

AGREEMENT

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, acting on behalf of its Department of Aviation (the “**City**”), and **PRE LLC d/b/a PANGIAM**, a Delaware limited liability company, authorized to do business in the State of Colorado whose address is 7950 Jones Branch Dr., McLean, VA 22102 (the “**Contractor**”), individually a “**Party**” and jointly “the Parties.”

RECITALS

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

WHEREAS, the City issued a Request for Proposal No. 202369505 dated August 25, 2023, (the “**RFP**”) for the installation and maintenance of all required equipment and software for a biometric facial recognition system (“**System**”); and

WHEREAS, Contractor submitted a proposal dated September 18, 2023 (“**Contractor’s Proposal**”); and

WHEREAS, the City awarded this Agreement to the Contractor based upon Contractor’s Proposal.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above agree as follows:

1. **LINE OF AUTHORITY / COORDINATION AND LIAISON:**

The Chief Executive Officer of the Department of Aviation or their designee or successor in function (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 Airport Operations. The relevant Senior Vice President (the “**SVP**”), or their designee (the “**Director**”), will designate a Project Manager to coordinate professional services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Contractor hereunder shall be processed in accordance with the Project Manager’s directions.

2. **DEFINITIONS:**

2.1 “**City Data**” means all information, data, and records, regardless of form, created by or in any way originating with the City and all information that is the output of any computer processing or other electronic manipulation including all records relating to the City’s use of the Work. City Data also includes Confidential Information and Protected Information, as defined in this Agreement.

2.2 “**Data**” or “**data**” means information, regardless of form, that can be read, transmitted, or processed.

2.3 “**Deliverable(s)**” means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of the Contractor’s Work that is intended to be delivered to the City by the Contractor.

2.4 “**Effective Date**” means the date on which this Agreement is fully approved and signed by the City as shown on the City’s signature page.

2.5 “**Service(s)**” means the services to be performed by the Contractor as set forth in this Agreement and shall include any services to be rendered by the Contractor in connection with any goods or Deliverables.

2.6 “**Subcontractor**” means any third party engaged by the Contractor to aid in performance of the Work.

2.7 “**Work**” means the Deliverables provided and Services performed pursuant to this Agreement.

2.8 “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Term that is used, without modification, in the performance of the Work.

3. HARDWARE, SOFTWARE, SOFTWARE AS A SERVICE, SUPPORT, AND SERVICES TO BE PERFORMED:

As the City directs, the Contractor shall diligently undertake, perform, and complete the Work set forth on the attached **Exhibit A**, Scope of Work (“**SOW**”) to the City’s satisfaction. The City shall have no liability to compensate the Contractor for Work that is not specifically authorized by this Agreement. The Work shall be performed as stated herein and shall conform to the specification of the attached exhibits (collectively, “**Exhibits**”). The Parties acknowledge that they may further define the SOW in writing, and any alterations to the initial SOW shall become a part of this Agreement by incorporation. If any alteration to the initial or subsequent SOW materially alters the terms contained therein, the Parties agree to amend this Agreement in writing. The Contractor is ready, willing, and able to provide the technology related Work required by this Agreement. The Contractor shall faithfully perform the Work in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in this Agreement and in accordance with the terms of this Agreement. All Work shall be performed in accordance with the requirements of **Attachment 1: Service Level Agreement**.

4. ON-CALL SERVICES TO BE PERFORMED:

The Contractor agrees to cooperate with the City in the preparation of detailed Task Orders in accordance with the Scope of Work, and the rates, contained therein, attached hereto as **Exhibit A**. Each Task Order shall include a detailed scope of Services, level of effort, schedule, rates, and payment schedule, including a “not to exceed” amount, specific to each the Task Order. Task Orders shall be construed to be in addition to, supplementary to, and consistent with the provisions of this Agreement. In the event of a conflict between a particular provision of any Task Order and a provision of this Agreement, this Agreement shall take precedence. A Task Order may be amended by the Parties by a written instrument prepared by the Parties jointly and signed by their authorized representatives. The City may execute Task Orders in its sole discretion, and the City is not required to execute any minimum number of Task Orders under this Agreement.

The City shall have no liability to compensate the Contractor for any Work not specifically set forth in this Agreement or a properly executed Task Order. In no event shall a Task Order term extend beyond the Term unless the City has specifically agreed in writing. If this Agreement is terminated for any reason, each Task Order hereunder shall also terminate unless the City has specifically directed otherwise in writing. The Contractor agrees to fully coordinate its provision of Services with any third party under contract with the City doing work or providing Services which affect the Contractor’s performance. The Contractor represents and warrants that all Services under a Task Order will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards; all Services and/or Deliverables will conform to applicable, agreed upon specifications, if any; and, it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to any software and Services free and clear from any and all liens, adverse claims, encumbrances and interests of any third party.

5. TERM:

This Agreement will commence on the Effective Date, and will expire, unless sooner terminated, THREE (3) years thereafter (the “**Term**”). The Term of this Agreement may be extended for two additional one (1) year periods, on the same terms and conditions, by written notice from the CEO to Contractor. However, no extension of the Term shall increase the Maximum Agreement Liability stated below. Subject to the City’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the City.

6. COMPENSATION AND PAYMENT:

6.1 Budget: The City shall pay, and the Contractor shall accept as the sole compensation for Work provided, and costs incurred and paid, under this Agreement payment not to exceed the line budget amounts set forth in **Exhibit A and/or B**. Payment shall be made in accordance with any agreed upon payment milestone set forth herein.

6.2 Fees: The City shall pay, and the Contractor shall accept as the sole compensation for services rendered and costs incurred under this Agreement the fees described in the

attached **Exhibit A and/or B**. Amounts billed may not exceed rates set forth in **Exhibit A and/or B** and will be made in accordance with any agreed upon payment milestones.

6.3 Reimbursement Expenses: There are no reimbursable expenses allowed under this Agreement. All the Contractor's expenses are contained in the budget in **Exhibit A and/or B**. The City will not be obligated to pay the Contractor for any other fees, costs, expenses, or charges of any nature that may be incurred and paid by the Contractor in performing services under this Agreement including but not limited to personnel, benefits, contract labor, overhead, administrative costs, operating costs, supplies, equipment, and out-of-pocket expenses.

6.4 Invoicing: The Contractor must submit an invoice which shall include the City contract number, clear identification of the Work that has been completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City's Prompt Payment Ordinance.

6.5 Payment Source: For payments required under this Agreement, the City shall make payments to Contractor solely from funds of the Airport System Fund and from no other fund or source. The City has no obligation to make payments from any other source.

6.6 Maximum Agreement Liability:

6.6.1 Notwithstanding any other provision of this Agreement, the City's maximum payment obligation will not exceed Two Million Dollars and Zero Cents (\$2,000,000.00) (the "**Maximum Agreement Amount**"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in the attached Exhibits. Any services performed beyond those in the attached Exhibits are performed at the Contractor's risk and without authorization under this Agreement.

6.6.2 The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

7. STATUS OF CONTRACTOR:

The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

8. TERMINATION:

8.1 The City has the right to terminate this Agreement or a product under this Agreement with cause upon written notice effective immediately and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under this Agreement beyond the time when its services become unsatisfactory to the City.

8.2 Notwithstanding the preceding paragraph, the City may terminate this Agreement if the Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with the Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

8.3 The City is entering into this Agreement to serve the public interest. If this Agreement ceases to further the City's public interest, the City, in its sole discretion, may terminate this Agreement, in whole or in part, for convenience by giving written notice to the Contractor.

8.4 Upon termination of this Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in this Agreement and shall refund to the City any prepaid cost or expenses.

8.5 If this Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools, and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under this Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE."

9. EXAMINATION OF RECORDS AND AUDITS:

9.1 Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by

the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

9.2 In the event the City receives federal funds to be used toward the services performed under this Agreement, 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 Contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Contractor further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

10. WHEN RIGHTS AND REMEDIES NOT WAIVED:

In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party’s action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party 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.

11. INSURANCE:

11.1 Contractor shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in **Exhibit C (“Insurance Requirements”)** during the entire Term of this Agreement, including any extensions of the Agreement or other extended period stipulations stated in **Exhibit C**. All certificates of insurance must be received and accepted by the City before any airport access or work commences.

11.2 Contractor shall ensure and document that all subcontractors performing services or providing goods hereunder procure and maintain insurance coverage that is appropriate to the primary business risks for their respective scopes of performance. At minimum, such insurance must conform to all applicable requirements of DEN Rules and Regulations Part 230 and all other applicable laws and regulations.

11.3 Contractor shall ensure and document that all subcontractors performing services or providing goods hereunder procure and maintain insurance coverage that is appropriate to the primary business risks for their respective scopes of performance. At minimum, such insurance must conform to all applicable requirements of DEN Rules and Regulations Part 230 and all other applicable laws and regulations.

11.4 The City in no way warrants or represents the minimum limits contained herein are sufficient to protect Contractor from liabilities arising out of the performance of the terms and conditions of this Agreement by Contractor, its agents, representatives, employees, or subcontractors. Contractor shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Contractor is not relieved of any liability or other obligations assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

11.5 In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Contractor; (ii) damage, theft, or destruction of Contractor's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

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

12. DEFENSE AND INDEMNIFICATION:

12.1 The Contractor hereby 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 the Contractor 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.

12.2 The Contractor's duty to defend and 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. The Contractor's duty to defend and 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.

12.3 The Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

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

12.5 The Contractor shall indemnify, save, and hold harmless the indemnified parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the indemnified parties in relation to any claim that any Deliverable or Service, software, or Work Product provided by the Contractor under this Agreement (collectively, "**IP Deliverables**"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. The Contractor's obligations hereunder shall not extend to the combination of any IP Deliverables provided by the Contractor with any other product, system, or method, unless the other product, system, or method is (i) provided by the Contractor or the Contractor's subsidiaries or affiliates; (ii) specified by the Contractor to work with the IP Deliverables; (iii) reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or (iv) is reasonably expected to be used in combination with the IP Deliverables.

12.6 The Contractor shall indemnify, save, and hold harmless the indemnified parties against all costs, expenses, claims, damages, liabilities, court awards and other amounts, including attorneys' fees and related costs, incurred by the indemnified parties in relation to the Contractor's failure to comply with §§ 24-85-101, *et seq.*, C.R.S., or the *Accessibility Standards for Individuals with a Disability* as established pursuant to § 24-85-103 (2.5), C.R.S.

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

12.8 **Limitation Of The Contractor's Liability**: To the extent permitted by law, the liability of the Contractor, its Subcontractors, and their respective personnel to the City for any claims, liabilities, or damages relating to this Agreement shall be limited to damages, including but not limited to direct losses, consequential, special, indirect, incidental, punitive or exemplary loss, loss or unauthorized disclosure of City Data, not to exceed three (3) times the Maximum Agreement Amount payable by the City under this Agreement. No limitation on the Contractor's liability to the City under this Section shall limit or affect: (i) the Contractor's indemnification obligations to the City under this Agreement; (ii) any claims, losses, or damages for which coverage is available under any insurance required under this Agreement; (iii) claims or damages arising out of bodily injury, including death, or damage to tangible property of the City; or (iv) claims or damages resulting from the recklessness, bad faith, or intentional misconduct of the Contractor or its Subcontractors.

13. COLORADO GOVERNMENTAL IMMUNITY ACT:

The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S. (2003).

14. COMPLIANCE WITH APPLICABLE LAWS AND CITY POLICIES:

The Contractor shall comply with all applicable existing and future laws and DEN Rules and Regulations and policies in performing the Services under this Agreement. Any of the Contractor's personnel visiting the City's facilities will comply with all applicable City policies regarding access to, use of, and conduct within such facilities. The City will provide copies of such policies to the Contractor upon request.

15. SERVICE LEVEL AGREEMENTS; FUNCTIONALITY MATRIX:

To the extent the Contractor provides service level commitments in connection with its provision of any Work purchased hereunder, the Contractor shall be fully responsible for the delivery and maintenance of the Work, in whole and/or in part, in accordance with the terms of the service level agreement attached hereto and incorporated herein as **Exhibit A, Attachment 1**. The Contractor agrees that the Work shall also conform to the functionality matrix attached hereto and incorporated herein as **Exhibit A, Attachment 1**.

16. TECHNOLOGY SPECIFICATIONS:

16.1 Vendor Supported Releases: The Contractor shall maintain the currency of all third-party software used in the development and execution or use of the Work with third-party vendor approved and supported releases, including, but not limited to, all code libraries, frameworks, components, and other products (by way of example, but not limitation: Java JRE, code signing certificates, .NET, jQuery plugins, etc.), whether commercial, free, open-source, or closed-source.

