

## AGREEMENT FOR PROFESSIONAL SERVICES

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

### WITNESSETH:

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

**WHEREAS**, the City desires to obtain professional software maintenance and support services for the Physical Access Control Systems (PAC) at DEN; and

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

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

#### 1. LINE OF AUTHORITY:

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 the DEN 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. SCOPE OF WORK AND CONTRACTOR RESPONSIBILITIES:

**A. Scope of Services.** Contractor shall provide professional services and deliverables for the City as designated by the CEO, from time to time and as described in the attached *Exhibit A* (“**Scope of Work**”), in accordance with the schedules and budgets set by the City. Without requiring amendment to this Agreement, the City may, through an authorization or similar form issued by the CEO and signed by Contractor, make minor changes, additions, or deletions to the Scope of Work without change to the Maximum Contract Amount.

**B. Standard of Performance.** Contractor shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

**C. Time is of the Essence.** Contractor acknowledges that time is of the essence in its performance of all work and obligations under this Agreement. Contractor shall perform all work under this Agreement in a timely and diligent manner.

**D. Subcontractors.**

i. In order to retain, hire, and/or contract with an outside subcontractor that is not identified in this Agreement for work under this Agreement, Contractor must obtain the prior written consent of the CEO. Contractor shall request the CEO's approval in writing and shall include a description of the nature and extent of the services to be provided; the name, address and professional experience of the proposed subcontractor; and any other information requested by the City.

ii. The CEO shall have the right to reject any proposed outside subcontractor deemed by the CEO to be unqualified or unsuitable for any reason to perform the proposed services. The CEO shall have the right to limit the number of outside subcontractors and/or to limit the percentage of work to be performed by them.

iii. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of this Agreement and/or the subcontract.

iv. Contractor is subject to Denver Revised Municipal Code ("D.R.M.C.") § 20-112, wherein Contractor shall pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from the City. Any late payments are subject to a late payment penalty as provided in the Denver Prompt Payment Ordinance (D.R.M.C. §§ 20-107 through 20-118).

v. This Section, or any other provision of this Agreement, shall not create any contractual relationship between the City and any subcontractor. The City's approval of a subcontractor shall not create in that subcontractor a right to any subcontract. The City's approval of a subcontractor does not relieve Contractor of its responsibilities under this Agreement, including the work to be performed by the subcontractor.

**E. Personnel Assignments.**

i. Contractor or its subcontractor(s) shall assign all key personnel identified in this Agreement to perform work under this Agreement ("**Key Personnel**"). Key Personnel shall perform work under this Agreement, unless otherwise approved in writing by the SVP or their authorized representative. In the event that replacement of Key Personnel is necessary, the City in its sole discretion shall approve or reject the replacement, if any, or shall determine that no replacement is necessary.

ii. It is the intent of the Parties that all Key Personnel perform their specialty for all such services required by this Agreement. Contractor and its subcontractor(s) shall retain Key Personnel for the entire Term of this Agreement to the extent practicable and to

the extent that such services maximize the quality of work performed.

iii. If, during the Term of this Agreement, the Project Manager determines that the performance of any Key Personnel or other personnel, whether of Contractor or its subcontractor(s), is not acceptable or that any such personnel is no longer needed for performance of any work under this Agreement, the Project Manager shall notify Contractor and may give Contractor notice of the period of time which the Project Manager considers reasonable to correct such performance or remove the personnel, as applicable.

iv. If Contractor fails to correct such performance, then the City may revoke its approval of the Key Personnel or other personnel in question and notify Contractor that such Key Personnel or other personnel will not be retained on this Project. Within ten (10) days of receiving this notice, Contractor shall use its best efforts to obtain adequate substitute personnel who must be approved in writing by the Project Manager. Contractor's failure to obtain the Project Manager's approval shall be grounds for Termination for Cause in accordance with this Agreement.

### **3. OWNERSHIP AND DELIVERABLES:**

Upon payment to Contractor, all records, data, deliverables, and any other work product prepared by Contractor or any custom development work performed by Contractor for the purpose of performing this Agreement on or before the day of the payment, whether a periodic or final payment, shall become the sole property of the City. Upon request by the City, or based on any schedule agreed to by Contractor and the City, Contractor shall provide the City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Contractor or otherwise saved or maintained by Contractor as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Parties. Contractor also agrees to allow the City to review any of the procedures Contractor uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to three (3) years after termination of this Agreement. Upon written request from the City, Contractor shall deliver any information requested pursuant to this Section within ten (10) business days in the event a schedule or otherwise agreed-upon timeframe does not exist.

### **4. TERM AND TERMINATION:**

**A. Term.** The Term of this Agreement shall commence on January 1, 2022 and shall expire on December 31, 2024, unless terminated in accordance with the terms stated herein (the "**Expiration Date**"). The Term of this Agreement may be extended for two (2) additional terms of one (1) year each, on the same terms and conditions, by written notice from the CEO to Contractor. However, no extension of the Term shall increase the Maximum Contract Amount stated below.

**B.** If the Term expires prior to Contractor completing the work under this Agreement, subject to the prior written approval of the CEO, this Agreement shall remain in full force and effect until the completion of any services commenced prior to the Expiration Date. Contractor

has no right to compensation for services performed after the Expiration Date without such express approval from the CEO.

**C. Suspension and Termination.**

i. Suspension. The City may suspend performance of this Agreement at any time with or without cause. Upon receipt of notice from the SVP, Contractor shall, as directed in the notice, stop work and submit an invoice for any work performed but not yet billed. Any milestones or other deadlines shall be extended by the period of suspension unless otherwise agreed to by the City and Contractor. The Expiration Date shall not be extended as a result of a suspension.

ii. Termination for Convenience. The City may terminate this Agreement at any time without cause upon written notice to Contractor.

iii. Termination for Cause. In the event Contractor fails to perform any provision of this Agreement, the City may either:

a. Terminate this Agreement for cause with ten (10) days prior written notice to Contractor; or

b. Provide Contractor with written notice of the breach and allow Contractor an Opportunity to Cure.

iv. Opportunity to Cure. Upon receiving the City's notice of breach pursuant to Section 4(C)(iii)(b), Contractor shall have five (5) days to commence remedying its defective performance. If Contractor diligently cures its defective performance to the City's satisfaction within a reasonable time as determined by the City, then this Agreement shall not terminate and shall remain in full force and effect. If Contractor fails to cure the breach to the City's satisfaction, then the City may terminate this Agreement pursuant to Section 4(C)(iii)(a).

v. Compensation for Services Performed Prior to Suspension or Termination Notice. If this Agreement is suspended or terminated, the City shall pay Contractor the reasonable cost of only those services performed to the satisfaction of the CEO prior to the notice of suspension or termination. Contractor shall submit a final invoice for these costs within thirty (30) days of the date of the notice. Contractor has no right to compensation for services performed after the notice unless directed to perform those services by the City as part of the suspension or termination process or as provided in Section 4(C)(vi) below.

vi. Reimbursement for Cost of Orderly Termination. In the event of Termination for Convenience of this Agreement pursuant to Section 4(C)(ii), Contractor may request reimbursement from the City of the reasonable costs of orderly termination associated with the Termination for Convenience as part of its submittal of costs pursuant to Section 4(C)(v). In no event shall the total sums paid by the City pursuant to this Agreement, including Sections 4(C)(v) and (C)(vi), exceed the Maximum Contract Amount.

vii. No Claims. Upon termination of this Agreement, Contractor shall have no claim of any kind against the City by reason of such termination or by reason of any act incidental thereto. Contractor shall not be entitled to loss of anticipated profits or any other consequential damages as a result of termination.

