Communication, you agree and acknowledge that you have expressly granted MyOWLe a royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, and distribute such material (in whole or in part) worldwide and/or to incorporate it in other works in any form, media, or technology now known or hereafter developed for the full term of any copyright that may exist in such material. You hereby grant MyOWLe the right to edit, copy, publish and distribute any material made available on this Application by you, including, but not limited to, information, suggestions, ideas, events, comments, commentary, and other postings. You agree that MyOWLe may use any User Communication for any purpose in its sole discretion, including reproduction, transmission, disclosure, publication, broadcast, development, manufacturing and/or marketing in any manner whatsoever for any or all commercial or non-commercial purposes. You agree that MyOWLe shall be under no obligation: (a) to maintain any User Communication in confidence; (b) to pay compensation for any User Communication; and/or, (c) to monitor, use, return, review or respond to any User Communication. MyOWLe has no liability related to the content of any User Communication, whether or not arising under the laws of copyright, libel, privacy, obscenity, or otherwise. You warrant, certify, and represent that any individuals depicted in audio or visual files submitted as part of a User Communication, other than yourself, are of the age of majority in their respective states of residence; and you grant the right to MyOWLe to copy, edit, change, revise, display, perform, publish, distribute the likenesses of those individuals and that you have the authority to attest to this release on their behalves. If any of the individuals depicted in any User Communication are minors in their respective states of residence, you certify, warrant and represent that you are the parent or legal custodian of each such individual and you grant the use of the media containing his/her depiction in accordance with these Terms of Use.

Application Specific Content. For any content that you provide through the Application for use by the Licensee, the ownership of such content shall belong to the Licensee unless otherwise agreed to by MyOWLe and Licensee with the exception that MyOWLe.com may, in its sole discretion, aggregate and share non-identifying data collected from users and Licensee.

Privacy. MyOWLe cares about the privacy of our users. Please view MyOWLe's Privacy Policy, which is incorporated into this Agreement.

Security and Uptime. You acknowledge that the Internet is not a secure environment and sometimes there are interruptions in service or events that are beyond the control of MyOWLe. While MyOWLe makes reasonable precautions against loss or theft of data, MyOWLe shall not be responsible for any data lost or stolen while transmitting information on the Internet.

Intellectual Property

Copyright. All content on the Application, including, but not limited to, designs, text, graphics, pictures, video, information, music, sound, and other files, and their selection and arrangement

(the "Application Content"), are the proprietary property of MyOWLe with all rights reserved. No Application Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, scraped, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without MyOWLe's prior written permission. Any violation of this policy may result in a copyright, trademark, or other intellectual property right infringement that may subject you to civil and/or criminal penalties. The Application contains copyrighted material, trademarks, and other proprietary information, including, but not limited to, text, software, photos, video, graphics, music, sound, and the entire contents of MyOWLe protected by copyright as a collective work under the United States copyright laws. You agree that you will not use any material from MyOWLe except through the Application without written permission of MyOWLe.

Trademarks. MyOWLe, MyOWLe.com, and DRG Metrix are trademarks of DRG Metrix, LLC. All rights in respect of these trademarks are hereby expressly reserved. Unless otherwise indicated, all other trademarks appearing on MyOWLe are the property of their respective owners. Trademarks that are located on the Application shall not be deemed to be in the public domain but rather the exclusive property of DRG Metrix, LLC, unless such site is under license from the trademark owner thereof in which case such license is for the exclusive benefit and use of MyOWLe, unless otherwise stated.

Third Party Sites

Third Party Websites and Content. The Application may contain links to other websites and downloadable applications ("Third Party Sites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications to be downloaded, and/or items belonging to or originating from third parties or from Licensee (the "Third Party Content"). Such Third Party Sites and Third Party Content are not investigated, monitored, or checked for accuracy, appropriateness, or completeness by MyOWLe. MyOWLe is not responsible for any Third Party Sites accessed through the Application or any content posted by other users on this Application or any Third Party Sites regarding MyOWLe. If you decide to leave the Application and access the Third Party Sites, you do so at your own risk and you should be aware that MyOWLe's terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any site to which you navigate from this Application.