16.2 Additional Products or Services: The Parties acknowledge that the Contractor will continue to enhance and/or modify its existing products or services. To use those enhanced products or services, the City shall be entitled to order those offerings at any time throughout the duration of this Agreement provided the pricing is set out in this Agreement. Once agreed upon by the Parties, additional products or services shall be subject to the same terms and conditions as contained herein and any order placed by the City shall not create any additional binding conditions on the City and shall not act as an amendment of the terms and conditions of this Agreement. If additional products or services are requested by the City, the Parties shall follow the agreed upon order process and if no process is outlined, then the SVP, or other designated DEN personnel, shall be authorized to sign any necessary forms to acquire the products/services on behalf of the City. Additional licenses shall be prorated and co-termed with current licensing contained in this Agreement.

16.3 Reoccurring Security Audits: Prior to the Effective Date of this Agreement, the Contractor, will at its expense conduct or have conducted the following, and thereafter, the Contractor will at its expense conduct or have conducted the following at least once per year, and immediately after any actual or reasonably suspected Security Breach: (i) a SSAE 16/SOC 2 or other mutually agreed upon audit of the Contractor's security policies, procedures and controls; (ii) a quarterly external and internal vulnerability scan of the Contractor's systems and facilities, to include public facing websites, that are used in any way to deliver Services under this Agreement. The report must include the vulnerability, age, and remediation plan for all issues identified as critical or high; and (iii) a formal penetration test performed by qualified personnel of the Contractor's systems and facilities that are used in any way to deliver Work under this Agreement. The Contractor will provide the City the reports or other documentation resulting from the above audits, certifications, scans, and tests within seven (7) business days of the Contractor's receipt of such results. The report must include the vulnerability, age, and remediation plan for all issues identified as critical or high. Based on the results and recommendations of the above audits, the Contractor will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures to meet its obligations under this Agreement and provide the City with written evidence of remediation. In addition, the Contractor shall comply with the City's annual risk assessment and the results thereof. The City may require, at the Contractor's expense, that the Contractor perform additional audits and tests, the results of which will be provided to the City within seven (7) business days of Contractor's receipt of such results. The Contractor will provide the City the results of the above audits. If additional funds are required to perform the tests required by the City that are not accounted for in this Agreement, the Parties agree to amend this Agreement as necessary. The Contractor shall also protect data against deterioration or degradation of quality and authenticity by, at minimum, having a third party perform annual data integrity audits.

16.4 Transition of Services: Upon expiration or earlier termination of this Agreement or any Work provided hereunder, the Contractor shall accomplish a complete transition of the Services from the Contractor to the City or any replacement provider designated solely by the City without any interruption of or adverse impact on the Services or any other services provided by third parties under this Agreement. The Contractor shall cooperate fully with the City or such replacement provider and promptly take all steps required to assist in effecting a complete transition of the Services designated by the City. All Services related to such transition shall be performed at no additional to the City. The Contractor shall extend this Agreement monthly if additional time is required beyond the termination of this Agreement, if necessary, to effectuate the transition and the City shall pay a proration of the subscription fee.

16.5 Disaster Recovery and Continuity:

16.5.1 The Contractor shall maintain a continuous and uninterrupted business continuity and disaster recovery program with respect to the Work provided under this Agreement. The program shall be designed, in the event of a significant business disruption affecting the Contractor, to provide the necessary and sufficient capabilities, processes, and

procedures to enable the Contractor to resume and continue to perform its duties and obligations under this Agreement without undue delay or disruption. In the event of equipment failures, the Contractor shall, at no additional expense to the City, take reasonable steps to minimize service interruptions, including using any back-up facilities where appropriate. Upon request, the Contractor shall provide the City with a copy of its disaster recovery plan and procedures.

16.5.2 Prior to the Effective Date of this Agreement, the Contractor shall, at its own expense, conduct or have conducted the following, and thereafter, the Contractor will, at its own expense, conduct or have conducted the following at least once per year:

16.5.2.1 A test of the operability, sufficiency, and completeness of business continuity and disaster recovery program's capabilities, processes, and procedures that are necessary to resume and continue to perform its duties and obligations under this Agreement.

16.5.2.2 Based upon the results and subsequent recommendations of the testing above, the Contractor will, within thirty (30) calendar days of receipt of such results and recommendations, promptly modify its capabilities, processes, and procedures to meet its obligations under this Agreement and provide City with written evidence of remediation.

16.5.2.3 Upon request, the Contractor shall provide the City with report summaries or other documentation resulting from above testing of any business continuity and disaster recovery procedures regarding the Services provided under this Agreement.

16.5.2.4 The Contractor represents that it is capable, willing, and able to provide the necessary and sufficient business continuity and disaster recovery capabilities and functions that are appropriate for it to provide services under this Agreement.

17. DELIVERY AND ACCEPTANCE:

17.1 Acceptance & Rejection: Software, technology services, or other deliverables created and/or delivered pursuant to this Agreement (collectively, "**Deliverables**") will be considered accepted ("**Acceptance**") only when the City provides the Contractor affirmative written notice of acceptance that such Deliverable has been accepted by the City. Such communication shall be provided within a reasonable time from the delivery of the Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the City shall be final, except in cases of Contractor's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or the

Contractor's gross negligence or willful misconduct. The City may reject a Deliverable if it materially deviates from its specifications and requirements listed in this Agreement or its attachments by written notice setting forth the nature of such deviation. In the event of such rejection, the Contractor shall correct the deviation, at its sole expense, and redeliver the Deliverable within fifteen (15) days. After redelivery, the Parties shall again follow the acceptance procedures set forth herein. If any Deliverable does not perform to the City's satisfaction, the City reserves the right to repudiate acceptance. If the City ultimately rejects a Deliverable, or repudiates acceptance of it, the Contractor will refund to the City all fees paid, if any, by the City with respect to any rejected Deliverable. Acceptance shall not relieve the Contractor from its responsibility under any representation or warranty contained in this Agreement, and payment of an invoice prior to Acceptance does not grant a waiver of any representation or warranty made by the Contractor.

17.2 Quality Assurance: The Contractor shall provide and maintain a quality assurance system acceptable to the City for Deliverables under this Agreement and shall provide to the City only such Deliverables that have been inspected and found to conform to the specifications identified in this Agreement and any applicable solicitation, bid, offer, or proposal from which this Agreement results. The Contractor's delivery of any Deliverables to the City shall constitute certification that any Deliverables have been determined to conform to the applicable specifications, and the Contractor shall make records of such quality assurance available to the City upon request.

17.3 License to Deliverables: For the absence of doubt, under this Agreement and any SOW the Contractor is licensing its proprietary biometric identity verification solution (including the veriScan™ software and related Services) to the City during the Term, contingent upon the payment of fees to the Contractor and under the terms and conditions herein. Consequently, as between Contractor, on one hand, and the City and its affiliates, on the other, the Contractor owns and will own all intellectual property rights in the IP Deliverables (including any Deliverable or Service, software, or Work Product provided by the Contractor under this Agreement). Effective upon the Contractor's receipt of applicable fees and the Acceptance of each Deliverable by the City, the Contractor grants the City a nonexclusive, non-transferrable, royalty-free license to use such IP Deliverables, strictly as necessary for permitted uses under the Agreement and for no other reason. The City may not modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of the Deliverables, except as the Agreement otherwise expressly permits. The City may not rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make the Deliverable available to any third party except as the Agreement otherwise expressly permits. The City must comply with any license restrictions set forth in this Agreement and any attachments thereto. The City will not reverse engineer, reverse compile, decompile, disassemble, decode, or otherwise attempt to derive, discover, or gain access to the source code, object code, or underlying structure of, or the ideas or algorithms incorporated in any part of a Deliverable unless agreed by the Parties in writing.

17.4 Incorporation of Deliverables: Upon Acceptance, each Deliverable will thereafter be subject to this Agreement's terms, including without limitation license, warranty, and indemnity terms.

18. WARRANTIES AND REPRESENTATIONS:

18.1 Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, the Contractor warrants that any Work or Deliverable provided by the Contractor under this Agreement shall be free from material defects and shall function as intended and in material accordance with the applicable specifications. The Contractor warrants that any Work or Deliverable, and any media used to distribute it, shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function or technological means designed to disrupt, interfere with, or damage the normal operation of the Work or Deliverable and the use of City resources and systems. The Contractor's warranties under this Section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.

18.2 Upon notice of any defect or material nonconformity, the Contractor shall submit to the City in writing within 10 business days of the notice one or more recommendations for corrective action with sufficient documentation for the City to ascertain the feasibility, risks, and impacts of each recommendation. The City's remedy for such defect or material non-conformity shall be:

18.2.1 The Contractor shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the City. The Contractor shall deliver, at no additional cost to the City, all documentation required under this Agreement as applicable to the corrected Work or Deliverable; or

18.2.2 The Contractor shall refund to the City all amounts paid for such Work or Deliverable, as well as pay to the City any additional amounts reasonably necessary for the City to procure alternative goods or services of substantially equivalent capability, function, and performance.

18.3 Any Work or Deliverable delivered to the City as a remedy under this Section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date of the corrected or replacement Work or Deliverable.

18.4 Customization Services: The Contractor warrants that it will perform all customization services, if any, in a professional and workmanlike manner. In case of breach of the warranty of the preceding sentence, the Contractor, at its own expense, shall promptly re-perform the customization services in question or provide a full refund for all nonconforming customization services.

18.5 Third-Party Warranties and Indemnities: The Contractor will assign to the City all third-party warranties and indemnities that the Contractor receives in connection with any Work or Deliverables provided to the City. To the extent that the Contractor is not permitted to assign any warranties or indemnities through to the City, the Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of the City to the extent the Contractor is permitted to do so under the terms of the applicable third-party agreements.

18.6 Intellectual Property Rights in the Software: As between the Contractor, on the one hand, and the City and its affiliates, on the other, the Contractor solely and exclusively owns all right, title, and interest in, to, and under the software (including the veriScan™ and related Services) and IP Deliverables this Agreement contemplates, and all customizations, modifications, adaptations, translations, enhancements, and improvements thereto. Except for the limited license grant Section 17.3 contains, the Contractor does not grant the City or any of the City's affiliates or any other person any, and the Contractor hereby reserves all, right, title, and interest in, to, and under the software and the IP Deliverables, including all copyrights, trademarks, and other intellectual property rights comprising any part thereof, and nothing this Agreement contains grants the City or any other person, by implication, waiver, estoppel, or otherwise, any right, title, or interest in, to, or under the software, the IP Deliverables or any part thereof. The Contractor warrants that it is the owner of all Deliverables, and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the limited license to the Deliverables in this Agreement without the further consent of any third party and without conditions or requirements not set forth in this Agreement. In the event of a breach of the warranty in this Section, the Contractor, at its own expense, shall promptly take the following actions: (i) secure for the City the right to continue using the Deliverable as intended; (ii) replace or modify the Deliverable to make it non-infringing, provided such modification or replacement will not materially degrade any functionality as stated in this Agreement; or (iii) refund 100% of the fee paid for the Deliverable for every month remaining in the Term, in which case the Contractor may terminate any or all of the City's licenses to the infringing Deliverable granted in this Agreement and require return or destruction of copies thereof. The Contractor also warrants that there are no pending or threatened lawsuits, claims, disputes, or actions: (i) alleging that any of the Work or Deliverables infringes, violates, or misappropriates any third-party rights; or (ii) adversely affecting any Deliverables or Services, or the Contractor's ability to perform its obligations hereunder.

18.7 Disabling Code: The Work and any Deliverables will contain no malicious or disabling code that is intended to damage, destroy, or destructively alter software, hardware, systems, or data. The Contractor represents, warrants and agrees that the City will not receive from the Contractor any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system, resources, or data (a "**Disabling Code**"). In the event a Disabling Code is

identified, the Contractor shall take all steps necessary, at no additional cost to the City, to: (i) restore and/or reconstruct all data lost by the City as a result of a Disabling Code; (ii) furnish to City a corrected version of the Work or Deliverables without the presence of a Disabling Code; and, (iii) as needed, re-implement the Work or Deliverable at no additional cost to the City. This warranty shall remain in full force and effect during the Term.

19. ACCESSIBILITY AND ADA WEBSITE COMPLIANCE:

19.1 Compliance: The Contractor shall comply with, and the Work and Work Product provided under this Agreement shall be in compliance with, all applicable provisions of §§ 24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established pursuant to Section § 24-85-103 (2.5), C.R.S (collectively, the “**Guidelines**”). The Contractor shall also comply with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

19.2 Testing: The City may require the Contractor’s compliance to be determined by a third party selected by the City to attest that the Contractor’s has performed all obligations under this Agreement in compliance with §§ 24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established pursuant to Section § 24-85-103 (2.5), C.R.S.