**D. Remedies.** In the event Contractor breaches this Agreement, Contractor shall be liable to the City for all costs of correcting the work without additional compensation, including but not limited to additional costs incurred by the City, its tenants, or its other contractors arising out of Contractor's defective work. These remedies are in addition to, and do not limit, the remedies available to the City in law or in equity. These remedies do not amend or limit the requirements of Section 8 and Section 9 otherwise provided for in this Agreement.

## 5. COMPENSATION AND PAYMENT:

**A. Maximum Contract Amount.** Notwithstanding any other provision of this Agreement, the City shall not be liable under any theory for payment for services rendered and expenses incurred by Contractor under the terms of this Agreement for any amount in excess of the sum of **One Million Two Hundred Sixty Thousand Dollars and Zero Cents (\$1,260,000.00)** ("**Maximum Contract Amount**"). Contractor shall perform the services and be paid for those services as provided for in this Agreement up to the Maximum Contract Amount.

**B. Limited Obligation of City.** The obligations of the City under this Agreement shall extend only to monies appropriated and encumbered for the purposes of this Agreement. Contractor acknowledges and understands the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Amount above.

**C. 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.

**D. Basis for Contractor's Fee.** Contractor's fee is based on the time required by its professionals to complete the services under this Agreement. Individual hourly rates are set forth in *Exhibit B* ("**Rates**").

**E. Payment Schedule.** Subject to the Maximum Contract Amount, for payments required under this Agreement, the City shall pay Contractor's fees and expenses in accordance with this Agreement. Unless otherwise agreed to in writing, Contractor shall invoice the City on a regular basis in arrears and the City shall pay each invoice in accordance with Denver's Prompt Payment Ordinance, D.R.M.C. § 20-107, *et seq.*, subject to the Maximum Contract Amount.

**F. Invoices.** On or before the fifteenth (15<sup>th</sup>) day of each month, Contractor shall submit to the City a monthly progress invoice containing reimbursable costs and receipts from the previous month for professional services rendered under this Agreement to be audited and approved by the City ("**Invoice**"). Each Invoice shall provide the basis for payments to Contractor

under this Agreement. In submitting an Invoice, Contractor shall comply with all requirements of this Agreement and:

- i. Include an executive summary and status report(s) that describe the progress of the services and summarize the work performed during the period covered by the Invoice;
- ii. Include a statement of recorded hours that are billed at an hourly rate;
- iii. Include the relevant purchase order (“**PO**”) number related to the Invoice;
- iv. Ensure that amounts shown on the Invoices comply with and clearly reference the relevant services, indicate the hourly rate and multiplier where applicable, and identify the allowable reimbursable expenses;
- v. For only those reimbursable costs incurred in the previous month, submit itemized business expense logs and, where billing is based upon receipts, include copies of receipts for all allowable reimbursable expenses;
- vi. Include the signature of an authorized officer of Contractor, along with such officer's certification they have examined the Invoice and found it to be correct; and
- vii. Submit each Invoice via email to [ContractAdminInvoices@flydenver.com](mailto:ContractAdminInvoices@flydenver.com).
- viii. Late Fees. Contractor understands and agrees interest and late fees shall be payable by the City only to the extent authorized and provided for in the City’s Prompt Payment Ordinance.
- ix. Travel Expenses. Travel and any other expenses are not reimbursable unless such expenses are related to and in furtherance of the purposes of Contractor’s engagement, are in accordance with this Agreement, and Contractor receives prior written approval of the SVP or their authorized representative.

**G. Timesheets.** Consultant shall maintain all timesheets kept or created in relation to the services performed under this Agreement. The City may examine such timesheets and any other related documents upon the City’s request.

**H. Disputed Invoices.** The City reserves the right to reject and not pay any Invoice or part thereof, including any final Invoice resulting from a Termination of this Agreement, where the SVP or their authorized representative determines the amount invoiced exceeds the amount owed based upon the work satisfactorily performed. The City shall pay any undisputed items contained in an Invoice. Disputes concerning payments under this provision shall be resolved in accordance with procedures set forth in Section 9.

**I. Carry Over.** If Contractor's total fees for any of the services provided under this Agreement are less than the amount budgeted for, the amount remaining in the budget may be used for additional and related services rendered by Contractor if the CEO determines such fees are reasonable and appropriate and provides written approval of the expenditure.

**6. MWBE, WAGES AND PROMPT PAYMENT:**

**A. Minority/Women Business Enterprise.** This project has been reviewed by the Division of Small Business Opportunity (“DSBO”) and it has been determined that it is not subject to Denver Revised Municipal Code (“D.R.M.C.”), Article III, Divisions 1 and 3 of Chapter 28, designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “MWBE Ordinance”) and any Rules or Regulations promulgated pursuant thereto, and therefore will not have an MWBE goal assigned. While the work performed under this Agreement is not subject to the MWBE Ordinance, the Director of DSBO encourages all participants in City projects to seek independent partnerships with SBEs, MBEs, WBEs, and other business enterprises in supply chain activities, prime/subcontractor partnerships, and joint ventures for all contracts and purchase orders. The City reserves the right to reevaluate the work under this Agreement and apply the requirements of the MWBE Ordinance to this contract if DSBO determines that the MWBE Ordinance is applicable.

**B. Prompt Pay of MWBE Subcontractors.** For agreements of one million dollars (\$1,000,000.00) and over to which D.R.M.C. § 28-135 applies, Contractor is required to comply with the Prompt Payment provisions under D.R.M.C. § 28-135, with regard to payments by the Contractor to MWBE subcontractors. If D.R.M.C. § 28-135 applies, Contractor shall make payment by no later than thirty-five (35) days from receipt by Contractor of the subcontractor’s invoice.

**C. 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.

i. Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the Effective Date of this Agreement. Unless expressly provided for in this Agreement, Contractor will receive no additional compensation for increases in prevailing wages or fringe benefits.

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

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

iv. 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](mailto:auditor@denvergov.org).

v. 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.

**D. City Minimum Wage.** To the extent required by law, Contractor shall comply with and agrees to be bound by all requirements, conditions, and the City determinations regarding the City's Minimum Wage Ordinance, D.R.M.C. §§ 20-82 through 20-84, including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the City's Minimum Wage Ordinance. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by 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.

**E. City Prompt Pay.**

i. The City will make monthly progress payments to Contractor for all services performed under this Agreement based upon Contractor's monthly invoices or shall make payments as otherwise provided in this Agreement. The City's Prompt Payment Ordinance, D.R.M.C. §§ 20-107 to 20-118 applies to invoicing and payment under this Agreement.

ii. Final Payment to Contractor shall not be made until after the Project is accepted, and all certificates of completion, record drawings, reproducible copies, and other deliverables are delivered to the City, and the Agreement is otherwise fully performed by Contractor. The City may, at the discretion of the SVP, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the SVP.

