

MEMORANDUM OF UNDERSTANDING
BETWEEN AND AMONG
U.S. CUSTOMS AND BORDER PROTECTION
AND

(b) (4)

AND

(b) (4)

REGARDING SINGLE-TOKEN BIOMETRIC PILOT PROJECTS FOR
INTERNATIONAL FLIGHTS DEPARTING FROM DESIGNATED U.S.
AIRPORTS

I. PARTIES

The Parties to this Memorandum of Understanding (MOU) are U.S. Customs and Border Protection (CBP) (b) (4)

(b) (4) (collectively, "the Parties").

II. PURPOSE

The purpose of this MOU is for the Parties to collaborate on (b) (4) proposed pilot program to utilize facial biometrics to verify the identity of travelers prior to their departure on (b) (4) international flights from selected airports in the United States to London, United Kingdom.

III. AUTHORITIES

CBP is authorized to enter this MOU pursuant to 6 U.S.C. § 301a, and more generally, the Homeland Security Act of 2002, 6 U.S.C. §§ 112 et seq., as amended. Other legal authorities relevant to CBP's participation in the below-referenced pilot program include 8 U.S.C. § 1365b, 8 U.S.C. § 1731, and Section 8 of the Executive Order 13780, *Protecting The Nation From Foreign Terrorist Entry Into The United States* (Mar. 6, 2017).

(b) (4) and (b) (4) represent and warrant that they each have the full power and authority to enter into this MOU and to carry out their respective requirements necessary for its implementation.

IV. RESPONSIBILITIES

(b)(4) working with (b)(4) its technology partner, intends to capture each traveler's photo, in accordance with CBP's specifications, during the boarding process for (b)(4) international flights from designated Airport(s) in the United States to London, United Kingdom. (b)(4) collection from the traveler of this information, use of (b)(4) technology to facilitate capture, processing, and transmission to CBP, is based solely on (b)(4) contractual relationship with the traveler, which is in accordance with the performance of the contract (b)(4) has with the traveler. (b)(4) is entitled to rely upon (b)(4) authority, which includes (b)(4)'s making of disclosures and obtaining consents as may be required by applicable law, in regard to (b)(4) provision of services, including data processing, to facilitate boarding.

(b)(4) intends to capture each consenting traveler's photo using (b)(4) provided technology and send it to CBP's Traveler Verification Service (TVS) which is expected to match the records biometrically within an agreed degree of accuracy and return a response to (b)(4) via (b)(4) provided technology to indicate whether a traveler is clear to board or otherwise requires a manual review of travel documents to confirm identity. (b)(4) will perform alternative ("as-is") processing in the event CBP's response requires it, as otherwise directed by CBP, or in response to a traveler's declination to be photographed. CBP's authority to inspect all outbound international travelers is not affected by this arrangement.

The Parties expect to begin the pilot on or after 22 Jan 2018, and continue for 45 calendar days. The pilot may be extended for an additional 45 calendar days upon written concurrence of the Parties. The Parties can mutually determine, in writing, to continue or discontinue the pilot per Section XI, below.

(b)(4) and (b)(4) understand that CBP's involvement with (b)(4) pilot is for market research and exploratory purposes only. CBP intends to explore future projects to test the TVS in other use cases in collaboration with (b)(4); however, CBP is making no commitment to give (b)(4) and/or (b)(4) any special consideration in any future acquisition. The Parties consent to discuss possible expansion of the pilot to additional flights and/or locations, provided the staff and background infrastructure are available. Further, the Parties acknowledge that (b)(4) is a company organized under the laws of the (b)(4) and as such, (b)(4) must comply with applicable data protection laws of the (b)(4) and other applicable jurisdictions which may have current or future bearing on the Parties ability to agree to any continuation or expansion of the pilot.

CBP intends to:

- 1) Build a biometric gallery of facial images, obtained through various DHS databases, of all travelers intending to depart on select mutually agreed upon London bound flights as identified through its Advance Passenger Information System (APIS) manifest collections and CBP's facial image database;
- 2) Use the manifest to determine if CBP officer presence is required at the departure gate and coordinate with (b)(4) in advance to support its airport operations, as appropriate;
- 3) Provide (b)(4) and/or (b)(4) with specifications for the collection and transmission of facial images from travelers to CBP;