19.3 Validation and Remediation: The Contractor agrees to promptly respond to and resolve any instance of noncompliance regarding accessibility in a timely manner and shall remedy any noncompliant Work Product, Service, or Deliverable at no additional cost to the City. If the City reasonably determines accessibility issues exist, the Contractor shall provide a “roadmap” for remedying those deficiencies on a reasonable timeline to be approved by the City. Resolution of reported accessibility issue(s) that may arise shall be addressed as high priority, and failure to make satisfactory progress towards compliance with the Guidelines, as agreed to in the roadmap, shall constitute a breach of contract and be grounds for termination or non-renewal of this Agreement.

20. CONFIDENTIAL INFORMATION:

20.1 “Confidential Information” means all information or data, regardless of form, not subject to disclosure under the Colorado Open Records Act, § 24-72-201, *et seq.*, C.R.S. (“**CORA**”), and is marked or identified at the time of disclosure as being confidential, proprietary, or its equivalent. Each of the Parties may disclose (a “**Disclosing Party**”) or permit the other Party (the “**Receiving Party**”) access to the Disclosing Party’s Confidential Information in accordance with the following terms. Except as specifically permitted in this Agreement or with the prior express written permission of the Disclosing Party, the Receiving Party shall not: (i) disclose, allow access to, transmit, transfer or otherwise make available any Confidential Information of the Disclosing Party to any third party other than its employees, Subcontractors, agents and consultants that need to know such information to fulfil the purposes of this Agreement, and in the case of non- employees, with whom it has executed a non-disclosure or other agreement which limits the use,

reproduction and disclosure of the Confidential Information on terms that afford at least as much protection to the Confidential Information as the provisions of this Agreement; or (ii) use or reproduce the Confidential Information of the Disclosing Party for any reason other than as reasonably necessary to fulfil the purposes of this Agreement. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Both the City and the Contractor will retain all right, title, and interest to their respective Confidential Information.

20.2 The Contractor shall provide for the security of Confidential Information and information which may not be marked but constitutes personally identifiable information or other federally or state regulated information (“**Regulated Data**”) in accordance with all applicable laws, rules, policies, publications, and guidelines. If the Contractor receives Regulated Data outside the scope of this Agreement, it shall promptly notify the City.

20.3 Disclosed information or data that the Receiving Party can establish: (i) was lawfully in the Receiving Party’s possession before receipt from the Disclosing Party; or (ii) is or becomes a matter of public knowledge through no fault of the Receiving Party; or (iii) was independently developed or discovered by the Receiving Party; or (iv) was received from a third party that was not under an obligation of confidentiality, shall not be considered Confidential Information under this Agreement. The Receiving Party will inform necessary employees, officials, Subcontractors, agents, and officers of the confidentiality obligations under this Agreement, and all requirements and obligations of the Receiving Party under this Agreement shall survive the expiration or earlier termination of this Agreement.

20.4 Nothing in this Agreement shall in any way limit the ability of the City to comply with any laws or legal process concerning disclosures by public entities. The Parties understand that all materials exchanged under this Agreement, including Confidential Information, may be subject to CORA. In the event of a request to the City for disclosure of possible confidential materials, the City shall advise the Contractor of such request to give the Contractor the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If the Contractor objects to disclosure of any of its material, the Contractor shall identify to the City the legal basis under CORA for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Contractor agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the City will tender all material to the court for judicial determination of the issue of disclosure. The Contractor further agrees to defend, indemnify, and save and hold harmless the City, its officers, agents, and employees, from any claim, damages, expense, loss, or costs arising out of the Contractor’s intervention to protect and assert its claim of privilege against disclosure under this Section, including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs, and damages that the City may incur directly or may be ordered to pay.

21. **SENSITIVE SECURITY INFORMATION:**

Contractor acknowledges that, in the course of performing its work under this Agreement, Contractor may be given access to Sensitive Security Information (“SSI”), as material is described in the Code of Federal Regulations, 49 C.F.R. Part 1520. Contractor specifically agrees to comply with all requirements of the applicable federal regulations, including but not limited to, 49 C.F.R. Parts 15 and 1520. Contractor understands any questions it may have regarding its obligations with respect to SSI must be referred to DEN’s Security Office.

22. **DATA MANAGEMENT, SECURITY, AND PROTECTION:**

22.1 Compliance with Data Protection Laws and Policies: The Contractor shall comply with all applicable federal, state, local laws, rules, regulations, directives, and policies relating to data protection, use, collection, disclosures, processing, and privacy as they apply to the Contractor under this Agreement, including, without limitation, applicable industry standards or guidelines based on the data’s classification relevant to the Contractor’s performance hereunder and, *when applicable*, the most recent iterations of § 24-73-101, *et seq.*; C.R.S., IRS Publication 1075; the Colorado Consumer Protection Act, the Payment Card Industry Data Security Standard (“PCI- DSS”), and the Minimum Acceptable Risk Standards for Exchanges (collectively, “**Data Protection Laws**”). If the Contractor becomes aware that it cannot reasonably comply with the terms or conditions contained herein due to a conflicting law or policy, the Contractor shall promptly notify the City. The Contractor shall comply with all rules, policies, procedures, and standards issued by the City.

22.2 Safeguarding Protected and Sensitive Information: “Protected Information” means data, regardless of form, that has been designated as sensitive, private, proprietary, protected, or confidential by law, policy, or the City. Protected Information includes, but is not limited to, employment records, protected health information, student and education records, criminal justice information, personal financial records, research data, trade secrets, classified government information, other regulated data, and personally identifiable information as defined by §§ 24-73-101(4)(b) and 6-1-716(1)(g)(I)(A), C.R.S., as amended. Protected Information shall not include public records that by law must be made available to the public under CORA. To the extent there is any uncertainty as to whether data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the City or an appropriate legal authority. Unless the City provides security protection for the information it discloses to the Contractor, the Contractor shall implement and maintain reasonable security procedures and practices that are both appropriate to the nature of the Protected Information disclosed and that are reasonably designed to help safeguard Protected Information from unauthorized access, use, modification, disclosure, or destruction. Disclosure of Protected Information does not include disclosure to a third party under circumstances where the City retains primary responsibility for implementing and maintaining reasonable security procedures and practices appropriate to the nature of the Protected Information, and the City implements and maintains technical controls reasonably designed to safeguard Protected Information from unauthorized access, modification, disclosure, or destruction

or effectively eliminate the third party's ability to access Protected Information, notwithstanding the third party's physical possession of Protected Information. If the Contractor has been contracted to maintain, store, or process personal information on the City's behalf, the Contractor is a "Third-Party Service Provider" as defined by § 24-73-103(1)(i), C.R.S.

22.3 Data Access and Integrity: The Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the Data Protection Laws applicable to the Contractor's performance hereunder to ensure the security and confidentiality of data. The Contractor shall protect against threats or hazards to the security or integrity of data; protect against unauthorized disclosure, access to, or use of data; restrict access to data as necessary; and ensure the proper and legal use of data. The Contractor shall not engage in "data mining" except as specifically and expressly required by law or authorized in writing by the City. Unless otherwise required by law, the City has exclusive ownership of all City Data under this Agreement, and the Contractor shall have no right, title, or interest in City Data obtained in connection with the services provided herein. The Contractor has a limited, nonexclusive license to access and use data as provided in this Agreement solely for the purpose of performing its obligations hereunder. The City retains the right to access and retrieve City Data stored on the Contractor's infrastructure at any time during the Term. All City Data created and/or processed by the Work, if any, is and shall remain the property of the City and shall in no way become attached to the Work, nor shall the Contractor have any rights in or to the City Data without the express written permission of the City. This Agreement does not give a Party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in this Agreement. The City retains the right to use the Work to access and retrieve data stored on the Contractor's infrastructure at any time during the Term. Upon written request, the Contractor shall provide the City its policies and procedures to maintain the confidentiality of City Data and Protected Information.

22.4 Response to Legal Orders for City Data: If the Contractor is required by a court of competent jurisdiction or administrative body to disclose City Data, the Contractor shall first notify the City and, prior to any disclosure, cooperate with the City's reasonable requests in connection with the City's right to intervene, quash, or modify the legal order, demand, or request, and upon request, provide the City with a copy of its response. If the City receives a subpoena, legal order, or other legal demand seeking data maintained by the Contractor, the City will promptly provide a copy to the Contractor. Upon notice and if required by law, the Contractor shall promptly provide the City with copies of its data required for the City to meet its necessary disclosure obligations.

22.5 Data Retention, Transfer, Litigation Holds, and Destruction: Using appropriate and reliable storage media, the Contractor shall regularly backup data used in connection with this Agreement and retain such backup copies consistent with the City's data and record retention policies. All City Data shall be encrypted in transmission, including by web interface, and in storage by an agreed upon National Institute of Standards and Technology ("NIST") approved strong encryption method and standard. The Contractor

shall not transfer or maintain data under this Agreement outside of the United States without the City's express written permission. Upon termination of this Agreement, the Contractor shall securely delete or securely transfer all data, including Protected Information, to the City in an industry standard format as directed by the City; however, this requirement shall not apply to the extent the Contractor is required by law to retain data, including Protected Information. Upon the City's request, the Contractor shall confirm, by providing a certificate, the data disposed of, the date disposed of, and the method of disposal. With respect to any data in the Contractor's exclusive custody, the City may request, at not additional cost to the City, that the Contractor preserve such data outside of record retention policies. The City will promptly coordinate with the Contractor regarding the preservation and disposition of any data and records relevant to any current or anticipated litigation, and the Contractor shall continue to preserve the records until further notice by the City. Unless otherwise required by law or regulation, when paper or electronic documents are no longer needed, the Contractor shall destroy or arrange for the destruction of such documents within its custody or control that contain Protected Information by shredding, erasing, or otherwise modifying the Protected Information in the paper or electronic documents to make it unreadable or indecipherable. The Contractor and its third-party services providers must develop and maintain a written policy for the destruction of such records.

22.6 Software and Computing Systems: At its reasonable discretion, the City may prohibit the Contractor from the use of certain software programs, databases, and computing systems with known vulnerabilities to collect, use, process, store, or generate data and information received under this Agreement. The Contractor shall fully comply with all requirements and conditions, if any, associated with the use of software programs, databases, and computing systems as reasonably directed by the City. The Contractor shall not use funds paid by the City for the acquisition, operation, or maintenance of software in violation of any copyright laws or licensing restrictions. The Contractor shall maintain commercially reasonable network security that, at a minimum, includes network firewalls, intrusion detection/prevention, and enhancements or updates consistent with evolving industry standards. The Contractor shall use industry-standard and up-to-date security tools, technologies and procedures including, but not limited to, anti-virus and anti-malware protections. The Contractor shall ensure that any underlying or integrated software employed under this Agreement is updated on a regular basis and does not pose a security threat.

22.7 Background Checks: The Contractor shall ensure that, prior to being granted access to Protected Information, the Contractor's agents, employees, Subcontractors, volunteers, or assigns who perform work under this Agreement have all undergone and passed all necessary criminal background screenings, have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement and Data Protection Laws, and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the data. If the Contractor will have access to federal tax information ("FTI") under this Agreement, the Contractor shall comply with the background check and other provisions

of Section 6103(b) of the Internal Revenue Code, the requirements of IRS Publication 1075, and the Privacy Act of 1974, 5 U.S.C. § 552a, *et. seq.*, related to federal tax information.

22.8 Subcontractors and Employees: If the Contractor engages a Subcontractor under this Agreement, the Contractor shall impose data protection terms that provide at least the same level of data protection as in this Agreement and to the extent appropriate to the nature of the Work provided. The Contractor shall monitor the compliance with such obligations and remain responsible for its Subcontractor's compliance with the obligations of this Agreement and for any of its Subcontractors acts or omissions that cause the Contractor to breach any of its obligations under this Agreement. Unless the Contractor provides its own security protection for the information it discloses to a third party, the Contractor shall require the third party to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Protected Information disclosed and that are reasonably designed to protect it from unauthorized access, use, modification, disclosure, or destruction. Any term or condition within this Agreement relating to the protection and confidentiality of any disclosed data shall apply equally to both the Contractor and any of its Subcontractors, agents, assigns, employees, or volunteers. Upon request, the Contractor shall provide the City copies of its record retention, data privacy, and information security policies. The Contractor shall ensure all Subcontractors sign, or have signed, agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force so long as the Subcontractor has access to any data disclosed under this Agreement. Upon request, the Contractor shall provide copies of those signed nondisclosure agreements to the City.