**7. INSURANCE REQUIREMENTS:**

**A.** 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 and any required endorsements must be received and approved by DEN Risk Management before any airport access or work commences.

**B.** 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.

**C.** 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.

**D.** 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.

**E.** 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.

## **8. DEFENSE AND INDEMNIFICATION:**

**A.** Contractor hereby agrees to defend, indemnify, reimburse and hold harmless the 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 the City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including the City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

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

**C.** Contractor will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the 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, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City’s exclusive remedy.

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

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

## **9. 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.

**10. GENERAL TERMS AND CONDITIONS:**

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

**B. Assignment.** Contractor shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the CEO. Any attempt by Contractor to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO, automatically terminate this Agreement and all rights of Contractor hereunder.

**C. Compliance with all Laws and Regulations.** Contractor and its subcontractor(s) shall perform all work under this Agreement in compliance with all existing and future applicable laws, rules, regulations, and codes of the United States, and the State of Colorado and with the City Charter, ordinances, Executive Orders, and rules and regulations of the City.

**D. Compliance with Patent, Trademark and Copyright Laws.**

i. Contractor agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States, as they may be amended from time to time. Contractor will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission, all releases, and other necessary documents. If Contractor prepares any documents which specify any material, equipment, process or procedure which is protected, Contractor shall disclose such patents, trademarks and copyrights in such documents.

ii. Pursuant to Section 8, Contractor shall indemnify and defend the City from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

**E. Notices.**

i. Notices of Termination. Notices concerning termination of this Agreement, shall be made as follows:

by Contractor to:

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

And by the City to:

Cyber Country Systems, LLC  
3055 Galena Way  
Boulder, CO 80305

ii. Delivery of Formal Notices. Formal notices of the termination of this Agreement shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested; express mail (Fed Ex, UPS, or similar service) or package shipping or courier service; or by electronic delivery directed to the person identified above and copied to the Project Manager through the electronic or software system used at the City's direction for any other official communications and document transmittals. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service and electronically transmitted notices by pressing "send" or the equivalent on the email or other transmittal method sufficient to irretrievably transmit the document. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed, delivered or emailed, but such substitutions shall not be effective until actual receipt of written or electronic notification thereof through the method contained in Subsection (E)(ii).

iii. Other Correspondence. Other notices and day-to-day correspondence between the Parties may be done via email directed to the Project Manager or through the electronic or software system used for work-related communications and transmittals at the City's direction.

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

**G. No Third-Party Beneficiaries.** The Parties agree that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party. It is the express intention of the Parties that any person or entity other than the City or Contractor receiving services or benefits under this Agreement shall be deemed an incidental beneficiary and shall not have any interest or rights under this Agreement.

**H. Governing Law.** This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision and condition herein is subject to the provisions of Colorado law, the City Charter, and the ordinances and regulations enacted pursuant thereto, as may be amended from time to time.

**I. 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.

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

**K. Cooperation with Other Contractors.**

i. The City may award other contracts for additional work, and Contractor shall fully cooperate with such other contractors. The City, in its sole discretion, may direct Contractor to coordinate its work under this Agreement with one or more such contractors.

ii. Contractor shall have no claim against the City for additional payment due to delays or other conditions created by the operation of other contractors. The City will decide the respective rights of the various contractors in order to secure the completion of the work.

**L. 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.

**M. Force Majeure.** The Parties shall not be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God, judicial action, or any other causes beyond the control of the Parties. The Parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

**N. Coordination and Liaison.** Contractor agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the SVP or their authorized representative, along with any City agency, or any person or firm under contract with the City doing work which affects Contractor's work.

**O. No Authority to Bind City to Contracts.** Contractor has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by the City Charter and ordinances.

**P. Information Furnished by the City.** The City will furnish to Contractor information concerning matters that may be necessary or useful in connection with the work to be performed by Contractor under this Agreement. The Parties shall make good faith efforts to ensure the accuracy of information provided to the other Party; however, Contractor understands and

acknowledges that the information provided by the City to Contractor may contain unintended inaccuracies. Contractor shall be responsible for the verification of the information provided to Contractor.

**Q. Severability.** In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**R. Taxes and Costs.** Contractor shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City.

**S. Environmental Requirements.** Contractor, in conducting its activities under this Agreement, shall comply with all existing and future applicable local, state and federal environmental rules, regulations, statutes, laws and orders (collectively "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous or Special Materials and Wastes, Clean Water Act legislation, Centralized Waste Treatment Regulations, and DEN Rules and Regulations.

i. For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), per – and polyfluoroalkyl substances (PFAS), oil or any other petroleum products, natural gas, source material, pesticide, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 *et seq.* (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 *et seq.* (1990)), and any rules and regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

ii. Contractor shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements.

iii. Contractor agrees to ensure that its activities under this Agreement are conducted in a manner that minimizes environmental impact through appropriate preventive measures. Contractor agrees to evaluate methods to reduce the generation and disposal of waste materials.

iv. In the case of a release, spill or leak as a result of Contractor's activities under this Agreement, Contractor shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Contractor shall reimburse the City for any penalties and all costs and expenses, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Contractor of any pollutant or hazardous material.

**T. Non-Exclusive Rights.** This Agreement does not create an exclusive right for

Contractor to provide the services described herein at DEN. The City may, at any time, award other agreements to other contractors or consultants for the same or similar services to those described herein. In the event of a dispute between Contractor and any other party at DEN, including DEN itself, as to the privileges of the parties under their respective agreements, CEO shall determine the privileges of each party and Contractor agrees to be bound by CEO's decision.

## **11. RECORD RETENTION AND OTHER STANDARD CITY PROVISIONS:**

**A. Diversity and Inclusiveness.** The City encourages the use of qualified small businesses doing business within the metropolitan area that are owned and controlled by economically or socially disadvantaged individuals. Contractor is encouraged, with respect to the goods or services to be provided under this Agreement, to use a process that includes small businesses when considering and selecting any subcontractors or suppliers.

**B. No Discrimination in Employment.** In connection with the performance of work under the 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.

**C. Advertising and Public Disclosures.** Contractor shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the SVP or their authorized representative. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by the City, and designs and renderings, if any, which have been accepted by the City. Contractor shall notify the SVP in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Contractor's transmittal of any information to officials of the City, including without limitation, the Mayor, the CEO, any member or members of Denver City Council, and the Auditor.

### **D. Colorado Open Records Act.**

i. Contractor acknowledges that the City is subject to the provisions of the Colorado Open Records Act ("**CORA**"), C.R.S. §§ 24-72-201 *et seq.*, and Contractor agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Contractor asserts is confidential or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all materials, records, and information provided by Contractor to the City shall be considered confidential by the City only to the extent provided in CORA, and Contractor agrees that any disclosure of information by the City consistent with the provisions of CORA shall result in no liability of the City.

ii. In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of

any material Contractor may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Contractor objects to disclosure, the City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed, the City may tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Contractor agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Contractor does not wish disclosed. Contractor agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Contractor's objection to disclosure, including prompt reimbursement to the City of all reasonable attorney's fees, costs, and damages the City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

**E. Examination of Records and Audits.**

i. 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 audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. §20-276.