Third Party Content. Any opinions, advice, statements, services, offers, or other information or content expressed or made available by third parties are those of the respective author(s) and not of MyOWLe. Neither MyOWLe nor any third-party provider of information guarantees the accuracy, completeness, or usefulness of any content, nor its merchantability or fitness for any particular purpose.

Warranties and Disclaimers

Disclaimer of Warranty; NEITHER MYOWLE, ITS AFFILIATES NOR ANY OF THEIR DIRECTORS, MEMBERS, RESPECTIVE EMPLOYEES, AGENTS, OR THIRD PARTY CONTENT PROVIDERS WARRANT THAT USE OF THE APPLICATION WILL BE

UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO (I) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THIS APPLICATION, OR (II) THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION OR SERVICE PROVIDED ON THIS APPLICATION. THIS DISCLAIMER OF LIABILITY APPLIES TO ANY DAMAGES OR INJURY, EITHER BODILY OR FINANCIALLY, CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION RESULTING FROM THE USE OF THIS APPLICATION. YOU SPECIFICALLY ACKNOWLEDGE THAT MYOWLE IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH THAT USER AND/OR THIRD PARTY YOU HEREBY ACKNOWLEDGE THAT THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CONTENT ON THIS APPLICATION.

As-Is Basis. USE OF THIS APPLICATION IS MADE AVAILABLE ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT.

Limitation of Liability. MYOWLE'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THREE (3) TIMES THE "MAXIMUM CONTRACT LIABILITY" OF THE AGREEMENT.

State Law Limitations. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

Miscellaneous

Waiver. The waiver by MyOWLe of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by MyOWLe.

Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect the enforceability of any other provisions contained in this Agreement and the remaining portions of this Agreement shall continue in full force and effect.

Governing Law; Venue and Jurisdiction. By using this Application, you agree that the laws of the State of Colorado in the United States, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise between you and MyOWLe or any of MyOWLe's affiliates. You agree not to commence or prosecute any action in connection therewith other than in the state and federal courts of Colorado located in Denver, Colorado, United States and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts of Colorado.

Schedule B – Privacy Policy

DRG Metrix, LLC (hereinafter the "MyOWLe") has established this privacy policy to explain to you how your information is protected, collected, and used both through the MyOWLe mobile application and through our website. MyOWLe may update this policy at any time. MyOWLe will provide notice of materially significant changes to this privacy policy by posting notice at www.MyOWLe.com/privacy_policy.html or through the mobile application. If you use the MyOWLe mobile application through an organization's account, additional privacy related terms and conditions may be in your organization's agreement with MyOWLe for any use by that organization. MyOWLe recommends speaking with an authority figure at your organization about any specific terms and conditions that may override these terms or supplement them if you are using the MyOWLe mobile application through your organization's account. If you are using the MyOWLe mobile application through your organization's account, the agreement for such use between MyOWLe and your organization shall prevail if there are any conflicts with this Privacy Policy.

Protecting Your Privacy

MyOWLe makes all attempts to protect your private information. MyOWLe will not share your information with third parties for marketing purposes without your prior consent except as allowed in our Terms of Use. However, MyOWLe does share your personal information with third parties that provide services to MyOWLe, including, but not limited to, independent contractors and/or employees who provide services and third party merchant processing companies if you pay for our services through credit card. In addition, with your permission, information, including but not limited to, stating that you are a current MyOWLe client and case studies, may be shared with social networking websites such as Facebook.com, Twitter.com, and LinkedIn.com.

MyOWLe, people who post through MyOWLe or our website, and/or the company which is providing your MyOWLe account, may provide links to third party websites, which may have different privacy practices. MyOWLe is not responsible for, and does not have any control over, the privacy policies of those third party websites, and encourages all users to read the privacy policies of each and every website visited.

If you have a paid account through MyOWLe, MyOWLe will share the information that you provide to the users who you let access your MyOWLe account.

Use of MyOWLe Website by Minors

MyOWLe does not knowingly collect any information from persons under the age of 13 years of age.