22.9 Security Audit Access: The Contractor shall permit the City reasonable access and shall provide the City with information reasonably required to assess the Contractor's compliance with its security and confidentiality obligations under this Agreement. Such access and information shall include an annual SSAE 16/SOC 2 audit, or an alternative audit recommended by the City, and the Contractor shall comply with the City's annual risk assessment and the results thereof. To the extent the Contractor controls or maintains information systems used in connection with this Agreement, the Contractor shall provide the City with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application-level risk assessments, and other security assessment activities as required by this Agreement or reasonably requested by the City. The Contractor will remediate any vulnerabilities to comply with its obligations hereunder.

22.10 Unauthorized Data Disclosure:

22.10.1 Security Breach: If the Contractor becomes aware of a suspected or unauthorized acquisition or disclosure of unencrypted data, in any form, that compromises the security, access, confidentiality, or integrity of City Data, Protected Information, or other data maintained or provided by the City ("**Security Breach**"), the Contractor shall notify the City in the most expedient time and without unreasonable delay but no less than forty-eight (48) hours. A Security Breach shall also include, without limitation, (i)

attempts to gain unauthorized access to a City system or City Data regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a City system for the processing or storage of data; or (iv) changes to the City's system hardware, firmware, or software characteristics without the City's knowledge, instruction, or consent. Any oral notice of a Security Breach provided by the Contractor shall be immediately followed by a written notice to the City. The Contractor shall maintain documented policies and procedures for Security Breaches including reporting, notification, and mitigation.

- 22.10.2 Cooperation:** The Contractor shall fully cooperate with the City regarding recovery, lawful notices, investigations, remediation, and the necessity to involve law enforcement, as determined by the City and as required by law. The Contractor shall preserve and provide all information relevant to the Security Breach to the City; provided, however, the Contractor shall not be obligated to disclose confidential business information or trade secrets. Unless the Contractor can establish that neither it nor any of its agents, employees, assigns, or Subcontractors are the cause or source of the Security Breach, the Contractor shall indemnify, defend, and hold harmless the City for all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the City in connection with a Security Breach and any required lawful notices.
- 22.10.3 Reporting:** The Contractor shall provide a written report to the City that identifies: (i) the nature of the unauthorized use or disclosure; (ii) the data used or disclosed; (iii) the parties responsible for the Security Breach (if known); (iv) what the Contractor has done or shall do to mitigate the effect of the Security Breach; and (v) what corrective action the Contractor has taken or shall take to prevent future Security Breaches. Except as expressly required by law, the Contractor will not disclose or otherwise provide notice of the incident directly to any person, regulatory agencies, or other entities, without prior written permission from the City.
- 22.10.4 Costs:** Notwithstanding any other provision of this Agreement, and in addition to any other remedies available to the City under law or equity, the Contractor will promptly reimburse the City in full for all costs incurred by the City in any investigation, remediation or litigation resulting from any Security Breach, including but not limited to providing notification to third parties whose data was compromised and to regulatory bodies, law- enforcement agencies, or other entities as required by law or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a Security Breach in such a fashion that, in the City's sole discretion, could lead to identity theft; and the payment of legal fees

and expenses, audit costs, fines and penalties, and other fees imposed by regulatory agencies, courts of law, or contracting partners as a result of the Security Breach.

22.10.5 Remediation: After a Security Breach, the Contractor shall take steps to reduce the risk of incurring a similar type of Security Breach in the future as directed by the City, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the City at no additional cost to the City. The City may adjust or direct modifications to this plan, and the Contractor shall make all reasonable modifications as directed by the City. The City may, in its sole discretion and at the Contractor's sole expense, require the Contractor to engage the services of an independent, qualified, City- approved third party to conduct a security audit. The Contractor shall provide the City with the results of such audit and evidence of the Contractor's planned remediation in response to any negative findings. Implementation of corrective actions to remedy the Security Breach and restore the City's access to the Work shall occur within five (5) calendar days of the date the Contractor becomes aware of any Security Breach.

22.11 Request for Additional Protections and Survival: In addition to the terms contained herein, the City may reasonably request that the Contractor protect the confidentiality of certain Protected Information or other data in specific ways to ensure compliance with Data Protection Laws and any changes thereto. Unless a request for additional protections is mandated by a change in law, the Contractor may reasonably decline the City's request to provide additional protections. If such a request requires the Contractor to take steps beyond those contained herein, the Contractor shall notify the City with the anticipated cost of compliance, and the City may thereafter, in its sole discretion, direct the Contractor to comply with the request at the City's expense; provided, however, that any increase in costs that would increase the Maximum Contract Amount must first be memorialized in a written amendment complying with City procedures. Obligations contained in this Agreement relating to the protection and confidentiality of any disclosed data shall survive termination of this Agreement, and the Contractor shall continue to safeguard all data for so long as the data remains confidential or protected and in the Contractor's possession or control.

23. DEN SECURITY:

23.1 Contractor, its officers, authorized officials, employees, agents, subcontractors, and those under its control, shall comply with safety, operational, or security measures required of Contractor or the City by the FAA or TSA. If Contractor, 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 the City, then, in addition to any other remedies available to the City, Contractor shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Contractor must pay

this amount within fifteen (15) days from the date of the invoice or written notice. Any fines and fees assessed by the FAA or TSA against the City due to the actions of Contractor and/or its agents will be deducted directly from the invoice for that billing period.

23.2 Contractor is responsible for compliance with Airport Security regulations and 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Contractor. The fee/fine will be deducted from the invoice at time of billing.

24. FEDERAL RIGHTS:

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the 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 the City for airport purposes and the expenditure of federal funds for the extension, expansion or development of the Airport System. As applicable, Contractor shall comply with the Standard Federal Assurances identified in the attached **Appendix: Standard Federal Assurances**.

25. TAXES, CHARGES AND PENALTIES:

The City shall not be liable for the payment of taxes, late charges, or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.

26. ASSIGNMENT; SUBCONTRACTING:

The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the City's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void and shall be cause for termination of this Agreement by the City. The City has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate this Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subconsultant, Subcontractor, or assign.

27. NO THIRD-PARTY BENEFICIARY:

Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

28. NO AUTHORITY TO BIND CITY TO CONTRACTS:

The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

29. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:

Except for the functional requirements provided in response to a request for proposal and/or any subsequent enhancement of the SOW or other implementation documentation that may be developed after execution of this Agreement, this Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous, or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City.

30. COMPLIANCE WITH DENVER WAGE LAWS:

To the extent applicable to the Contractor's provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

31. PAYMENT OF PREVAILING WAGE:

To the extent required by law, Contractor shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, D.R.M.C. §§ 20-76 through 20-79, including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City- owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the Effective Date of this Agreement.

31.1 Prevailing wage and fringe rates will adjust on the yearly anniversary of the actual date of bid or proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable.

31.2 Contractor shall provide the Auditor with a list of all subcontractors providing any services under the Agreement.

31.3 Contractor shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.

31.4 Contractor shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling (720) 913-5000 or emailing auditor@denvergov.org.

31.5 If Contractor fails to pay workers as required by the Prevailing Wage Ordinance, Contractor will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Contractor fails to pay required wages and fringe benefits.

32. DIVISION OF SMALL BUSINESS OPPORTUNITY PROVISIONS:

32.1 This project is covered under D.R.M.C. Chapter 28 Article V. In accordance with the D.R.M.C., the Division of Small Business Opportunity has conducted an analysis examining the scope of work for this project, cost estimate and the existing availability of certified firms in the following NAICS code: 423610 to perform the specified services as stated in the business utilization request form. DSBO has established that no DSBO program will apply.

32.2 If directed by DSBO, the Contractor is required to develop and comply with the Equity, Diversity and Inclusion Plan (“**EDI Plan**”) attached as **Exhibit D** and as it may be modified in the future by DSBO. Unless a separate Utilization Plan is required in accordance with § 28-62(b), D.R.M.C, the EDI Plan shall constitute the Utilization Plan required by § 28-62(b). Along with the EDI Plan and Utilization Plan requirements, the Contractor must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the EDI Plan and/or Utilization Plan and achieving the MWBE participation goal. The EDI Plan and Utilization Plan is subject to modification by DSBO.

33. SEVERABILITY:

Except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of this Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

34. CONFLICT OF INTEREST:

No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City’s Code of Ethics, D.R.M.C. § 2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under this

Agreement. The Contractor 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 the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

35. NOTICES:

All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, electronic mail, or mailed via United States mail, postage prepaid, if to the Contractor at the aforementioned address on page one of this Agreement, and if to the City at:

Chief Executive Officer
Denver International Airport
8500 Pena Blvd., 9th Floor
Denver, CO 80249

With a copy to:

Denver City Attorney's Office
DEN Legal
8500 Pena Blvd., 9th Floor
Denver, CO 80249

Notices hand delivered, sent by overnight courier, or electronic mail are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate electronic and substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

36. DISPUTES:

All disputes arising under or related to this Agreement shall be resolved by administrative hearing under the procedures described in D.R.M.C. § 5-17 and all related rules and procedures. The determination resulting from said administrative hearing shall be final, subject only to the right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106. In the event of a dispute between the Parties, the Contractor will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

37. GOVERNING LAW; VENUE:

This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

38. BOND ORDINANCES:

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

39. NO DISCRIMINATION IN EMPLOYMENT:

In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

40. LEGAL AUTHORITY:

The Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of the Contractor represents and warrants that he has been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either the Contractor or the person signing this Agreement to enter into this Agreement.

41. LICENSES, PERMITS, AND OTHER AUTHORIZATIONS:

The Contractor shall secure, prior to the Term, and shall maintain, at its sole expense, all licenses, certifications, rights, permits, and other authorizations required to perform its obligations under this Agreement. This Section is a material part of this Agreement.

42. NO CONSTRUCTION AGAINST DRAFTING PARTY:

The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.

43. ORDER OF PRECEDENCE:

In the event of an irreconcilable conflict between a provision of this Agreement 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: Standard Federal Assurances
This Agreement
Exhibit A
Exhibit A, Attachment 1: Service Level Agreement
Exhibit B: Rates
Exhibit C: Insurance Requirements
Exhibit D: EDI Plan

44. SURVIVAL OF CERTAIN PROVISIONS:

The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

45. INUREMENT:

The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

46. TIME IS OF THE ESSENCE:

The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

47. FORCE MAJEURE:

Neither Party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or

partial shutdown of manufactures, unreasonable unavailability of equipment or software from suppliers, default of a Subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other Party and/or other substantially similar occurrences beyond the Party's reasonable control ("**Excusable Delay**"). In the event of any such Excusable Delay, time for performance shall be extended for as may be reasonably necessary to compensate for such delay.

48. PARAGRAPH HEADINGS:

The captions and headings set forth herein are for convenience of reference only and shall not be construed to define or limit the terms and provisions hereof.

49. CITY EXECUTION OF AGREEMENT:

49.1 City Execution: This Agreement is expressly subject to, and shall become effective upon, the execution of all signatories of the City and, if required, the approval of Denver City Council. 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.

49.2 Electronic Signatures and Electronic Records: The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and/or Contractor 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.

50. ADVERTISING AND PUBLIC DISCLOSURE:

The Contractor shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of the Contractor's advertising or public relations materials without first obtaining the City's written approval. Any oral presentation or written materials related to services performed under this Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the City in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

51. EXTERNAL TERMS AND CONDITIONS DISCLAIMER:

Notwithstanding anything to the contrary herein, neither Party shall be subject to any provision including any terms, conditions, or agreements appearing on the City's, Contractor's or a Subcontractor's (as applicable) website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

52. PROHIBITED TERMS:

Any term included in this Agreement that requires the City to indemnify or hold the Contractor harmless; requires the City to agree to binding arbitration; limits the Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be *void ab initio*.

53. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:

The Contractor 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 the City barring the Contractor from City facilities or participating in City operations.

54. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

The Contractor consents to the use of electronic signatures by the City. This 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 this 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 this 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.

55. ATTACHED EXHIBITS INCORPORATED:

The following attached exhibits are hereby incorporated into and made a material part of this Agreement:

- Appendix: Standard Federal Assurances
- Exhibit A
- Exhibit A, Attachment 1: Service Level Agreement
- Exhibit B: Rates
- Exhibit C: Insurance Requirements
- Exhibit D: EDI Plan

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-202369505-00
Contractor Name: ANY VENDOR

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:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202369505-00
ANY VENDOR

By:  _____
B15B94BA3AE7453...