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

iii. 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.

**F. Use, Possession or Sale of Alcohol or Drugs.** Contractor shall cooperate and comply with the provisions of Denver 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 Contractor from City facilities or participating in City operations.

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

**H. Conflict of Interest.**

i. Contractor and its subsidiaries, affiliates, subcontractors, principals, or employees shall not engage in any transaction, work, activity or conduct which would result in a conflict of interest. A conflict of interest occurs when, for example, because of the relationship between two individuals, organizations or one organization (including its subsidiaries or related organizations) performing or proposing for multiple scopes of work for the City, there is or could be in the future a lack of impartiality, impaired objectivity, an unfair advantage over one or more firms competing for the work, or a financial or other interest in other scopes of work.

ii. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Contractor written notice which describes such conflict. If, during the course of the Agreement, the City determines that a potential conflict of interest exists or may exist, Contractor shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

iii. Contractor has a continuing duty to disclose, in writing, any actual or potential conflicts of interest including work the Contractor is performing or anticipates performing for other entities on the same or interrelated project or tasks. Contractor must disclose, in writing, any corporate transactions involving other companies that Contractor knows or should know also are performing or anticipate performing work at DEN on the same or interrelated projects or tasks. In the event that Contractor fails to disclose in writing actual or potential conflicts, the CEO in their sole discretion, may terminate the Agreement for cause or for its convenience.

**I. No Employment of A Worker Without Authorization to Perform Work Under The Agreement**

i. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

ii. The Contractor certifies that:



a. At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

b. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

d. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

e. If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

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

iii. The Contractor is liable for any violations as provided in the Certification Ordinance. If the Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Contractor from submitting bids or proposals for future contracts with the City.

## **12. 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.

**13. DEN SECURITY:**

**A.** 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.

**B.** 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.

**14. 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 Appendix.

**15. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:**

**A. Attachments.** This Agreement consists of Section 1 through 16 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

- Appendix: Standard Federal Assurances
- Exhibit A: Scope of Work
- Exhibit B: Rates
- Exhibit C: Insurance Requirements

**B. Order of Precedence.** In the event of an irreconcilable conflict between a provision of Section 1 through 16 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  
Section 1 through 16 hereof  
Exhibit A  
Exhibit B  
Exhibit C

**16. CITY EXECUTION OF AGREEMENT:**

**A. 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.

**B. 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.

**[SIGNATURE PAGES FOLLOW]**

**Contract Control Number:** PLANE-202158652-00  
**Contractor Name:** CYBER COUNTRY SYSTEMS LLC

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:

\_\_\_\_\_

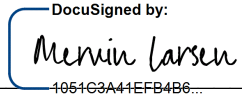
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By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

PLANE-202158652-00  
CYBER COUNTRY SYSTEMS LLC

By:  \_\_\_\_\_  
1051G3A41EFB4B6...

Name: Mervin Larsen  
(please print)

Title: Manager  
(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.

#### GENERAL CIVIL RIGHTS PROVISIONS

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 subtier 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.

#### 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 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.

## APPENDIX

### Federal Aviation Administration Required Contract Provisions

#### ALL CONTRACTS – NON-AIP FUNDED

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.

#### 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);
- 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);

## APPENDIX

### Federal Aviation Administration Required Contract Provisions

#### ALL CONTRACTS – NON-AIP FUNDED

- 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.*).

#### **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



## APPENDIX

### Federal Aviation Administration Required Contract Provisions

#### ALL CONTRACTS – NON-AIP FUNDED

services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be 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.)

#### **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.)

#### **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

## **APPENDIX**

### **Federal Aviation Administration Required Contract Provisions**

#### **ALL CONTRACTS – NON-AIP FUNDED**

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

#### **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.

## **EXHIBIT A**

# **Airport Security System Support Agreement**

## **Scope of Work**

### **1. GENERAL PROVISIONS**

This section defines the technical requirements of this System Support Agreement, which will be required of Cyber Country Systems, Inc. (hereinafter referred to as “CCS”) in the day-to-day performance and execution of the work outlined in this Agreement in support of those Card Access Control systems owned and operated by Denver International Airport (“DIA”).

### **2. TECHNICAL PROVISIONS**

#### **A. Duration of Support:**

January 1, 2022 through December 31, 2024, with options to extend as set forth in Contract Number PLANE between Cyber Country Systems, Inc and the City and County of Denver.

#### **B. Definitions:**

For the purpose of interpreting the requirements of this Agreement, the following definitions are provided for key terms used in this document. Where reference is made to a defined item it shall include all materials, labor and know-how to satisfy the corrective or support requirements aspects of the specific item.

- (1). **Scope.** The Scope of Work is defined as all services required of CCS in the successful execution of the requirements outlined within this specification.
- (2). **Software.** Software is defined as any and all operating or application software and firmware installed on the DIA Computerized Airport Integrated Security System (“CAISS”), including any software installed by this Contractor over the duration of this Agreement.

This shall include but not be limited to:

- a. Windows Operating Systems
- b. SQL Server 2016 (and later versions)
- c. Crystal Reports v9.0, v.9.5 (and later versions)
- d. MaxxNet NT (and later versions) Computerized Airport Integrated Security System (CAISS) application software as developed or modified by CCS or any other entity or individual under direction by DIA, including, but not limited to:
  1. Alarm Workstation (AWS)
  2. Management Workstation (MWS)
  3. Graphics Workstation (GWS)
  4. ACC (Area Control Computer)
  5. MAPS and eMaps applications
  6. “IDCUtil” and “IDC Net Utilities” programs
  7. “Biometric Enrollment” Program
  8. “AGI” program. MaxxNet to Genetec interface program.

- 9. "ChkExp" program
- 10. "AV" program
- e. "AV" program Relay Ladder Logic programs (both RLLs and RLYs, produced under site licensing purchased and furnished by Denver International Airport for use at DIA.)

Note: Cyber Country Systems has entered into a license agreement with CPI Industrial Software, Inc., the original developer of the CPI relay ladder package. Under that agreement, Cyber Country Systems has updated the CPI package to move the software from DOS based to be compatible with the latest Microsoft environment. It now works on 32-bit machines and the Windows 10 operating system. The capability has also been added to allow network connectivity to that package. IDCs can now be programmed, monitored and debugged through the network connection. The previous version only supported a serial port connection. This agreement grants Cyber Country Systems the rights to market, distribute and reproduce units of the product to its customers in exchange for making the updates available to CPI Industrial Software, Inc. A quotation has been submitted to DEN to update to this new package. It is not required.

