

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. CB13-0285
COMMITTEE OF REFERENCE:
BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Agreement between the City and County of Denver and Dell Marketing, L.P. related to software maintenance and support services at Denver International Airport.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed Agreement between the City and County of Denver and Dell Marketing, L.P., in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2013-0346, is hereby approved.

COMMITTEE APPROVAL DATE: May 2, 2013

MAYOR-COUNCIL DATE: May 7, 2013

PASSED BY THE COUNCIL: _____, 2013

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2013

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2013; _____, 2013

PREPARED BY: Kevin Cain, Assistant City Attorney *Kevin Cain* DATE: May 9, 2013

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney DATE: May 9, 2013

AGREEMENT

THIS AGREEMENT FOR DATA MANAGEMENT AND DATA REDUCTION SYSTEM, SOFTWARE, SUPPORT AND MAINTENANCE (Contract Number PLANE-201206123-00) (“Agreement”), made and entered into as of the date set forth on the signature page below (the “Effective Date”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City” or “Customer”), Party of the First Part, and **DELL MARKETING, LP**, a limited partnership organized under the laws of Texas and authorized to do business in Colorado (“Consultant” or “Dell”), Party of the Second Part. City and Dell are each referred to individually as a “Party,” and collectively as the “Parties.” References to “City or Customer” shall include any affiliate of Customer that expressly agrees to the terms hereunder or is otherwise legally bound to such terms, and references to “Consultant or Dell” shall include any affiliate of Dell that expressly agrees to the terms hereunder or is otherwise legally bound to such terms;

W I T N E S S E T H:

WHEREAS, the City owns and operates Denver International Airport (“DIA” or the “Airport”), and desires to purchase software, software upgrades, and related support and maintenance Services and related equipment for a comprehensive and automated data management platform providing data reduction technologies across DIA’s heterogeneous tiered storage infrastructure managed from a single administrative console or Graphical User Interface (GUI), and such other work as may be requested by the City, at Denver International Airport; and

WHEREAS, the Consultant is qualified and ready, willing and able to provide the requested hardware, software and Services to the City, in accordance with the terms of this Agreement; and

WHEREAS, this Agreement together with any executed Schedules hereto govern the relationship between the City and Dell with regard to the purchase and sale of Solutions;

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

1. **LINE OF AUTHORITY:**

The City's Manager of Aviation, his designee or successor in function (the "Manager of Aviation" or the "Manager") authorizes all work performed under this Agreement. The Manager hereby delegates his authority over the work described herein to the Airport's Deputy Manager of Aviation / Information Technologies (the "Deputy Manager") as the Manager's authorized representative for the purpose of administering, coordinating and approving work performed by the Consultant under this Agreement. The Deputy Manager's authorized representative for day-to-day administration of the Consultant's services under this Agreement is the Project Manager. The Consultant shall submit its reports, memoranda, correspondence and submittals to the Project Manager. The Manager and the Deputy Manager may rescind or amend any such designation of representatives or delegation of authority and the Deputy Manager may from time to time designate a different individual to act as Project Manager, upon notice to the Consultant.

2. **SCOPE:**

A. Introduction. Dell's sale of Solutions, as well as its performance of Services and Customer's use of the Software are subject to and governed by the terms of this Agreement. Purchases of Products, Software licenses, or Services under this Agreement shall be solely for Customer's own internal use and not for

resale purposes. In instances where Customer purchases through a reseller or distributor, final prices and terms and conditions of sale will be as agreed between Customer and the third party from which Customer makes such purchases; however, the terms set forth herein are applicable to Customer's use of Dell Software and the performance of Dell Services.