- 4) Receive data transmitted by (b) (4) through the (b) (4) provided technology, namely facial photographs captured during the boarding process, and perform the facial matching of each photograph against the pre-established biometric gallery of manifested travelers;
- 5) For each match, transmit an electronic response through the (b) (4) provided technology to (b) (4) pilot boarding system, comprised only of the APIS numeric identifier, to indicate whether the traveler is cleared to continue with the boarding process or manual review by (b) (4) to confirm the traveler's identity as necessary. If any traveler (US citizen or otherwise), does not wish to have his/her photo taken, he/she can request alternative processing;
- 6) Record a biometrically confirmed departure record for each traveler matched against the biometric gallery of expected travelers;
- 7) Use the submitted photo for diagnostic and analytical purposes to evaluate the success of the pilot, to evaluate the potential for expansion of the pilot, and to consider how to improve the efficiency and effectiveness of CBP's biometric exit program; and
- 8) Protect (b) (4) captured photos received under this MOU in accordance with its applicable privacy and security policies and delete such photos from the TVS in accordance with applicable U.S. law and policy.

(b) (4) intends to:

- 1) Take responsibility for instructing on the parameters for (b) (4) providing services to enable the capturing and processing of the traveler photo and submission to CBP's TVS or (b) (4) behalf, including such as may be required pursuant to (b) (4) obligations as a (b) (4) organized and operating company, as such are mutually agreed upon in the Scope of Work ("SOW") as further contemplated and defined below.
- 2) Integrate traveler photo capture into the boarding process for flights within the scope of this MOU, in accordance with CBP's facial matching specifications;
- 3) For each traveler on the flight manifest, capture the traveler photo at boarding that conforms to CBP's facial matching specifications;
- 4) Facilitate transmission of each conforming traveler photo to CBP's TVS per CBP's technical specifications;
- 5) Permit boarding of the traveler based in part on a positive matching response of CBP's biometric facial matching service;
- 6) Perform as-is manual confirmation of each traveler's identity using that traveler's travel documents in the event CBP's response indicates that such review is necessary or as otherwise directed by CBP;
- 7) Consistent with normal operating procedures, promptly contact CBP following any manual review of a traveler's travel documents for which (b) (4) is not able to confirm the traveler's identity, to receive CBP instructions regarding the boarding of such traveler;
- 8) Not store or process any photo captured or matching response from CBP beyond the intended purpose of processing travelers for boarding, as outlined in this MOU; and
- 9) Develop and implement defined processes and instructions to undertake this pilot, including the provision of alternative processing (As-Is) for those travelers who do not wish to have their photo taken.

(b) (4) intends to:

- 1) Provide technology to perform facial image capture and facilitate transmission to CBP's TVS per CBP's specifications on (b) (4) behalf in accordance with (b) (4) defined process and instructions, as mutually agreed upon in the SOW;
- 2) Provide technology to integrate with (b) (4) Departure Control System (DCS) to provide boarding details;
- 3) Provide a pass-through service to (b) (4), retaining no data, including but not limited to facial images or CBP TVS response transmissions, and excluding log-files, unless explicitly agreed among the Parties;
- 4) Not store or process any photo captured or matching response from CBP beyond the intended purpose of processing travelers for boarding, as outlined in this MOU ;
- 5) Provide (b) (4) with a traveler-facing interface with indicators to guide the boarding process in accordance with (b) (4)'s defined process and instructions; and
- 6) Provide (b) (4) with an agent application to allow (b) (4) to view traveler information where applicable, such as name and seat number, to support (b) (4) customer experience and boarding requirements.

(b) (4) and (b) (4) intend to develop a separate SOW document identifying the designated airport and describing the boarding process concepts being developed, implemented, and tested by (b) (4) and (b) (4) in this pilot initiative, which will define detailed concepts, technical specifications, an implementation schedule, and operating procedures. (b) (4) will provide a final draft copy of the SOW to CBP for review, and CBP may provide input to (b) (4) regarding the SOW, solely on the provisions that pertain to CBP and its operations. CBP will also be provided with a finalized version of the SOW as a reference and with updated copies as changes may be made. Receipt and review of the SOW by CBP shall not be construed as an endorsement of any kind.

V. PUBLIC COMMUNICATIONS

(b) (4) and (b) (4) understand that CBP's involvement with (b) (4) pilot is for market research and exploratory purposes only. CBP is making no commitment to give (b) (4) and/or (b) (4) any special consideration in any future acquisition. Through participation in this pilot initiative, CBP is not officially endorsing or approving the equipment, technology, or process developed by (b) (4) and/or (b) (4). As such, (b) (4) and (b) (4) agree not to use any statements or feedback provided by CBP regarding the implementation of the pilot for marketing purposes. All content for public communications regarding the pilot project that is the subject of this MOU, including the issuance of press releases or promotional activities, is to be approved by all Parties prior to such release to the public or media.