- f. PROMS and firmware
  - g. All third party software used in the system including compilers, linking software, network software or in effect any software product, which is required for the normal and complete operation, maintenance and support of the system.
  - h. Any and all new or updated software used in any part of the system, including operating systems, database systems, and network software.
- (3). **Hardware:** Hardware is defined as any and all system components that are not software. This includes all of the components and subassemblies of the following elements but not limited to:
- a.. Area Control Computers "ACC"
  - b. Database and File Servers (DBS/FS)
  - c. Intelligent Door Controller (IDC)
  - d. Network switches and interfaces
  - e. Supported serial connected IDCs that have been switched to network
  - f. Biometric Fingerprint Readers
  - g. Biometric interface boards for Stone Lock facial biometric
  - h. Digital Video Recording Equipment and Interfaces
  - i. Audio/Video Portal Assemblies
  - j. Printers

Note: this contract does not cover the EPCAS system. The Employee Parking system CAS is covered under a different contract.

- (4). **Network:** Network is defined as any and all hardware and software required to transport Computerized Airport Integrated Security System "CAISS", EPCAS, to any and all distributed components of the systems.
- (5). **On-Call:** On-Call is defined as the availability of CCS, 7 days per week / 24 hours per day in the execution of this Agreement for Levels 1 and 2 (CAISS Malfunction and CAISS Failure) events. On-Call status is a non-site presence with the ability to respond to the site with qualified personnel as necessary and defined in this specification to provide services as defined in this Scope of Work.

- (6). **On Site:** On Site is defined as the presence of CCS at Denver International Airport.
- (7). **Support:** Support is defined as those duties described in Section 5, Scope of Work and otherwise enumerated in this Specification.
- (8). **Normal CAISS Operation:** Normal operation is defined as the system operating within the parameters as specified and put forth in the operation manuals provided to DIA in support of all system elements.
- (9). **CAISS System Major Failure:** CAISS System Major Failure is defined as a system state where the operator is unable to control the CAISS system from the DIA Communications Center, or Alternate Communications Center, and default operation is implemented where HSS guards are deployed to compensate for the system malfunction. In terms of Contractor performance response times to this condition is considered a Level 1 event.
- (10). **CAISS System Malfunction:** CAISS System Malfunction is defined as any condition where System operational and performance characteristics fall outside of normal operation or a problem that impacts the normal specified

system throughput or functionality, or causes erroneous data creation or data loss. In terms of Contractor performance response times, this condition is considered a Level 2 event.

- (11). **Minor Abnormal CAISS Operation:** Minor abnormal operation (Minor CAISS Failure) is defined as all other system anomalies that do not fall into the category of CAISS Major System Failure or CAISS System Malfunction. In terms of Contractor performance response times this condition is considered a Level 3 event.
- (12). **Systems:** Systems are defined as the Computerized Airport Integrated Security System ("CAISS") installed and operating at Denver International Airport (DIA) as defined in Section 3, System Configuration.
- (13). **CCS:** Is defined as including all of the firm's employees, agents and any assignees licensed by CCS to perform portions of this work and previously approved by DIA, providing the services required to successfully execute the work specified in this Agreement.

### 3. SYSTEM CONFIGURATION

The system configuration for which this Agreement is specified and applies to include the system components enumerated in Section 5 below. Further, any hardware or software additions implemented in the system by CCS or DIA and its Contractors during the duration of this specification shall be considered part of the system configuration. Where additions or modifications to the system by DIA and its Contractors are performed, CCS shall review the addition or modification for the purpose of ensuring correct system functionality. Should CCS after review of a system addition or modification advise in writing against its implementation and DIA chooses to implement the addition or modification, those components or resulting functionality shall not be considered within the scope of this specification.

### 4. CCS – REQUIRED QUALIFICATIONS

CCS representatives, agents, or assignees performing the work as specified in this Scope of Work shall be fully trained in the complexities of repair and maintenance for all hardware elements of the system other than those elements covered in the existing DIA PC maintenance specification, which shall be kept in force for the duration of this specification. In addition, CCS shall be fully proficient in the creation, modification and support of all system application software and in the use and configuration of all third party or "other" software programs utilized in the normal operation and support and maintenance of the system.

### 5. SCOPE OF WORK

CCS shall provide the following services as part of this Agreement, for the CAISS Security System on a continuing basis, and provide on-site and on-call capabilities in support of the following items.

#### A. Software

- (1). Software support is defined as CCS's best efforts to address, resolve, and restore the Systems to normal working order as a result of any software anomalies that interfere with the normal operation of these systems. These anomalies shall be classified as System Failures that are identified and defined in Section 2, Definitions.

- a. Participation in the resolution of Major Failures is not limited to availability or to a specific time frame. CCS shall have qualified personnel available 24 hours a day, 7 days a week by pager and/or telephone to support resolution of Major System Failures. The designated contact number(s) and procedure are defined in Attachment 1 to this Scope of Work. This specification requires that upon notification of any Major Failure by DIA, CCS shall depart immediately for the Airport, and respond to the problem by telephone while en route, if possible (Ref. Section 6, B for response times).
  - b. Assistance rendered by CCS in the resolution of Minor Failures shall occur during CCS's normal business hours between 8:00 am and 5:00 pm Monday through Friday. The Department of Aviation shall implement and maintain event logs to document occurrences, and permit CCS to implement software measures (traps) to enhance the diagnostic process.
- (2). Software support shall include delivery, installation and debugging of any and all new software installed as required, including but not limited to, new releases and versions of software installed by CCS as part of this Scope of Work that may be necessary to resolve system anomalies identified in Section 6. B. (below).
- (3). Software support shall include upgrades to installed releases, and all modifications developed in the normal development of the product, including, but not limited to, evolutions of the software to other operating systems, or those software upgrades or modifications developed specifically for DIA.
- (4). As part of software support, CCS shall provide reasonable cooperation with third party technical support organizations in their effort to modify third party software products for utilization in the DIA systems. CCS will notify DIA, in writing, of any cost impacts involved with any third party technical support organizations. CCS will commence work following approval by DIA in accordance with Section 9. C. (below).
- (5). Where the installation of new, modified or additional software installed on the CAISS system by CCS in the resolution of Major and Minor Failures causes malfunction of systems interfacing to the CAISS system, (specifically the SAFE for Aviation Badging, VMS/CCTV or Life Safety systems interfaces) it shall be the responsibility of CCS to restore proper interface operation through manipulation of application or third-party software (refer to §2.05 d.) reconfiguration. When proper operation cannot be restored, CCS shall, at the Department of Aviation's option, restore the previous software version or configuration and provide alternate options of resolution to the Department of Aviation. The ultimate decision shall be the responsibility of the Department of Aviation.
- (6). Should the installation of a new software release, upgrade or modification cause the system to exhibit abnormal or unstable operation after installation, CCS shall be prepared at anytime as determined by the DIA CAISS Administrator or Director of Security to revert immediately to the previous installed release and configuration. CCS will be on site if necessary to accomplish the reversion to the previously installed release and

configuration within (2) two hours of a specific request to do so by the DIA CAISS Administrator or Director of Security.