Name: Kevin McAleenan
(please print)

Title: Chief Executive Officer
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

APPENDIX
Federal Aviation Administration Required Contract Provisions
ALL CONTRACTS – NON-AIP FUNDED

Federal laws and regulations require that recipients of federal assistance (Sponsors) include specific contract provisions in certain contracts, requests for proposals, or invitations to bid.

Certain provisions must be included in all sponsor contracts, **regardless of whether or not the contracts are federally funded**. This requirement was established when a sponsor accepted the Airport Improvement Program (AIP) grant assurances.

As used in these Contract Provisions, “Sponsor” means The City and County of Denver, Department of Aviation, and “Contractor” or “Consultant” means the Party of the Second Part as set forth in Contract / Lease / Agreement to which this Appendix is attached.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Issued on June 19, 2018

GENERAL CIVIL RIGHTS PROVISIONS

Clause that is used for Contracts:

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A5.3.1, Issued on June 19, 2018

Clause that is used for Lease Agreements or Transfer Agreements:

The (tenant/concessionaire/lessee) agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A5.3.2, Issued on June 19, 2018

CIVIL RIGHTS – TITLE VI ASSURANCE

Compliance with Nondiscrimination Requirements:

During the performance 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 (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or

APPENDIX
Federal Aviation Administration Required Contract Provisions
ALL CONTRACTS – NON-AIP FUNDED

indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, 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 contract and the Nondiscrimination Acts And Authorities 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, the Regulations, and 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 to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, 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 Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration 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 any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.1, Issued on June 19, 2018

Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program:

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be

APPENDIX
Federal Aviation Administration Required Contract Provisions
ALL CONTRACTS – NON-AIP FUNDED

amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, Sponsor will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the Sponsor will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of Sponsor and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.3, Issued on June 19, 2018

Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program:

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, Sponsor will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, Sponsor will there upon revert to and vest in and become the absolute property of Sponsor and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.4, Issued on June 19, 2018

Title VI List of Pertinent Nondiscrimination Acts and Authorities:

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination 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);

APPENDIX
Federal Aviation Administration Required Contract Provisions
 ALL CONTRACTS – NON-AIP FUNDED

- 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 100-209), (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 non-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.*).

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A6.4.5, Issued on June 19, 2018

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The [*contractor / consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*contractor / consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A17.3, Issued on June 19, 2018

APPENDIX
Federal Aviation Administration Required Contract Provisions
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OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contracts Provisions, Contract Clause A20.3, Issued on June 19, 2018

For additional information, please refer to:

https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/

EXHIBIT A



SCOPE OF WORK

Customs and Border Protection Biometric Air Exit

1.0 SUMMARY OF PROJECT

Denver International Airport (DEN) is requesting proposals to leverage a Vendor service(s) to facilitate and install a biometric identity verification solution at designated gates used for international departure(s).

DEN's Vendor solution will meet Customs and Border Protection's (CBP) technical specifications to capture facial images of travelers and use the Traveler Verification Service (TVS) for identity verification.

DEN has 148 gates, to allow for maximum flexibility of gate usage and deployment of DEN's vendor solution, proposers solution shall be capable of secured wired and secured wireless (wi-fi) connectivity to the CBP Traveler Verification Service (TVS).

DEN needs the proposer to act as a system integrator and system manager for the term of the agreement providing all software, hardware, equipment, and implementation services that include design, configuration, interface development, project management, commissioning and training for an automated biometric facial recognition boarding gate system ("System").

2.0 DETAILED SCOPE OF WORK

In compliance with CBP's Business Requirements, a Vendor solution will be implemented at DEN that meets CBP's technical specifications to capture facial images of travelers and use the Traveler Verification Service (TVS) for identity verification. DEN is considering between 8 and 18 gates for the initial implementation of the solution with plans to expand to additional gates contingent on airline coordination and the availability of funding. Pricing Biometric Air Exit solutions shall be per unit. Costs details will be broken down and shall include unit costs and billable rates associated with integration with airline Departure Control Systems. For new airlines entrants into DEN, please provide costs for adding new airlines into the system.

The following gates are owned by DEN and are confirmed for initial installations. Gates not listed below are leased to airlines (preferential use) and will receive

EXHIBIT A

installed solutions based on their use for international departures and airline approval.

Gate	Number of Solutions at Gate
A33	2
A35	2
A37	2
A39	2
A41 (a/b)	3
A43	2
A45	2
A47	2
Not Assigned (Spare)	1
Total	18

2.1 STANDARDS / POLICIES, TECHNICAL REQUIREMENTS / SPECIFICATIONS AND OPERATIONAL REQUIREMENTS:

1. Comply with all current CBP specifications regarding Biometric Exit program and be certified by CBP as such to connect and process data with the TVS system. The system integrator must adhere to the requirements outline in the U.S. Customs and Border Protection Biometric Air Exit Business Requirements document and the technical on- boarding guide and the CBP documents listed in Attachment 6. See Attachment 6 – U.S. Customs and Border Protection Biometric Air Exit Business Requirements and Traveler Verification Service (Cloud-Based Matching) Technical Reference Guide (Authentication API and Technical Reference Guide).
2. Each camera must be connected to the TVS via a wired or wi-fi secure and encrypted connection. Vendor to provide type of encryption used (DES, 3 DES, etc.) and CBP must approve encryption algorithm. Camera manufacture information including name, make, model, firmware version, and serial number must be documented for the airport. Camera may not have any unsecured methods of externally accessing it. Vendors must have a connection with TVS and reference the CBP Traveler Verification Service Technical Reference Guide provided to the vendor through CBP.
3. Any photos taken to facilitate TVS matching must not be stored and/or retained by the business sponsor or its systems integrator/vendor. All photos must be immediately purged from the business sponsor's system upon the photo's transmission to TVS. The business sponsor's system (including its systems integrator) must provide a mutually agreeable method by which CBP

EXHIBIT A

is able to audit compliance with this requirement.

4. Hardware and software solution shall authenticate traveler identity in two seconds or less to maintain or improve airline boarding times/duration.
5. DEN is looking for hardware to have the ability to scale and replicate over time. The hardware needs to be non-disruptive, and easy to deploy across multiple gates. See Attachment 7 – Typical Gate Mounting Location(s).
6. Gate devices must have a Gate Agent facing screen and a passenger facing screen.
7. Gate devices must include a mechanism to “pause” the boarding process by the Gate Agent.
8. Managed service must provide a system that has remote monitoring of status, health, and system level performance for reporting over time and for real-time alerting on system outages. Details of how the remote monitoring is performed must be presented in proposal.
9. Managed Service must provide a time synchronize network time protocol (NTP) to ensure accuracy of logs and assist with troubleshooting.
10. Mounting hardware must be ergonomically designed to allow for Gate Agent manipulation and will not include any exposed wiring. Final mounting options will require DEN approval.
11. In addition to a mounted solution, pricing for a stand-alone kiosk gate device will be offered as an option for DEN use. The stand-alone kiosk shall be capable of secured wired and secured wireless (wi-fi) connectivity to the CBP Traveler Verification Service (TVS).
12. In addition to a mounted solution, pricing for a handheld device such as a tablet, iPad or iPhone will be offered as an option for DEN use. The handheld device shall be capable of secured wired and secured wireless (wi-fi) connectivity to the CBP Traveler Verification Service (TVS).Electrical equipment and systems shall meet Underwriters Laboratories (UL) Standards (or equivalent) and requirements of the National Electric Code (NEC). This listing requirement applies to the entire assembly.
13. Theft and vandalism resistant. Mounting hardware must secure hardware and restrict access to authorized personnel only.
14. Managed Service must provide performance measurements around service availability to include operational, monitoring, and performance (up time). DEN and CBP must be provided performance reporting when requested. Vendor must provide in their proposal their minimal range of performance for their solution. The vendor shall provide performance measurement data to the Project Manager at least monthly via email or via access to the vendor supplied database or dashboard.
15. DEN’s goal is to establish one-step boarding process for all international departures. Managed Service must provide a one-step mode of operation for airlines that board passengers using a one-step passenger verification and

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boarding process by connecting to those airline Departure Control Systems. Two-step boarding solutions will be provided and utilized in cases where a one-step solution is not possible.

16. The Managed Service must ensure that all access to the hardware is secured and restricted to authorized personnel only. Access to the system and its endpoints must require no less than a username/log-in and password.
17. Only one (1) entity (airline vs CBP) may access the system during an aircraft boarding process.
18. Managed Service must ensure that the CBP Password Expiration Policy is followed.
19. Managed Service must provide to DEN a description of how the vendor will adhere to each requirement outlined in the CBP Biometric Air Exit Business Requirements Document. Managed Service must be a vendor that has access to the CBP TVS service and must outline to DEN on how they adhere to the CBP Technical References.
20. Managed Service must submit information to include a network topology, high-level solution architecture, test schedule, and deployment plan. Managed Service must adhere to the CBP prescribed naming convention for device unique identifiers.
21. Managed Service must provide a solution that shows the status of the traveler-facing indicators. Indicators must be visible to both travelers and airline/CBP staff.
22. Managed Service must ensure compliance with DHS and CBP privacy and security policies to include any system log files and data stored, associated with a TVS-enabled biometric exit solution transaction data.

2.2 WARRANTIES AND LICENSING:

1. Hardware Warranty:
 - All hardware supplied as a part of this Request for Proposal (RFP) shall include a warranty throughout the entire duration of the contractual agreement. The Vendor shall manage all third-party warranties and renew, as applicable, throughout the life of the contract.
2. Software Warranty:
 - All software supplied as a part of this RFP shall include a warranty throughout the entire duration of the contractual agreement. The Vendor shall manage all third-party warranties and renew, as applicable, throughout the life of the contract.
3. Software License:
 - Commercial software packages shall have all registration and licensing documentation filed indicating DEN as the owner of the software. Costs for commercial off-the-shelf software licenses shall be included.
 - Warranty, maintenance, and support plans including recommended Service

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Level Agreements.

- DEN will be entitled to any and all upgrades, patches, hotfixes, and other software releases during the term of the agreement under the applicable software subscription and support agreement.
4. Hosting
- Hosted solution must be supported by a minimum of two separate Vendor data centers and have redundant network connects to DEN's WAN.
 - Cloud hosted solutions are preferred.
 - Hosted solution must provide the ability to access an alternate route to leverage the DEN data network for access by end users.
 - Hosted solution must have a defined and acceptable (to DEN) upgrade and patching process.
 - Perform daily incremental backups and weekly full backups.
5. Security
- The solution must follow security industry best practices and meet DEN guidelines, including but not limited to:
 - Two factor authentication
 - Physical access, i.e. preventive and detective access controls and reporting mechanisms, ensuring a timely and reliable process for notifying DEN of any breach; ensure that access controls are strictly enforceable and auditable.
 - All log entries shall be time and date stamped.
 - Connectivity will be HTTPS encryption based.
 - Ensure data confidentiality, including protection from unauthorized access, while:
 - In transit – ensure that all other data is encrypted beyond the reasonable threat of a successful brute force attack, or comparable risk-based mechanisms.
 - At rest – ensure that DEN data in databases will not be compromised.
 - Compliant with NIST 800-171 NIST Guidelines (application and hosting data center) or other applicable standards appropriate for protected information that will be contained within the stored data, and can produce audit results to DEN.
 - Meet or exceed storage and conditions standards set by the City of Denver with regards to the use, storage and protection of public records.
 - Ensure application audit capabilities – implement date-time stamp, or other mechanism sufficient to provide an audit trail for identifying critical data and resource application activity, and the reporting of unauthorized intrusions and activity or attempted breaches.
 - Vendor must maintain and share with DEN a disaster recovery (DR) plan that outlines steps that will be taken in the event of a ransomware attack to ensure continuity of services. The plan must include, but not be limited to, the following information:
 - Process for data recovery
 - SLA to provide restoration of services
 - The Vendor's proposed solution for system security, including but not limited to; end-point detection and response agents, vulnerability scanning agents,

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and baseline security configuration shall be coordinated with and approved by DEN. DEN is currently utilizing specific software/systems: CrowdStrike to provide end-point detection and response and Tenable to provide vulnerability scanning services and the preference is for the Vendor solution utilize these components. As part of the implementation process the Vendor shall facilitate a system security workshop with DEN stakeholders to coordinate a security solution that is acceptable to DEN.

- The Vendor must submit policies and / or procedures for cybersecurity incident management for the proposed solution that outline the acceptable and preferred methods to receive reported cybersecurity incidents from customers (such as DEN), an outline of the response plan the Vendor executes upon receiving reported incidents, and a prioritized timeframe for vulnerability remediation.
- Upon award, as part of their security program, the Vendor must attest that they subscribe to National Cyber Awareness System's current activity announcements (managed by US-CERT) <https://www.cisa.gov/uscert/ncas/current-activity> and to all updates to the Known Exploited Vulnerabilities Catalog produced by CISA <https://www.cisa.gov/known-exploited-vulnerabilities-catalog>, and agree to remediate any reported vulnerabilities reported through these information channels by the timelines specified by CISA (if they apply to the solution in use at DEN).