B. Definitions.

- i. **"Deliverables"** means the tangible and intangible materials, including reports, studies, base cases, drawings, findings, software, manuals, procedures and recommendations that are prepared by Dell or its subcontractors uniquely and exclusively for use by Customer and that are specifically identified in a signed Statement of Work as Deliverables.
- ii. **"Products"** means computer hardware, related devices and other accessories and products, including standard components embedded therein, as provided by Dell hereunder.
- iii. **"Schedule(s)"** means the Dell Product Schedule, Services Schedule and/or Software License Schedule, as well as any attachments to such Schedule(s), as executed by the parties.
- iv. **"Services"** means any and all maintenance and support services provided by Dell hereunder.
- v. **"Software"** means any software, library, utility, tool, or other computer or program code, each in object (binary) code form, as well as the related media, printed materials, online and electronic documentation and any copies thereof, as provided by Dell hereunder. Software includes without limitation standalone software, software provided in connection with Products, software provided in connection with Services, software locally installed on Customer's systems, and software accessed by Customer through the Internet or other remote means (such as websites, portals, and "cloud-based" solutions).
 - a) **"System Software"** means Software that provides basic hardware functionality and provides a platform for applications to run (e.g., firmware and BIOS software), Software that is primarily intended to operate and manage the Products in which it is embedded, and any Software specifically designated by Dell as System Software.
 - b) **"Application Software"** means Software that is designed to perform specialized data processing tasks for the user and any Software specifically designated by Dell as Application Software.
- vi. **"Solutions"** means the Products, Services (including Deliverables), Software licenses or any combination thereof provided by Dell under this Agreement.
- vii. **"Statement of Work" or "SOW"** means any mutually agreed document describing the Solution to be provided by Dell to Customer, including without limitation, "Service Descriptions", "Specification Sheets", "Sales Orders" and any other such documents executed under the terms of a Services Schedule hereto or otherwise available at www.dell.com/servicecontracts/US.
- viii. **"Third-Party Products"** means any products, software, or services that are manufactured, created or performed by a party other than Dell.

C. Additional Agreements. This Agreement, together with the applicable Schedules, form a legally binding contract between the Customer and Dell. The Schedules, if executed, shall apply in the following manner:

- i. Customer's purchase of Products is further subject to the additional terms of the **"Product Schedule."**

- ii. Dell's performance of Services are further subject to the additional terms of the "Services Schedule."
- iii. Customer's use of Software is subject solely to the separate software license terms provided with the Software, included with the Software media packaging, or presented to Customer during the installation or use of the Software. Customer agrees that Customer will be bound by such license agreement. If no license terms accompany the Dell-branded Software, then Customer's use of such Software is subject to the additional terms of the "Software License Schedule." If no such schedule has been executed by the parties, then use of Dell-branded Application Software is subject solely to the Dell End User License Agreement – Type A located at <http://content.dell.com/us/en/gen/d/solutions/dell-end-user-license-agreement.aspx>, and use of Dell-branded System Software is subject solely to the End User License Agreement — Type S located at <http://content.dell.com/us/en/gen/d/solutions/software-license-agreements.aspx>. International purchases of eligible licenses are provided under Dell's International Sales Agent Agreement ("ISSA") (provided upon request).

3. COMPENSATION AND PAYMENT:

A. **Fee:** The City agrees to pay to the Consultant, and the Consultant agrees to accept as its sole compensation for costs incurred under this Agreement, the rates set forth in any subsequent Statement of Work ("SOW") and as may be further described herein.

B. **Reimbursement Expenses:** There are no reimbursable expenses allowed under this Agreement, unless approved in writing, in advance, by the Deputy Manager.

C. **Invoicing:** Consultant shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City. The City shall pay any undisputed amounts in accordance with its obligations under the City's Prompt Payment Ordinance. Dell may invoice parts of an order separately or combine separate orders into one invoice. Unless Customer and Dell have agreed to a different discount structure, Dell's standard pricing policy for Dell-branded Solutions includes Products, Software licenses and Services in one discounted price, and allocates the discount off list price applicable to the Services portion of the Solution to be equal to the overall percentage discount off list price of the entire Solution. Dell may suspend or terminate any or all Solutions and refuse additional orders from Customer, with no liability to Customer, until Dell's receipt of all overdue amounts.

C. **Prices:** The prices charged for Solutions purchased under this Agreement shall be the amounts set forth on Dell's website or other quotation provided to Customer, except as otherwise expressly agreed to by the parties. Quoted prices will remain in effect only until the expiration date of the quote (or thirty days if there is no expiration date), Dell's withdrawal of the quote or Dell's acceptance of Customer's order.

D. **Changed or Discontinued Products, Software, or Services:** A change in a Product, Software or Service may occur after a Customer places an order but before Dell ships the Product or Software, or performs the Service. As a result, Products, Software, and Services that Customer receives may display minor differences from the Products, Software, and Services Customer ordered, but they will meet or exceed all material specifications of such Products, Software or Services ordered.

E. **Multi-year Licenses:** If Customer purchases a multi-year Software license and related support and/or maintenance, and Dell and the Customer (and, if applicable, the third-party licensor) agree to annualize the Customer's purchase over the term of the license, then Customer shall make all annual payments in full and such purchase is non-cancellable over the term of the license.