- (7). Any and all modifications and upgrades implemented as part of this Scope of Work shall be fully debugged and compatible with all third party software programs installed on the system. Where a malfunction is encountered as a result of incompatibility between software elements installed on the system, CCS shall make every reasonable effort to correct the situation by either upgrading or replacing the third party software elements to achieve compatibility, or further debug and correct the modification to the application software. This requirement shall hold true to version upgrades of third party software where it impacts the performance of the application software.
- (8). Installation of all software shall be coordinated with DIA Security and normally occur after 10:00 PM only on weekdays and at times on weekends as directed by the CAISS Administrator or Director of Security. All software loads will be conducted in the presence of the DIA CAISS Administrator or person as designated by the Director of Security. Written documentation of all software added or altered shall be provided to the DIA CAISS Administrator or Director of Security at least 72 hours in advance of installing such software.
- (9). Where implementation of a software release, upgrade or modification is implemented on the system to satisfy the requirements of the software support portion of this specification alters the system operational functionality, CCS shall provide the necessary training and documentation to the system users. Training shall conclude when users are deemed fully informed and competent as determined jointly between CCS and the DIA CAISS Administrator or Director of Security. Documentation will be provided 72 hours in advance of the installation of such software release, upgrade, or modification.
- (10). Understanding that CCS does not have an access control system in their place of business which is of similar size, scope and complexity as the installed system at DIA, CCS shall dispatch personnel to the site as necessary to support the resolution of Major and Minor Failures utilizing the installed system. DIA shall designate a network computer that CCS can use to install diagnostic software. All diagnostic software shall be provided or created by CCS and installed on the DIA system only after review and approval by the DIA CAISS Administrator. Any diagnostic software installed as part of this specification shall become property of DIA. This review as requested by the DIA CAISS Administrator may include review of application software source code. Where, as determined jointly between CCS and the DIA CAISS Administrator, this level of review is necessary, CCS shall provide all application source code, methods and tools necessary to achieve this review. When performing diagnostic routines on the installed system, all activities and procedures shall be fully coordinated with the DIA CAISS Administrator.
- (11). Where CCS identifies a software bug and it is resident in a third party software package, CCS shall make every attempt to resolve the bug with the third party software vendor. When this is not possible, CCS shall make



every reasonable attempt to circumvent the bug through alternate code or other means as coordinated with and agreed to by the DIA CAISS Administrator or Director of Security.

(12). Integration of Modified, Developed or Added Software

- a. Any modification, development, or addition to the software described in paragraph 5 of this Scope of Work shall become part of the software.
- b. Modified, Developed or Added Software DIA intends to request, but does not guarantee, during the term of this contract include but not limited to:
  - i. Biometric downloads – Modification to how biometric templates are downloaded within the system in order to speed up processing time for person entry.
  - ii. Biometric installs – Providing modified or added software to support the installation of additional Stone Lock facial biometric readers or new biometric entry technologies.
  - iii. Pre-alarms – Notification alarm at requested door locations to let persons know the door will go into an alarmed state if action is not taken. Similar functionality to other airports with this capability at jetway doors.
  - iv. Crystal Reports/SQL – Converting the current Crystal Reports functionality to a current version of SQL Server Reporting Services. Includes the migration of existing reports to SQL and new reports being created as requested by DIA.
  - v. Automated notifications to users
  - vi. MAPS Updates – Providing updates to the MAPS application to reflect new doors and cameras added as a part of constructions projects to include but not limited to Concourse Gate Expansion and Great Hall.

B. Technical Support

- (1). CCS shall provide technical support services in the execution of this specification. Technical support will be conducted during CCS's normal working hours. CCS shall be available via telephone or CCS's place of business to assist DIA Staff in the resolution of technical questions.

Typical technical support activities shall include but not be limited to:

- a. Defining queries / reports
- b. Diagnostic procedures and methods
- c. Resolving Windows 2012 Servers (and later versions), Windows 10 Workstations (and later versions), network services configuration and operational questions
- d. Resolving SQL Server configuration and operational questions

- e. Resolving Crystal Reports configuration and questions
- f. Resolving application software configuration & operational issues
- g. IDC problem resolution / support
- h. Resolving other hardware issues
- i. Developing, Integrating with and/or Interfacing to other software and hardware applications and equipment, as directed by the DIA CAISS Administrator or Director of Security.

C. Hardware support

- (1). Hardware support shall ordinarily be limited to diagnostic and technical assistance for the hardware elements of the DIA CAISS, including network components and peripherals, except in those cases where the hardware elements have been provided by CCS and are under warranty. In support of the resolution of Major Failures/anomalous events, CCS shall respond if requested to the site to provide hardware support. Should the cause of the major abnormal system operation be determined to be the result of a hardware failure or instability, CCS shall assist DIA technical staff in the identification and repair of failed hardware. This shall include configuring and connecting alternate or spare equipment furnished by DIA and making general repairs.

#### D. System Documentation

- (1). Where a modification to DIA's systems is implemented as a result of any action by CCS, that work shall be documented in full. This includes all operations and maintenance manuals affected and shall be submitted 72 hours in advance of the implementation of modification. This requirement does not include as-built CAD drawings of physical changes, except when CCS are responsible for construction of such changes. CCS shall assist in answering DIA questions regarding as-built conditions as part of the on-call technical support.
- (2). DIA will make available to CCS a full set of the system as-built drawings for their use in the execution of this Agreement and shall include all of those drawings provided to DIA as part of the F-205A contract as-built deliverables and subsequent additions and modifications. Any changes to the system required by CCS that are not depicted on the current as-built drawings provided shall be documented by CCS in red-line form to DIA Engineering for incorporation into the as-built drawings.

### 6. AVAILABILITY AND RESPONSE TIME

- A. The requirements of this Agreement mandate that qualified personnel be available on an on-call basis, (24) twenty-four hours per day (7) seven days per week to provide support for different event types. The airport operator will notify CCS through a number provided by CCS. CCS shall be notified only after a reasonable effort has been made by DIA technical staff to resolve the problem, and advise CCS of the problem, symptoms and severity as well as the time the event occurred. Those persons authorized by DIA to request the assistance of CCS shall include:
- (1). DIA CAISS Administrator
  - (2). DIA CAISS Coordinators
  - (3). Director of Security

Refer to Attachment 1 to these Technical Provisions for the names and contact numbers of those individuals authorized as indicated above, who have the authority to contact and mobilize CCS in the resolution of an event.

- B. Response times by this Contractor to events shall be proportionate to the severity of the event. Contractor response times and involvement requirements in supporting DIA are based on the severity of the reported problem and shall be as indicated below. CCS shall furnish and maintain a list of employees who will respond on CCS's behalf to Level 1, 2 and 3 events.
- (1). Level 1 event: Computerized Airport Integrated Security System "CAISS" completely non-dysfunctional (off-line): This is a CAISS System Major Failure where malfunction of affected system elements results in an inability of the CAISS system to control and monitor access to restricted areas of the facility.

Response by telephone to a Level 1 event shall be as soon as possible and, in any case, no greater than thirty (30) minutes after report of a problem by DIA. If requested by authorized DIA contacts, CCS is required to be at the site to assist in resolving the problem within one (1) hour.

- (2). Level 2 event: CAISS System Malfunction not resulting in a system off-line state but exhibiting "Major Abnormal Operation:"

Response by telephone to a Level 2 event shall be no greater than two (2) hours after report of problem by DIA. If requested by authorized DIA contacts, CCS will be required to be available at the site within two (2) hours of the request to assist in the resolution of the problem.