2.3 PROJECT IMPLEMENTATION:

DEN will require a dedicated Vendor Project Manager onsite throughout the implementation effort.

The Managed Service vendor must be able to provide onsite support for install and during the established implementation period. As the product proves viability, DEN may consider expansion of the solution to additional gates.

The vendor shall prepare the necessary documents required for installing, configuration, testing, and bringing the systems online. Project management and quality assurance plans shall include:

1. Testing plans such as how the system will be tested to ensure works as expected.
2. Component and system submittal documents (such as product specs, cut sheets, etc.)
3. System Management Plan
4. Installation plans
5. Component design plans
6. Commissioning plan to include training documentation/plan and how to retrieve reports.
7. End User Test and Acceptance plan

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8. System user training plan and user documentation
9. As-built drawings and documentation
10. Notifications plan to DEN to advise of Cybersecurity related incidents or breaches of data.
11. Network Topology diagram
12. TVS project plan
13. Contact Information to include name, email, and phone of managed service support staff and contact.
14. Insurance certification requirements
15. DEN airport ID badge to gain access to the Sterile Area

Vendor must remain onsite through validation that the system has been commissioned, tested, and validated that it meets CBP TVS requirements. Vendor must remain onsite through validation that the system has been commissioned, tested, and validated that it successfully connects and validates the airline customer has boarded the aircraft through the airlines Departure Control System.

No public communications will be permitted regarding TVS performance or CBP's biometric exit program without written consent from DEN and CBP to include marketing campaigns and multimedia content related to DEN, CBP, TVS or the biometric exit program.

The vendor, prior to using the TVS in the production environment, must follow U.S. Customs and Border Protection Biometric Air Exit Requirements. (Attachment 6).

2.4 DELIVERY, STORAGE AND HANDLING:

Equipment shall be delivered in original packages with labels intact and identification clearly marked.

Equipment and components shall be protected from the weather, humidity, temperature variations, dirt, dust, or other contaminants.

Equipment damaged, lost, or stolen prior to system acceptance shall be replaced at no cost to DEN.

The Managed Service must ensure that the equipment is secured to prevent theft and vandalism.

2.5 MANAGED SERVICE:

The solution must be managed by the vendor through Tier 1, Tier 2, and Tier 3 support modeling. Managed Service support needs will be based on airline flight schedule(s) and the number of gates the solution is implemented at. DEN intent is to have service to be a cradle to grave managed service. The following topic

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areas are typical of a Managed Service Agreement or Service Level Agreement. Proposers shall provide a sample Managed Service Agreement/Service Level Agreements that address these areas as part of their proposal.

Managed Service support needs will be based on airline flight schedule(s) and the number of gates where the solution is implemented. Managed Service must provide ongoing support when a problem has been identified. Managed service must provide support for incoming requests by phone, email or web to provide ongoing support with identified problem.

Maintain a knowledge database of DEN and system activity to monitor trends and improve system performance. Managed Service must provide how this will be accomplished in the proposal.

Once the Managed Service vendor has been informed of an issue, take ownership of the ticket, investigate, troubleshoot, and apply fix.

Provide ongoing maintenance and support services to ensure the system operates at required service levels.

Availability, Health and Performance Monitoring:

Managed Service support will be based on airline flight schedule(s) and the number of gate solutions that have been implemented. Managed Service vendor must provide in proposal how they will provide availability, health and performance monitoring for DEN airlines.

1. Proactive availability, health, and performance monitoring.
2. Reports required to airport as requested or by mutually agreed to interval (not to exceed monthly intervals)

Self-Serve Reporting:

1. Self-serve reporting on managed Vendor equipment and application availability, health, and performance.
2. Access provided to the airport for on demand availability, system health and performance reporting.

Tier 1 Support:

Tier 1 provides basic support at the designated gate(s) location when notified by the airport or airline for troubleshooting. Tier 1 support must include preventative maintenance.

1. Available based on airline flight schedule, accessed via any of the following:
2. On site Vendor Technician
3. Off Site Vendor Service Lead, Technician
4. By calling the dedicated DEN Business Technologies Account Manager
5. By the customer calling 1-303-342-2012 with the customer having a dedicated option to choose being directed to a dedicated staff member to

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answer customer call

6. Taking support calls from the DEN's in-house helpdesk staff
7. Performing preliminary remote triage
8. Support to remediate incidents.

Tier 2 Support:

Tier 2 provides in-depth technical support for the airport and airlines staff in response to incidents. These technicians will have the knowledge and experience who will assess issues and provide solutions for problems that cannot be handled by Tier 1 technicians. Tier 2 technicians can handle break/fix, configuration issues, troubleshooting, software solutions and hardware repair.

1. Troubleshooting/diagnosing and resolving detected and reported incidents for both hardware and software.
2. Escalating Service Issues via defined escalation process (where applicable)
3. Provide support to remediate incidents.
4. Hardware installation, setup, and configuration should international gates change and the solution needs to be relocated.
5. Hardware preventative maintenance as defined by the manufacturer.
6. Asset, spares, and consumables management.
7. Hosting server management (OS patching, monitoring, SSL certificates, security, upgrades, etc)

Tier 3 Support:

Tier 3 support provides expert knowledge and service support, at an off-site location, supporting Tier 1 and 2 support. Tier 3 supports are experts that can resolve issues that are not solvable from Tier 1 and Tier 2 support. Tier 3 technicians will attempt to duplicate problems, and define root causes using product design, code or specifications and always having the ability to deploy solutions to new problems. Once identification of root cause, new fixes are provided with documentation used by Tier 1 and 2 support.

Support services will be made through direct phone call or an agreed upon method between DEN and the Managed Service vendor.

Managed service consists of remote proactive monitoring and notification on availability, health, and performance data during airline flight schedules. The managed service includes a framework-based Incident Management, Service Request, Change Management, and Performance Management processes support is provided to remediate incidents. Vendor will provide on-site response to the main location of Denver International Airport at 8500 Pena Blvd, Denver CO 80249.

1. Informational – Managed Service will clear, act accordingly and will pass along

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any pertinent information to DEN Business Technologies Account Manager .

2. Minor – non- system affecting, Managed Service will clear, open trouble ticket if appropriate, act accordingly and will pass along any pertinent information to DEN Business Technologies Account Manager.
3. Major – system outage or partial outage, will resolve the outage and advise DEN Business Technologies Account Manager

Managed service tiered support will perform the spare part logistics.

Utilization of a vendor tool for recording, tracking, and reporting will be utilized. All information and resolution of issues will be tracked. Data must be shared with DEN on a cadence agreed upon by the DEN Business Technologies Account Manager and the vendor. Vendor will share all outages of the system and resolution within one (1) hour from notification. Expected response hours will be determined based on scheduled international departure hours at designated gates. Response and restore time for operational hours to be negotiated.

Response and restore times to be negotiated with DEN for non-operational hours.

Faults:

Faults or incidents are determined based on the following information that is reported by the airline or DEN. These faults shall be managed according to the severity of the problem. The definitions of the levels of severity for software problems requiring Tier 1, Tier 2 or Tier 3 intervention are as follows:

There are three fault categories.

Priority 1: (Critical Fault)	A service is completely interrupted, i.e. the entire system is not usable.
Priority 2: (Major Fault)	A system or service is partly disturbed, but generally still available.
Priority 3: (Minor Fault)	The problem has little or no effect on the systems' or services' operation.

Escalation:

Managed Service shall provide a clear call tree and point of contact within their Managed Service Agreement for escalations by airport or airlines if vendor is not responding to the normal or established protocol or not meeting expected response and restoral time frames for outages.

Warranty Agreements:

Under warranty, DEN is entitled to receive hardware asset replacements, free of charge, when an installed device shows a hardware defect.

Hardware is provided with twelve (12) month warranty from time of

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commissioning, based on phase of work. Phase work will have its own warranty twelve (12) month period and additional phases will have a separate twelve (12) month warranty period.

DEN is entitled to receive software bug fixes, product updates and security vulnerability patching with no incremental cost for the duration of the contract.

Software Update Services:

DEN is granted a non-exclusive and non-negotiable right to use the delivered software and documentation updates without a time limit. The update service covers software updates resulting from the latest version, which include the continued improvements of the product such as corrections of software faults and adaptations to changed environments including new releases of the Operating Systems. DEN receives the released software and documentation updates. Software deployment will be handled by the Vendor but communicated and approved for release by DEN Change Board prior to roll-out/implementation. Faults will be corrected in the course of product updates following the severity of the fault or incident.

All changes to the product will need to be communicated in advance to and approved by DEN. DEN will work with the Vendor to implement the required changes to the environment. Vendor is required to maintain product regulatory compliance throughout the duration of the contract.

Software Update Service Scope:

The following section describes the scope of Software Update Service:

Provision of software updates and the correction of faults reported by DEN in a test environment prior to deploying into a production system.

These software updates intend to update the software version or fix problems within the delivered software or its supporting data. Software updates may include fixed bugs, corrected graphics, and text as well as improved usability or performance.

New functionality will be provided through software upgrades (Note: there is a difference between *an update and an upgrade*) only, unless negotiated differently between DEN and the Vendor.

Provision of Software Upgrades:

After an official software version (software upgrade) is released, the previous version will be maintained for another six (6) months at minimum.

Upon release of an updated version of the Travel Verification Services TRG, the vendor must provide a plan and reasonable timetable to bring the solution back into compliance with any Government-mandated changes within 60 days. Any solution changes that are made, DEN may request additional IT and security documents from the vendor.

According to the current level of technology, it is not possible to provide software

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products which perfectly function in all applications and configurations. The obligation to eliminate faults is restricted in those cases, where achieved performance of the software is lower than described in the product description.

Troubleshooting and Fault Correction:

If software bugs are detected, the Vendor will take the necessary actions to eliminate the problem either with a corrective action or a suitable workaround. Corrective action or suitable workaround must be tested prior to being implemented into the production environment. Roll back to prior functioning releases or implementation of corrective software or hardware will be coordinated with DEN prior to implementation.

Any corrections to the software will be categorized and delivered in the following table:

Software Update Service Restore Time Definition

Fault Priority	Restore Times
1	24 Hours
2	Next available Release
3	Next available Release

Note: Restore Times are based on contracted Technical Support times; i.e. restore time may be interrupted.

Preventive Maintenance on Software:

In order to keep the provided products at their optimum performance, the Vendor may carry out preventive maintenance.

1. Vendor shall agree with DEN on the times for any planned interruption of service of the supplied solution.
2. Vendor shall notify DEN of any planned preventive maintenance activity affecting the supplied solution.
3. Vendor shall ensure that (scheduled) periods of service interruption to the supplied solution is kept to a minimum. Planned maintenance shall be conducted such that airline and airport operations are minimally impacted.

Expected performance levels of solution:

1. Vendor is expected to maintain their negotiated system availability performance. Vendor will provide to DEN how the availability is guaranteed for back-end components and how the system availability is measured.
2. Vendor must provide overall hardware availability.
3. Vendor will provide in Service Level Agreement / Managed Service proposal how expected performance will be measured.

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Direct End User Support or Training:

1. On-Site and Off-Site technical resource will continually provide training of solution to airline agent staff and CBP officers.

2.6 DEDUCTIONS FOR NON-PERFORMANCE OR SUBSTANDARD PERFORMANCE:

In the event the Vendor shall fail in the performance of the work specified and required to be performed or material to be delivered within the time limit set forth within the Agreement, after due allowance for any extensions of the time granted by the Project Manager or his/her authorized representative, the Vendor shall be liable to the City, as liquidated damages and not as a penalty, the amounts noted below for each and every failure in the performance by the Vendor.