Data MyOWLe Collects

MyOWLe may collect the following data:

- * your email address, your physical contact information, and your phone number;
 - * information based on your activities on MyOWLe website and/or mobile application;
 - * dispute resolution information, correspondence through MyOWLe's website, and correspondence sent to MyOWLe or through the MyOWLe mobile application;
 - * additional information MyOWLe asks you to submit, including information that you submit through the application for organization who granted you access to the MyOWLe mobile application under their account; and,
 - * other supplemental information from third parties.
- Categorized information about the industry for your organization

MyOWLe sometimes collects your email address, for purposes such as sending confirmation emails, authenticating your accounts, and sending information about DRG Metrix, LLC, its mobile applications, and its websites. By submitting your email to MyOWLe's website, you consent to emails from MyOWLe.

MyOWLe may collect personal information if you provide it in feedback or comments or if you contact MyOWLe directly.

Any information posted on the public areas of MyOWLe website is not confidential nor is the information posted to the mobile application unless specifically stated. Please do not post anything on the public areas of MyOWLe website or to the mobile application that you would like to keep private. Information posted to the mobile application is generally available to all users that have access to your organization's account unless otherwise stated by your organization.

MyOWLe's web logs collect standard web log entries for each page served, including your IP address, page URL, and timestamp. Web logs help MyOWLe diagnose problems with our servers, administer MyOWLe website, and otherwise provide MyOWLe's service to you. In addition, MyOWLe may collect other information from your interaction with MyOWLe's website, services, content, and advertising, including computer and connection information, statistics on page views, traffic to and from MyOWLe website, ad data, IP address, demographic and navigational data, and standard web log information. This information may be obtained for MyOWLe from a third party provider including, but not limited to, through the use of Google Analytics. MyOWLe may use this information for marketing, commercial, or any other purpose as MyOWLe sees fit.

The MyOWLe mobile application may collect additional information, including but not limited to location, photos, and text, based on the setup of your organization.

Data MyOWLe Stores

All information posted to MyOWLe website and the mobile application, including account information, is stored in MyOWLe's database, even after "deletion," and may be archived elsewhere.

MyOWLe's web logs and other non-account records may be stored indefinitely. This may include any information you supply to MyOWLe and your browsing history. However, MyOWLe cannot guarantee access to these records by third parties, including its users, for more than seven business days after the original information was submitted.

MyOWLe stores account information, including all uploaded information subject to your organization's specific agreement with MyOWLe.

Although MyOWLe makes good faith efforts to store the information in a secure operating environment that is not available to the public, MyOWLe cannot guarantee complete security unless specifically stated in your organization's separate agreement to use the service.

MyOWLe may store information in an off-site location, which may or may not be located in the United States and may not be bound by the laws of the United States.

Archiving and Display of MyOWLe's Website by Search Engines and Other Websites

Search engines and other websites not affiliated with MyOWLe - including Google.com and Yahoo.com - archive or otherwise make available MyOWLe's website. MyOWLe has no control over third party archiving and search engine websites and cannot guarantee the accuracy of any information stored by these websites.

Circumstances in Which MyOWLe may Release Information

MyOWLe may disclose information about its users if required to do so by law or in the good faith belief that such disclosure is reasonably necessary to respond to subpoenas, court orders, or other legal processes.

MyOWLe may disclose information about its users, including but not limited to account information, to law enforcement officers or others, in the good faith belief that such disclosure is reasonably necessary to: enforce our Terms of Use; respond to claims that any posting or other content violates the rights of third-parties; or protect the rights, property, or personal safety of MyOWLe, its users, or the general public.

MyOWLe may disclose information, including personal information from your account, to a third party if you request it.

MyOWLe may disclose information from your account pursuant to our Terms of Use to a third party if your personal information is not revealed.

MyOWLe may disclose your information to other business entities, should MyOWLe plan to merge with or be acquired by that business entity.

MyOWLe may disclose all information provided by you to the organization who granted you access to the MyOWLe service.

International Users

MyOWLe welcomes international users to browse MyOWLe website. International Website Users consent to all the terms of service and this privacy agreement. International users waive any and all remedies that they may have based on the laws of their country.