- (3). Level 3 event: Minor Abnormal CAISS Operation not resulting in instability of the system, but one or more components exhibiting abnormal operation.

Upon notification by DIA of a system state exhibiting Minor Abnormal Operations, CCS shall respond via telephone within eight (8) business hours. Resolution of minor abnormal operation problems by CCS may be conducted via the telephone. CCS shall not be required to be present at the site to resolve Level 3 problems.

## **7. PENALITIES**

CCS shall be subject to financial penalties for failure to meet the response times and performance requirements specified in this Scope of Work. Penalties incurred by CCS shall be deducted from the monthly invoice and be assessed as follows:

- A. Failure to respond to a Level 1 event request for support: \$500.00 for not responding by telephone within the specified period, and \$250.00 for each subsequent hour.
- B. Failure to respond to a Level 2 event request for support: \$200.00 for not responding by telephone within the specified period, and \$100.00 for each subsequent hour.
- C. Failure to respond to a Level 3 event request for support: \$100.00 for not responding by telephone within the specified eight hour period (during normal working hours), and \$ 50.00 for each subsequent 8 hour period.
- D. Failure to resolve minor failures within the specified 60-day time frame: \$100.00 per day until corrected.

## **8. RESERVED**

## **9. COMPENSATION**

The compensation under this Agreement is:

- A. \$102,000 allocated annually for execution of:
  - 7/24 On Call support of the DIA CAISS system. On-Call support shall include production and/or modification of system RLY's and RLL's as necessary to implement replacement changes and upgrades to the IDC hardware.
- B. \$150,000 allocated annually for modification of the Maxx-Net application programs, and development of 3<sup>rd</sup> party software interfaces as may be

requested by DIA to support required system changes, software development and all other types of work. Specifications for the changes and/or development requested shall be made in writing by DIA, and estimates shall be provided by Cyber Country Systems of the cost and schedule for accomplishing such changes. A written Work Order may then be issued by DIA, authorizing the specified work.

- C. Where DIA has requested cooperation of CCS with third-party vendors resulting in costs to CCS, a written estimate of such costs shall be submitted to DIA for authorization prior to commencement of any associated work. Authorized work may be invoiced upon completion of the associated work by CCS, exclusive of completion of any work by such third-party vendor.

## **10. INVOICING**

- A. It is in the interest of DIA that any compensation due CCS as a result of work authorized under the terms of this Agreement be properly paid in a timely fashion. It is DIA's intention to prevent the accumulation of receivables, as claims from one party of the Agreement against another, arising out of performance of authorized work under this Agreement. CCS will consequently provide the DIA CAISS Administrator a quarterly summary of payments received for work performed under this Agreement.
- B. The compensation due under item Section 9. A. above, may be invoiced upon execution of this Support Agreement and annually thereafter for the term of this Agreement.
- C. Compensation due as a result of system modifications under Section 9. B. above, shall be invoiced following completion of work authorized by Work Order.
- D. Compensation due as a result of system modifications under Section 9. C. above, shall be invoiced following completion of the work authorized.
- E. Where CCS has been authorized to perform work by DIA at an hourly rate, such invoiced rate shall not exceed \$125.00 per hour for software development work or \$95.00 for all other types of work unless specifically presented in a quotation and accepted by DIA as approved work.

## **11. ESCROW OF MATERIALS AND REMEDIES IN DEFAULT OF AGREEMENT**

- A. In order to protect DIA against non-performance of these requirements by the parties to this agreement, copies of all source code materials and engineering drawings of all elements of the systems in use at DIA, shall be escrowed; deposited with the DIA Airport Security management staff and maintained at Denver International Airport and at its designated Disaster Recovery site. These materials shall be updated, as necessary, to incorporate all additions and modifications to software and hardware system elements over the term of this and subsequent Agreements.
- B. In the event of failure to perform as described in §11.C through E below, it shall be the right of DIA to use these materials and contract with any party it may select to maintain and develop the system owned and used by DIA. CCS explicitly agrees to inform all of its normal material suppliers that DIA shall have the right to continue to order component materials used in its normal

course of business to continue operation and development of the system. CCS further agrees to provide DIA with a list of those suppliers and manufacturers and their respective products as used at DIA to further facilitate this activity should CCS discontinue normal business operations for any reason. It shall not be the right of DIA to commercialize these materials in competition with CCS. DIA shall not distribute any materials escrowed under the terms of the Agreement except as herein provided for rightful maintenance and development of DIA's systems.

- C. Should CCS, during the term of this Agreement, discontinue normal business operations due to liquidation, business failure, or any other reason, CCS shall be considered in default of this Agreement and DIA shall have the rights specified in §11 A through B, above.
- D. Should CCS, Inc. refuse or be unable to perform the requirements of this Agreement, CCS shall be considered in default of this Agreement and DIA shall have the rights specified in §11 A through B, above, unless the default is cured as provided in §11 F, below.
- E. Should DIA allege that CCS is in default of this agreement, it shall notify, in writing, CCS of the default condition(s). CCS shall have thirty (30) days to cure the condition(s) comprising the default. CCS shall notify DIA, in writing, of the intent to cure the condition(s) and the steps taken to cure them.

## 12. EXCLUSIONS

CCS shall be held harmless, and any work required in corrective measures shall not be considered within this Agreement, under the following conditions:

- A. Damages resulting from any causes beyond the reasonable control of CCS such as but not limited to:
  - (1). Improper operation of said equipment or due to attack, civil commotion, storms, theft, fire, flood, lightning, war or other acts of God,
  - (2). Settling of walls or foundations, abuse or usage of equipment other than as designated or intended.
  - (3). Malfunctions caused by work performed by other than a CCS representative, agent or assignee or DIA technical staff trained by a CCS representative, or malfunction
  - (4). Failure resulting from interconnection of foreign equipment not previously approved by CCS (present configuration understood to include all third party interfaces presently connected to the system).
  - (2). Damage resulting from the movement of the equipment after its initial installation by other than a CCS representative, agent or assignee or DIA technical staff trained by CCS.
  - (3). Malfunctions or breakdowns of equipment not installed to the manufacturer's specifications, or of equipment which utilizes supplies or expendable items such as but not limited to: cards (punch), ribbons or journal paper which do not meet manufacturer's specifications.