The City shall have the right to make deductions from any amount due or that may become due the Vendor or collect such liquidated damages from the Vendor or his/her surety. Instances where deductions from unpaid billings may occur and the specific deductions for it shall include but are not limited to:

INCIDENT	DEDUCTION
1. Failure to provide performance measurements, as specified in Section 2.1, Item 13 of this SOW, to the DEN Project Manager by the agreed upon deadline.	\$100.00 per occurrence
2. Failure to respond to request for service and resolve an outage within 24 hours, Monday through Friday, or within 72 hours on a weekend or holiday, as specified in Section 2.5, "Managed Service Tiered Support . . ." of this SOW.	\$500.00 per occurrence
3. Failure to complete preventative maintenance, or failure to coordinate the preventative maintenance down time with the DEN Project Manager, per Section 2.5, "Preventative Maintenance on Software", of this SOW.	\$250.00 per occurrence
4. Failure to meet or exceed the agreed upon system availability performance more than 3 times in a one month period, as specified in Section 2.5, "Expected Performance Levels of Solution", of this SOW.	\$500.00 per monthly occurrence

Any instance of an imposition of deductions from balances owed for non-performance or unacceptable performance or delayed performance, as above,

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shall be prima facie evidence of a deficiency in the Vendor's performance and authorized personnel of the Department of Aviation shall document the incidents of non-performance or unacceptable performance or delayed performance on a "Vendor Deficiency/Deviation Report" which shall be forwarded to the appropriate Purchasing Division Buyer responsible for the bid administration of the Agreement.

3.0 WORK BY OTHERS**DEN PROVIDED INFRASTRUCTURE:**

DEN will provide the communications infrastructure to support the solution. This includes the communications cabling for connectivity of end devices as well as the Local Area Network (LAN)/Wide Area Network (WAN) to support data connectivity. The following provides a high-level description of the DEN enterprise LAN. For Wi-Fi communications structure(s), DEN will need to be provided understanding of how data will remain secure and encrypted and what additional protection measures are in place over a wired LAN configuration.

DEN to provide power to the devices at the gates.

Denver Enterprise Local Area Network: DEN runs a classic three tier Enterprise Network design (Core, Distribution, and Access Layer). This design separates IP space at the Distribution level, which is given unique IP space, which could be defined as the Main Terminal, Concourse A, Concourse B, Concourse C and so on.

Each region has an independent /16 of IP space and routing is required to traverse between physical regions. No layer 2 inter-region connectivity is permitted – only routed. Routed traffic is handled by DEN and segmentation is offered via access list or the preferred method, MPLS Virtual Route Forwarding tables- a service that is transparent to the user and service and would require a layer three firewall to traverse between it and the DEN primary network.

Connections to the internet can be offered in two ways. First is the use of the DEN infrastructure and firewall to push traffic internet bound out safely. The second option is to assign a /30 of public IP address space to the Vendor and use that for all internet bound traffic and utilize Vendor firewall and internet or private data connection.

Additional Items not in scope are and will be provided by DEN Business Technologies as required:

1. UPS
2. Cabling
3. Wi-Fi
4. Circuit Termination
5. A/C Power

DEN will provide the communications infrastructure to support the Vendor. This includes the communications cabling for connectivity of end devices as well as the

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local area network or Wi- Fi to support data connectivity. Coordination with DEN Business Technologies shall be performed by the Vendor to define the communications infrastructure requirements to be provided by DEN.

DEN will provide the Microsoft O365 and ITL Licenses for the vendor to use DEN's ServiceNow solution for ticket tracking.

4.0 COORDINATION

Coordinate this work with the DEN Business Technologies Project Manager, DEN Infrastructure and Maintenance Project Manager (electrical/structural) and the DEN Premise Wiring & Communications System project manager or as outlined above in this document.

5.0 REFERENCE STANDARDS

All work performed under this Scope of Work shall be in accordance with all applicable Airport rules and regulations, codes, and DEN Design Standard Documents.

Technicians required to respond on premises will be required to complete the DEN airport ID badging process and maintain an active DEN airport ID badge.

Device mounting to existing gate millwork or as stand-alone units will need to be reviewed and approved by DEN leadership in advance of installation. Mounting brackets must be lockable to prevent theft of hardware. Device mounting and installation will not include any exposed wiring.

6.0 DOCUMENTATION AND DRAWING REQUIREMENTS

Vendor shall maintain a complete set of system documentation including as-builts and system architectural drawings of how the system is connected and configured. These documents and associated drawings shall be maintained in Microsoft Word or PDF (Documents) and in Microsoft Visio or AutoCAD (drawings) and contain mutually agreed to detail and made available to DEN at solution acceptance and later demand.

1.1 SLA Definitions and Measurements

“Minor Default” is deemed to occur when the vendor’s performance against an SLA falls in the range of performance in which a minimum SLA credit is granted to Customer.

“Major Default” is deemed to occur when the vendor’s performance against an SLA falls in range of performance in which a maximum SLA default credit is granted to Customer.

“Scheduled Downtime,” means the planned downtime, of which the vendor has notified Customer at least 72 hours in advance.

“Service Level Agreement” or “SLA” means the service levels as defined by production uptime as more fully described in the “Service Level Measurement” section, below.

“Service Level Default” means that the vendor’s performance fell below the established SLA during a measurement period.

“Service Level Credit” means the amount of additional Service the Customer will be credited for the applicable Service Level Default during the measurement period.

“Target Service Level” means the expected performance range, within which no Service Level Default is assessed, and no Service Level Credit is granted.

Measurement periods are monthly, in arrears, with Service Level Defaults and Service Level Credits being calculated monthly. Any Service Level Credits shall be credited to the Customer annually in arrears, as applicable.

The SLA’s set forth in this Exhibit shall be Customer’s sole and exclusive remedy related to the SLA default and such Service Level Credits are in lieu of other available remedies such as damages for breach of contract.

1.2 Exceptions

The following items will not be considered as a part of the calculation of Service Level Credits and the vendor will be relieved of responsibility for SLAs and associated Service Level Credits to the extent the vendor’s failure to meet the SLA(s) is determined by the parties, to be due to:

- (i) Force Majeure Events as defined in the Agreement.
- (ii) Outages resulting from mutually agreed upon Scheduled Downtime
- (iii) Outages arising from Customer’s network being inaccessible.
- (iv) Domain Name Server (DNS) issues outside of the direct or contractual control of the vendor
- (v) Customer’s acts or omissions (including acts or omissions of a third party not acting on behalf of the vendor), including, without limitation, custom configuration, scripting, coding, negligence, failure to timely perform or provide relevant assistance, information or infrastructure required of Customer

or willful misconduct.

(vi) Internet outages, or other third-party infrastructure outages which hinder access to the vendor's environment.

(vii) Outages requested by Customer.

(viii) Changes by Customer, or its agents, to Customer's environment which are not communicated to the vendor, and which adversely impact the vendor's ability to perform the Service.

(ix) Inability of Customer to log-in due to Customer's failure to provide authentication stores to control authentication.

1.3 Service Level Measurement

Service Area: Production Uptime

Measurement: For Production availability, the Production downtime shall be measured as the aggregate number of minutes during the monthly measurement period in which the Service was unavailable, divided by the total number of minutes in the monthly measurement period. The period of unavailability shall be measured from the point-in-time that such unavailability is or reasonably should have been detected by the vendor.

(Uptime % = [1 - (downtime / Production) * 100%]).

For example, if hosting is unavailable for a total of 200 minutes in a 30-day month, then Production Uptime is [1 - (200/43,200) * 100%] = 99.5%

Target Service Level: Production Uptime is greater than or equal to 99.95%

Minor Default: Production Uptime is less than 99.95% but greater than or equal to 99.5%

Major Default: Production Uptime is less than 99.5%

Measurement Period: Measured on a monthly basis. The vendor will measure the Production Uptime for each downtime event and in the aggregate each month during the Term, and, upon written request of Customer, report the results to Customer within ten (10) business days of the of the request.

1.4 Service Level Credits

Minor Default = credit of eight (8) additional days of the Service as an extension of the term of the Agreement.

Major Default = credit of thirty days (30) additional days of the Service as an extension of the term of the Agreement.

Response time to Security Level 1 concern is greater than 2 hours = credit of 3 days (3) additional days of

the Service as an extension of the term of the Agreement.

Scheduled down time is greater than 2 hours per month = credit of five days (5) additional days of the Service as an extension of the term of the Agreement; scheduled down time would not be considered a Minor Default for purposes of Service Level Credit.

1.5 Included Support

1.5.1 Support Center

The vendor will provide support from a support center via e-mail, an Internet based Client support tool (English version only), and telephone. All support services shall be provided in English language, unless otherwise specified in this Agreement.

1.5.2 Hours of Support Center Operation

Support center is available twenty-four (24) hours per day, seven (7) days per week.

1.5.3 Requesting Support

- Customer will identify the severity level (defined below) of the incident when requesting support from the support center.
- If all support center representatives are busy with other calls, a message will be left on the voicemail response system, which will page appropriate support personnel.

1.5.4 Non-Critical Support

System performance or bug affecting some users that does not prevent a customer from using the software to respond to a crisis.

- Response Time: 2 business days
- Channel: Email, web, or general support phone number.

1.5.5 Software Critical Issue

System performance or bug affecting all users that prevents a customer from using the system.

Response time: 1 hour

- Channel: Email, web, or general support phone number

Exhibit B

Unit Pricing for Non-Recurring Costs

Attachment 1, Part 4 - ENTER ALL UNIT PRICING FOR NON-RECURRING COSTS PER SOLUTION/INSTALLATION (NOT PER GATE)

A1 Equipment, Components, Supplies Per Solution Installation (Not Per Gate)

Cost Item Description	Units	Unit Costs (\$USD)	Total Cost	Notes
veriScan Camera Device	18	2051	36918	
veriScan Housing	18	1808	32544	Potential reduction of \$1,808 if DEN does not require a spare housing.
Equipment Receipting	18	469	8442	
			0	
			0	
			0	
			0	
			0	
			0	

A2 Project Management Per Solution/Installation (Not Per Gate)

Employee Title	Hourly Rate (\$USD)	Hours	Total Cost	Notes
Project Manager	168	415	69720	
Senior Hardware Technician	45	185.51	8347.95	
Hardware Engineer	54	132.77	7169.58	
Lead Installer	102	102	10404	
Installation Technician	100	93.03	9303	
			0	
			0	
			0	
			0	

A3 Installation Cost Per Solution Installation (Not Per Gate)

Employee Title	Hourly Rate (\$USD)	Hours	Total Cost	Notes
Senior Hardware Technician	185.51	45	8347.95	
Hardware Engineer	132.77	54	7169.58	
Lead Installer	102	96	9792	
Installation Technician	93.03	100	9303	
			0	
			0	
			0	
			0	

Total Unit Cost Per Solution Installation **217461.06**

ALTERNATE 1

A4 - Stand Alone Kiosk Gate Device Unit Cost (Per Solution Installation)

Cost Item Description	Units	Unit Costs (\$USD)	Total Cost	Notes
Standalone veriScan Device (Hardware Only)	1	4789	4789	
Standalone veriScan Device Assembly/Installation	1	487.58	487.58	
			0	
			0	
			0	
			0	
			0	

ALTERNATE 2

A5- Handheld Device Unit Cost (Per Solution Installation)

Cost Item Description	Units	Unit Costs (\$USD)	Total Cost	Notes
veriScan Handheld Mobile Device (iPhone 15 Pro Max)	1	1712	1712	
veriScan Mobile Device Fixed Housing with swivel and tilt mechanism	1	2956	2956	
			0	
			0	
			0	
			0	
			0	

Unit Pricing for Recurring Costs

Attachment 1 Part 4 - ENTER ALL UNIT PRICING FOR RECURRING ANNUAL COSTS

Maintenance/Support	Cost Item Descriptor	Purpose/Function	Year 1			Year 2			Year 3			Year 4			Year 5		
			Units	Unit Price	Total	Units	Unit Price	Total	Units	Unit Price	Total	Units	Unit Price	Total	Units	Unit Price	Total
Tier 1 Maintenance	Per Scope of Work	Annual Maintenance	17	541	9197	17	557.23	9472.9	17	573.95	9757.15	17	591.17	10049.89	17	608.9	10351.3
Tier 2 Maintenance	Per Scope of Work	Annual Maintenance	17	1304.47	22176	17	1343.6	22841	17	1383.91	23526.47	17	1425.43	24232.31	17	1468.19	24959.23
Tier 3 Maintenance	Per Scope of Work	Annual Maintenance	17	1474	25058	17	1518.22	25810	17	1563.77	26584.09	17	1610.68	27381.56	17	1659	28203
Total			56431			58124			59867.71			61663.76			63513.53		

License Fees	Cost Item Descriptor	Purpose/Function	Year 1			Year 2			Year 3			Year 4			Year 5		
			Units	Unit Price	Total	Units	Unit Price	Total	Units	Unit Price	Total	Units	Unit Price	Total	Units	Unit Price	Total
Item B1	Annual License Fee	veriScan License	17	3840	65280	17	3955	67235	17	4074	69258	17	4196.22	71335.74	17	4322.11	73475.87
Item B2	Software Maintenan	veriScan License	17	0	0	17	791	13447	17	814.8	13851.6	17	839.24	14267.08	17	864.42	14695.14
Item B3								0									
Item B4																	
Item B5																	
Item B6																	
Total			65280			80682			83109.6			85602.82			88171.01		