Exhibit C – Cost for Services

- 1.0 Base Program Services – Program services itemized in Table 17 of the Cost Proposal Section of the proposal response will be billed at the initial rate of Nineteen Thousand Dollars per month (\$19,000.00) in Year 1 of the Agreement. Beginning at the start of Year 2, the billing rate will escalate at 3% per year in accordance with the following table:

<u>Base Program Services</u>	
<u>Billing Rate</u>	
Year 1	\$19,000 per month
Year 2	\$19,570 per month
Year 3	\$20,157 per month
Year 4	\$20,762 per month
Year 5	\$21,385 per month

- 2.0 The OWLe database warehouse technology pilot (described in section 9.1 above) will be billed based on actual hours incurred and in accordance with Table 18 of the proposal response for an amount not-to exceed Forty Six Thousand Dollars (\$46,000.00).
- 3.0 Monthly Mystery Shopping services performed at DEN will be billed at the initial Year 1 rate of Sixty Eight dollars (\$68.00) per shop as itemized in Table 17 of the Cost Proposal Section. Beginning at the start of Year 2, the billing rate will escalate at 3% per year in accordance with the following table:

<u>DEN Mystery Shopping</u>	
<u>Unit Cost</u>	
Year 1	\$68.00 per shop
Year 2	\$70.04 per shop
Year 3	\$72.14 per shop
Year 4	\$74.31 per shop
Year 5	\$76.53 per shop

- 4.0 Peer Airport Mystery Shopping services as described in Rule 45 will be billed at the initial Year 1 rate of Ninety dollars (\$90.00) per shop. Peer Airport Mystery Shopping services will only be performed once every eighteen months in accordance with rule 45. Depending on the contract year in which Peer Airport Mystery Shopping occurs, the following yearly schedule will apply based on a 3% per year escalator:

<u>Peer Airport Mystery</u>

<u>Shopping Unit Cost</u>	
Year 1	\$90.00 per shop
Year 2	\$92.70 per shop
Year 3	\$95.48 per shop
Year 4	\$98.35 per shop
Year 5	\$101.30 per shop

5.0 OWLe database warehouse technology licenses will be provided as required by DEN for the purposes of PVC on a Per User Per Month Basis in accordance with the licensing agreement, pre-paid for a one year period and in accordance with the following table:

<u>OWLe Monthly License Cost</u>	
Year 1	\$99.00/user
Year 2	\$99.00/user
Year 3	\$99.00/user
Year 4	\$99.00/user
Year 5	\$99.00/user

6.0 Additional Services – Any additional services requested by City that are in conjunction with the PVC Program’s administration or the collection of data, which are not already included in the Base Program Services fee above, will be billed by the TPA in accordance with Table 18 of the proposal response.

EXHIBIT D

CITY AND COUNTY OF DENVER INSURANCE REQUIREMENTS FOR THE DEPARTMENT OF AVIATION

Certificate Holder Information:

CITY AND COUNTY OF DENVER
Attn: Risk Management, Suite 8810
Manager of Aviation
Denver International Airport
8500 Peña Boulevard
Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201630022 – Premium Value Concessions Program

I. MANDATORY COVERAGE

Colorado Workers' Compensation and Employer Liability

Minimum Limits of Liability (In Thousands) \$100, \$500, \$100

1. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement. Any such rejections previously effected, must have been revoked as of the date Contractor executes this Agreement.
2. If the contractor/consultant is a sole proprietor, Workers' Compensation is waived per State of Colorado law.

Business Automobile Liability

Minimum Limits of Liability (In Thousands):

Combined Single Limit \$1,000

The policy must provide the following:

1. Coverage applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
2. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy.

II. ADDITIONAL COVERAGE

Professional Liability (Errors and Omissions)

Minimum Limits of Liability (In Thousands)

Per Claim \$1,000
Aggregate \$1,000

The policy must provide the following:

1. Policies written on a claims-made basis must remain in force for three years extended reporting period in accordance with CRS 13-80-104.
2. If the coverage is written on a claims-made basis the Insured warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract.

III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein:

1. For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
2. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
3. For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
4. The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
5. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better.
6. For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
7. No changes, modifications or interlineations on this document shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.