VI. POINTS OF CONTACT (POC)

Each Party is expected to provide specific contact information for their respective POC, listed below, by separate written communication, within 24 hours of the signing of this MOU, and provide updates of such information as necessary to ensure the information remains current for the duration of the pilot.

CBP Point of Contact
Director, Entry/Exit Policy and Planning
CBP
Entry/Exit Transformation Office
1300 Pennsylvania Ave NW
Washington, DC 20229

(b) (4) Point of Contact

(b) (4)

(b) (4) Point of Contact

(b) (4)

VII. OTHER PROVISIONS

Nothing in this MOU is intended to conflict with applicable U.S. law or the policies of the U.S. Department of Homeland Security (DHS) and CBP. If a term or provision of this MOU is inconsistent with such authority, then that term or provision shall be invalid, but the remaining terms, provisions, and conditions of this MOU shall remain in full force and effect.

VIII. IMPLEMENTATION

This MOU is to be implemented on the date of the last signature hereon by the Parties.

IX. FUNDS

Each Party is expected to be responsible for its own costs incurred in the implementation of this MOU, and is expected to use its own equipment and personnel resources in performing the activities under this MOU. This MOU does not obligate DHS/CBP funds, nor does this MOU in any way expand CBP's liability for any damage or loss to the other Parties that might arise from implementation of the pilot. CBP's stated intentions are subject to the availability of appropriated funds and changing operational needs.

X. MODIFICATION

This MOU and any annexes or addenda thereto may be modified upon the mutual written consent of the Parties.

XI. DISCONTINUATION

This MOU remains in effect until the completion of the pilot project. The MOU may be extended by mutual written consent of the Parties. Any Party may discontinue, suspend or terminate the pilot project with 24 hours' written notification to all other Parties if performance of the pilot is unreasonable or causes disruption to CBP or [REDACTED] operations.

XII. MISCELLANEOUS

1. This MOU does not confer a right or benefit, substantive or procedural, on behalf of any third party and does not otherwise confer a right on any third party to enforce any provision of this MOU.
2. This MOU represents the entire understanding between and among the Parties. No other understanding, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the Parties thereto.
3. Each Party is expected to permit access to data received by it under this MOU to only those personnel of such Party (including a party's contractors, or personnel of affiliated entities) with an official need to know or as otherwise required by applicable United States law.
4. No Party may disclose any confidential or proprietary information of another Party exchanged under this MOU for any purpose outside the scope of this MOU without prior written consent of the Party that provided the information, unless otherwise required by applicable law.
5. CBP understands that [REDACTED] terms of use may be implicated by CBP's participation in this pilot. To the extent such end user license agreement(s) include(s) indemnity language and/or other language that would cause CBP personnel or contractor personnel to violate the Antideficiency Act, 31 U.S.C. § 1341, or otherwise violate Federal law, if accepted by the personnel in the course of their participation in the pilot [REDACTED] agrees to strike that language and deems it unenforceable.
6. [REDACTED] hereby grants to CBP a non-exclusive license to use, copy, reproduce, and create derivative works based upon the captured photos received by CBP under this MOU for the limited purpose of using facial biometrics to verify the identity of travelers prior to their departure from the United States as described in this MOU. Without prejudice to the foregoing, nothing in this MOU conveys to a party any right, title or interest in any intellectual property right of another party.
7. Nothing in this MOU obligates a Party to enter into any further agreements with respect to the purpose or preclude any Party from entering into future business agreements or commercial opportunities.
8. This MOU is governed by federal law; but, to the extent necessary, as between [REDACTED] and [REDACTED] a court of federal jurisdiction will look to the laws of the State of New York to resolve disputes.

XIII. APPROVED BY

Signed for and on behalf of and by its duly authorized representative:

U.S Customs and Border Protection

(b) (6), (b) (7)(C)

Todd Owen

Executive Assistant Commissioner

Office of Field Operations

U.S. Customs and Border Protection

Date: Jan 31, 2018

(b) (4)

(b) (6), (b) (4)

Title: General Counsel, Americas

Date: February 23, 2018

(b) (4)

(b) (4)

Title: _____

Date: _____

XIII. APPROVED BY

Signed for and on behalf of and by its duly authorized representative:

U.S Customs and Border Protection

(b) (4)

Todd Owen
Executive Assistant Commissioner
Office of Field Operations
U.S. Customs and Border Protection
Date: _____

(b) (4)

Title: _____

Date: _____

(b) (4)

(b) (6), (b) (7)(C)

Title: (b) (4)

Date: _____