### 13. SENSITIVE SECURITY INFORMATION

- A. All elements of the systems owned and operated by DIA covered under this Agreement are considered Sensitive Security Information (“SSI”) under 49 CFR Parts 15 and 1520. All documents referencing any element of the systems covered under this Agreement are subject to SSI control and must be marked at the top of the page with the banner “SENSITIVE SECURITY INFORMATION” and at the bottom of each page with the following SSI statement:

*WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR Parts 15 and 1520. No part of this document may be disclosed to persons without a "need to know," as defined in 49 CFR 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. Government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR Parts 15 and 1520.*

**ATTACHMENT 1**

**Airport Security System Support Agreement**

**Scope of Work : Authorized Contacts**

Authorized representatives of DIA/Department of Aviation/Airport Security:

DIA CAISS Administrator

Ed Ahr  
Tel (303) 342-2923 Cell (720) 434-0071

DIA CAISS Coordinator

Chris Reither  
Tel (303) 342-4316 Cell (303) 591-5842

Jon Rodan  
Tel (303) 342-2779 Cell (303) 359-4536

DIA Director of Security

Adam Steffl  
Tel (303) 342-4123

Assistant Security Directors

Mark Inzana  
Tel (303) 342-2839

John Smithwick  
Tel (303) 342-4312

Airport Security Managers

Rick Graves  
Tel (303) 342-4302

Alisha Lopez  
Tel (303) 342-4344

Matt Gomez  
Tel (303) 342-4350

Lisa Dittberner  
Tel (303) 342-4328

Mark Chadwick  
Tel (303) 342-4353

Dawn Gregory  
Tel (303) 342-4343



Marie Surratt  
Tel (303) 342-2023

Fax number for Airport Security is (303) 342-4319

Upon notification of a Major or Minor Failure in these systems, CCS shall contact, in order, one of the above persons to coordinate resolution of the failure.

***The Airport Communications Center is available to contact any of the above at (303) 342-4210.***

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## **EXHIBIT B**

### **Cyber Country Systems Cost Estimate**

The estimated annual compensation under this Agreement is:

1. \$102,000 allocated annually for execution of:
  - a. 7/24 On Call support of the DIA CAISS system. On-Call support shall include production and/or modification of system RLY's and RLL's as necessary to implement replacement changes and upgrades to the IDC hardware.
  
2. \$150,000 allocated annually for:
  - a. Modification of the Maxx-Net application programs, and development of 3<sup>rd</sup> party software interfaces as may be requested by DIA to support required system changes, software development and all other types of work.
  - b. Specifications for the changes and/or development requested shall be made in writing by DIA, and estimates shall be provided by Cyber Country Systems of the cost and schedule for accomplishing such changes.
  - c. A written Work Order may then be issued by DIA, authorizing the specified work.
  - d. Where DIA has requested cooperation of CCS with third-party vendors resulting in costs to CCS, a written estimate of such costs shall be submitted to DIA for authorization prior to commencement of any associated work. Authorized work may be invoiced upon completion of the associated work by CCS, exclusive of completion of any work by such third-party vendor.

Annual Cost Estimate:

Year 1	\$252,000
Year 2	\$252,000
Year 3	\$252,000
Year 4 (optional)	\$252,000
Year 5 (optional)	\$252,000
<b>Total Estimated Budget</b>	<b>\$1,260,000</b>

**EXHIBIT C**

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

**A. Certificate Holder**

The certificate shall be issued to: CITY AND COUNTY OF DENVER  
Denver International Airport  
8500 Peña Boulevard, Suite 8810  
Denver CO 80249  
Attn: Risk Management

**B. Acceptable Certificate of Insurance Form and Submission Instructions**

Please read these requirements carefully to ensure proper documentation and receipt of your certificate(s) of insurance.

- ACORD FORM (or equivalent) certificate is required.
- SUBMIT via emailed in pdf format to: [contractadmininvoices@flydenver.com](mailto:contractadmininvoices@flydenver.com)
- ELECTRONIC CERTIFICATES are required, hard copy documents will not be accepted.
- THIRD PARTY SOFTWARE may be implemented during the term of this Agreement to manage insurance compliance and documents with required use by Vendor of such system.
- REFERENCE on the certificate must include the DEN assigned Contract Number.

**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 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.

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 unescorted airside driving privileges are required, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. The policy must not contain an exclusion related to operations on airport premises.
- d. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.

- e. If Contractor is an individual or represents that Contractor does not own any motor vehicles and Contractor's owners, officers, directors, and employees use their personal vehicles for business purposes, Personal Automobile Liability insurance coverage will be accepted provided it includes a business use endorsement.
  - f. If Contractor will be completing all services to DEN under this Agreement remotely this requirement will be 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. If Contractor is a sole proprietor, Workers' Compensation and Employer's Liability is exempt under the Colorado Workers' Compensation Act. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage and executing all required documentation with the State of Colorado.
  
4. **Professional Liability (Errors and Omissions) Insurance:**  
Contractor shall maintain a minimum limit of \$1,000,000 each claim and policy aggregate, providing coverage for applicable services outlined in this Agreement.
  
5. **Technology Errors and Omissions, Network Security, and Privacy Liability (Cyber):**  
Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with limits of \$10,000,000 per occurrence and \$10,000,000 policy aggregate.
  - 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.
  
6. **Property Insurance:**  
Contractor is solely responsible for any loss or damage to their real or personal property including, without limitation, property, materials, tools, equipment, and structures. If Contractor carries property insurance on its personal property located on DEN premises, a waiver of subrogation as outlined in Section E will be required from its insurer.
  
7. **Installation Floater:**  
Contractor shall provide coverage with a limit equal to the full insurable value of materials and equipment and be written on a Special Covered Cause of Loss Form including theft, faulty workmanship, mechanical or electrical damage during testing and labor costs to repair damaged work, and soft costs. The policy shall cover property while located at the project site, at temporary locations, or in transit; and name the City as the loss payee on the policy, as its interests may appear. Coverage shall remain in force until acceptance of the work by the City.

8. Unmanned Aerial Vehicle (UAV) Liability:

If Contractor desires to use drones in any aspect of its work or presence on DEN premises, the following requirements must be met prior to commencing any drone operations:

- a. Express written permission must be granted by DEN.
- b. Express written permission must be granted by the Federal Aviation Administration (FAA).
- c. Drone equipment must be properly registered with the FAA.
- d. Drone operator(s) must be properly licensed by the FAA.
- e. Contractor must maintain UAV Liability including flight coverage, personal and advertising injury liability, and hired/non-owned UAV liability for its commercial drone operations with a limit no less than \$1,000,000 combined single limit each occurrence for bodily injury and property damage.

9. 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 and/or Contract Number and project description shall be noted on the Certificate of Insurance.

**E. Additional Insured**

For all coverages required under this Agreement (excluding Workers' Compensation and Professional Liability), 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, 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.

**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. Said notice shall be sent thirty (30) 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) 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 seven (7) 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.

**H. Additional Provisions**

1. Deductibles, Self-Insured Retentions, or any other 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. 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.
4. 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.

5. The insurance requirements under this Agreement shall be the greater of (i) the minimum limits and coverage specified hereunder or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Contractor. It is agreed that the insurance requirements set forth herein shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums set forth in this Agreement.
6. 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 discovery period of three years beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
7. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required minimum per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage remains in force.
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 set forth in this Agreement 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. The City's acceptance of any submitted insurance certificate is subject to the approval of DEN Risk Management. All coverage requirements specified in the certificate 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 herein.
11. The City shall have the right to verify or confirm, at any time, all coverage, information or representations, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
12. No material changes, modifications or interlineations to insurance coverage required under this Agreement shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring DEN is provided updated Certificate(s) of Insurance ten (10) days prior to each policy renewal.
14. Contractor's failure to maintain the insurance required by this Agreement shall be the basis for immediate termination of this Agreement at DEN's sole discretion and without penalty to the City.