Other	Cost Item Descriptor	Purpose/Function	Year 1			Year 2			Year 3			Year 4			Year 5		
			Units	Unit Price	Total	Units	Unit Price	Total	Units	Unit Price	Total	Units	Unit Price	Total	Units	Unit Price	Total
Item C1																	
Item C2																	
Item C3																	
Item C4																	
Item C5																	
Item C6																	
Total			0			0			0			0			0		

Total Recuring Cost	
Cost Group	5-Years
Tier 1 Maintenance	48828.25
Tier 2 Maintenance	117735.21
Tier 3 Maintenance	133036.39
License Fees	402845.43
Other	0

Unit Pricing for Billing Rates

Attachment 1, Part 4 - ENTER BILLING RATES				
Cost Item Description	Units	Unit Costs (\$USD)	Total Cost	Notes
(A) Software Cost				
veriScan Annual Software License Fee	1	3840	3840	Subject to CPI Annual Adjustment
veriScan Software Maintenance	1	768	768	Subject to CPI Annual Adjustment
			0	
			0	
			0	
			0	
			0	
			0	
(B) Hardware Cost				
veriScan Camera Device	1	2051	2051	
veriScan Custom Housing	1	2435	2435	
			0	
			0	
			0	
			0	
			0	
			0	
Service Cost - Project Management				
Project Manager Hourly	1	168	168	
			0	
			0	
			0	
			0	
			0	
			0	
			0	
			0	
(C3) Service Cost - Report Configuration				
Software Engineer	0	0	0	Pangiam includes up to 40hrs for Report Configuration at no charge to DEN.
			0	
			0	
			0	
			0	
			0	
(C3) Service Cost				
Hardware Installation Technician	1	93.03	93.03	Excludes travel expenses
			0	
			0	
			0	
(C3) Service Cost - Project Management				
			0	

EXHIBIT C

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
GOODS AND SERVICES AGREEMENT**

A. Certificate Holder and Submission Instructions

Contractor must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard
Denver CO 80249
Attn/Submit to: contractadmininvoices@flydenver.com

- ACORD Form (or equivalent) certificate is required.
- Contractor must be evidenced as a Named Insured party.
- Electronic submission only, hard copy documents will not be accepted.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Contractor.

B. Defined Terms

1. “Agreement” as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. “Contractor” as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the attached Agreement.

C. Coverages and Limits

1. Commercial General Liability

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual per policy aggregate must be maintained.

- a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.
- c. If a “per location” policy aggregate is required, “location” shall mean the entire airport premises.

2. Business Automobile Liability

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- b. If Contractor does not have blanket coverage on all owned and operated vehicles and will require unescorted airside driving privileges, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened

- Pollution Endorsement and an MCS 90 endorsement on its policy.
- d. If Contractor does not own any fleet vehicles and Contractor's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Contractor shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Contractor. This provision does not apply to persons solely commuting to and from the airport.
 - e. If Contractor will be completing all services to DEN under this Agreement remotely and not be driving to locations under direction of the City to perform services this requirement is waived.
3. Workers' Compensation and Employer's Liability Insurance
Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing exemption status must be submitted with the Certificate of Insurance.
4. Property Insurance
Contractor is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, materials, tools, equipment, vehicles, furnishings, structures and personal property of its employees and subcontractors unless caused by the sole, gross negligence of the City. If Contractor carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.
5. Professional Liability (Errors and Omissions) Insurance. Contractor shall maintain a minimum limit of \$1,000,000 each claim and annual policy aggregate, providing coverage for all applicable professional services outlined in this Agreement.
6. Cyber Insurance. Contractor shall maintain a minimum limit of \$1,000,000 per occurrence and \$1,000,000 annual policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, and network security.
7. Technology Errors and Omissions. Contractor shall maintain a minimum limit of \$1,000,000 per occurrence and \$1,000,000 annual policy aggregate including cyber liability, network security, privacy liability and product failure coverage.
- a. Coverage shall include, but not be limited to, liability arising from theft, dissemination and/or use of personal, private, confidential, information subject to a non-disclosure agreement, including information stored or transmitted, privacy or cyber laws, damage to or destruction of information, intentional and/or unintentional release of private information, alteration of information, extortion and network security, introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon, advertising injury, personal injury (including invasion of privacy) and intellectual property offenses related to internet.
8. Excess/Umbrella Liability
Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

D. Reference to Project and/or Contract

The City Project Name, Title of Agreement and/or Contract Number and description shall be noted on the Certificate of Insurance, if applicable.

E. Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation, Employer's Liability and Professional Liability, if required), Contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers as Additional Insureds by policy endorsement.

F. Waiver of Subrogation

For all coverages required under this Agreement (excluding Professional Liability, if required), Contractor's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers by policy endorsement.

If Contractor will be completing all services to the City under this Agreement remotely and not be traveling to locations under direction of the City to perform services, this requirement is waived specific to Workers' Compensation coverage.

G. Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Such notice shall be sent thirty (30) calendar days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) calendar days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within three (3) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer(s) as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.
4. In the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits, Contractor will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Contractor cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

H. Cooperation

Contractor agrees to fully cooperate in connection with any investigation or inquiry and accept any formally tendered claim related to this Agreement, whether received from the City or its representative. Contractor's failure to fully cooperate may, as determined in the City's sole discretion, provide cause for default under the Agreement. The City understands acceptance of a tendered claim does not constitute acceptance of liability.

I. Additional Provisions

1. Deductibles or any type of retention are the sole responsibility of the Contractor.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. Coverage required may not contain an exclusion related to operations on airport premises.
4. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
5. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.

6. If the Contractor procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.
7. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended reporting period placed for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by an authorized representative and must be submitted to the City at the time Contractor signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. All coverage requirements shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements.
11. The City shall have the right to verify, at any time, all coverage, information, or representations, and the insured and its insurance representatives shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of copies of insurance policies upon request. In the case of such audit, the City may be subject to a non-disclosure agreement and/or redactions of policy information unrelated to verification of required coverage.
12. No material changes, modifications, or interlineations to required insurance coverage shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to each policy renewal.
14. Contractor's failure to maintain required insurance shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.

J. Part 230 and the DEN Airport Rules and Regulations

If the minimum insurance requirements set forth herein differ from the equivalent types of insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management. Part 230 applies to Contractor and its subcontractors of any tier.



EQUITY, DIVERSITY, AND INCLUSION PLAN (EDI PLAN)

Pangiam respects and supports the City of Denver's commitment to advancing its vision of business equity, diversity, inclusion, and sustainability as described in its Biometric Air Exit RFP and on flydenver.com. As a relatively new organization in an emerging industry where accessibility to individuals with highly specialized skills (via direct employment or subcontracting) in Artificial Intelligence and Machine Learning is a recruitment and a procurement challenge, Pangiam is just beginning to develop its strategy. While it would be easiest to hire a consultant to create a media statement, these efforts would appear to be more about "checking a box" than a **full commitment to Equity, Diversity, and Inclusion**. Pangiam understands that an effective business equity, diversity, and inclusion strategy plan must be **comprehensive, specific, and measurable**. Our senior leadership is working to develop and implement an EDI plan that meets all three of these criteria. In its infancy, Pangiam's EDI strategy focuses on the key areas of Community Development, Brand, Management, Culture, and Board Governance.

Community Development

We value collaboration and shared successes. Not only do our products play well with others – (they are device and vendor agnostic and integrate easily) but our people do as well. The Pangiam team represents expertise from all over government, industry and the world and we wish to share our knowledge to help multi-cultural communities grow.

Inaugural Summer 2022 Internship Program

Pangiam hosted its inaugural Summer Internship in 2022, inviting college students to explore the field of biometric facial recognition, Artificial Intelligence, and Machine Learning. Working directly at Pangiam headquarters in McLean, Virginia, college students assisted in various departments such as Pangiam Labs and Operations. For the summer intern who graduated in December, this led to full time employment with Pangiam. We hope the remaining interns return this summer and join us as full-time employment when they graduate. Plans are in development to focus on attracting more Women and Minorities into the Internship Program by partnering with local HBCUs, for example. This inaugural program helped us identify best practices and learned what resonated with the demographics of the Interns. Considerable progress was made and will be factored into the 2023 Summer Internship program.

University Partnerships

Given that almost all Pangiam careers require advanced technological skills, the best source of recruitment comes from universities. By developing these partnerships with the next generation of technologists, Pangiam creates meaningful opportunities for employment as well as knowledge sharing.

- Southern Methodist University: In September 2022, Pangiam announced its partnership with the Southern Methodist University AT&T Center for Virtualization to launch the Intelligent Systems and Bias Examination Lab (ISaBEL). Research conducted at ISaBEL focuses on measuring facial recognition performance across different demographic groups. Understanding how a facial



recognition system operates on diverse populations is a key step toward mitigating bias in the systems. Southern Methodist University and Pangiam will leverage the first international standard on how to do demographic testing and certifications of facial recognition systems. Pangiam is also the first group internationally to apply the methods of ISO 19795-10 standard on bias to a commercial product and release a public report on findings.

- George Mason University: In the fall of 2022, Pangiam sponsored Accelerate 22 at George Mason University, where our Chief Investment Officer presented on a panel about early-stage national security technology. The conference focused on supporting high-tech startups in the Washington D.C. region. Our sponsorship is part of an on-going partnership with George Mason, one of Pangiam's strongest recruitment partners.
- West Virginia University: Pangiam was proud to open its Lab to host fifty honors students from the West Virginia University Chambers School of Business. The students toured the lab facility, listening to discussions about emerging technologies and U.S. Customs and Border Protection.
- School of Public Affairs, American University: In March 2023, Pangiam announced a new partnership with the School of Public Affairs, American University's Terrorism and Homeland Security Policy (THSP) Program launching an Artificial Intelligence Practicum.

Brand

Pangiam's EDI commitment goes well beyond introducing policies and practices, it is reflected in how we develop and train our artificial intelligence. Bias mitigation and the ethical sourcing of images have been paramount and critical since the creation of our first facial recognition algorithm. Pangiam does not scrape images from the Internet as we believe a person owns their own image. We use only ethically sourced images to train our AI. To mitigate bias in AI, you must train with a large set of diverse images – millions of images that reflect the entire world. Our sustained commitment to bias mitigation in our system is proven repeatedly in objective third-party tests, competitions, and rallies.

The results of the 2022 U.S. Department of Homeland Security (DHS) Biometric Rally – pitting Pangiam Trueface facial recognition technology against competitors in the market in a blind test – were released, and Pangiam was ranked #1 in overall performance across various platforms.

Pangiam's Trueface facial recognition technology competed among ten industry-leading technologies and placed #1 across three of the four acquisitions systems tested by DHS. It achieved maximum performance in identification across demographics, including:

- 1st place for identifying males
- 1st place for identifying females
- 1st place for identifying all three categories for race
- 1st place for identifying skin-color groups



Management

Like almost all corporations in the United States, Pangiam adheres to all Equal Opportunity Employment and Affirmative Action Employment federal, state, and local laws; however, we recognize these laws do not necessarily create meaningful opportunities for historically underutilized and disadvantaged businesses or individuals. That is why our CEO, Kevin McAleenan, has committed our organization to move our EDI plans from infancy to fully implemented by the end of 2023, with measurement periods to begin in 2024. Policies that are not measured are ineffective.

Pangiam has applied for membership to the Airport Minority Advisory Council (AMAC) to provide Management access to necessary educational training focused on airport environment and business operations.

Culture

Pangiam recognizes that technical recruitment means companies recruit individuals with a collective mixture of differences and similarities that include individual characteristics, values and beliefs, and experiences and backgrounds. To that end Pangiam's workforce (including at senior and middle management levels) consists of a mix of collective differences including members of the African American, Asian American, and LGBTQ+ communities.

We place a high value on open communication and expressing differing and different points of view. We expect our employees and suppliers to act with integrity and ethics and hold themselves to the highest standards of personal and professional interaction.

Board Governance

Pangiam's ultimate parent company is AE Industrial Partners. AE Industrial Partner's Environmental, Social and Governance ("ESG") Policy was developed with the principles of both the United Nations-supported Principles AE for Responsible Investment (PRI) and the American Investment Council's Guidelines for Responsible Investment. As an AE Industrial Partner portfolio company, Pangiam adheres to the same ESG Policy from Sr. Management throughout the organization.

Please refer to Appendix B for AE Industrial Partner's Environment, Social and Governance policy.