F. Maximum Contract Liability:

(i) Any other provision of this Agreement notwithstanding, in no event shall the City be liable to pay for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of One Million Fifty Thousand Dollars and 00 Cents (\$1,050,000.00) (the "Maximum Contract Liability"). Funding under the provisions of this paragraph 3.F. may be payable from the City's Airport System Capital Replacement Fund and/or Airport Operations and Maintenance Fund. The Consultant acknowledges that the City is not obligated to execute an Order, agreement or an amendment to this Agreement for any services and that any services performed by Consultant beyond that specifically described in an Order are performed at Consultant's risk and without authorization under this Agreement. (ii) The Parties agree that the City's payment obligation, whether direct or contingent, shall extend only to funds appropriated as stated herein and encumbered for the purpose of this Agreement. The Parties agree that (a) the City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years and (b) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

4. IMPORTANT ADDITIONAL INFORMATION:

A. Limited Warranty:

- i. WARRANTIES FOR SOLUTIONS SHALL BE PROVIDED AS INDICATED IN THE SCHEDULES. EXCEPT AS EXPRESSLY STATED IN THE SCHEDULES, DELL (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS (COLLECTIVELY, THE "DELL PARTIES") MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS, SOFTWARE, DELIVERABLES OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (a) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (b) RELATING TO THIRD-PARTY PRODUCTS; (c) RELATING TO THE PERFORMANCE OF ANY PRODUCT OR SOFTWARE, OR DELL'S PERFORMANCE OF THE SERVICES; OR (d) REGARDING THE RESULTS TO BE OBTAINED FROM THE SOLUTION OR THE RESULTS OF ANY RECOMMENDATION BY DELL.
- ii. WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, MISUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICE NOT PERFORMED OR AUTHORIZED BY DELL (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH SOLUTION DOCUMENTATION, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE SOLUTION. WARRANTIES DO NOT APPLY TO THIRD-PARTY PRODUCTS. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER.
- iii. NOTHING IN THIS SECTION SHALL EXCLUDE OR LIMIT DELL'S WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. SOME JURISDICTIONS DO NOT ALWAYS ENFORCE CLASS ACTION OR JURY WAIVERS, AND MAY LIMIT FORUM SELECTION CLAUSES AND STATUTE OF LIMITATIONS PROVISIONS, AS SUCH, ONLY THE

LIMITATIONS THAT ARE LAWFULLY APPLIED TO CUSTOMER IN CUSTOMER'S JURISDICTION WILL APPLY TO CUSTOMER, AND DELL'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

B. High-Risk Disclaimer: Dell shall not be liable to the Customer for use of the Solution in hazardous or high-risk environments requiring fail-safe performance, in which the failure or malfunction of the Solution could lead directly to death, personal injury, or severe physical or property damage. Such use is at Customer's own risk, even if Dell knows of such use, and Dell expressly disclaims any express or implied warranty of fitness for such high-risk activities.

C. Limitation of Liability:

- i. EXCEPT FOR AN UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION, INFRINGEMENT/MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR AS OTHERWISE SET FORTH IN THE APPLICABLE SCHEDULES, NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR FOR ANY (a) LOSS OF REVENUE, INCOME, PROFIT, SAVINGS OR BUSINESS OPPORTUNITY; (b) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK, OR THE RECOVERY OF SUCH; (c) BUSINESS INTERRUPTION OR DOWNTIME; (d) LOSS OF GOODWILL OR REPUTATION; (e) PRODUCTS, SOFTWARE OR DELIVERABLES NOT BEING AVAILABLE FOR USE; OR (f) THE PROCUREMENT OF SUBSTITUTE SOLUTIONS; ARISING OUT OF OR IN CONNECTION WITH THE SOLUTIONS PROVIDED HEREUNDER.
- ii. THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR DELL PROVIDING PRODUCTS, SOFTWARE, OR SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES OR FAILURES.

D. Regulatory Requirements: Dell is not responsible for determining whether any Third-Party Product to be used in the Solution, satisfies the local regulatory requirements of the country to which such Solution is to be delivered or performed, and Dell shall not be obligated to provide any Solution where the resulting Solution is prohibited by law or does not satisfy the local regulatory requirements.

E. Excluded Data: Customer acknowledges that no part of the Solution is designed with security and access management for the processing and/or storage of the following categories of data: (1) data that is classified and/or used on the U.S. Munitions list, including software and technical data; (2) articles, services and related technical data designated as defense articles and defense services; (3) ITAR (International Traffic in Arms Regulations) related data; and (4) personally identifiable information that is subject to heightened security requirements as a result of Customer's internal policies or practices, industry-specific standards or by law (collectively referred to as "Excluded Data"). Customer hereby agrees that Customer is solely responsible for reviewing data that it will provide to Dell (or to which Dell will have access) to ensure that it does not contain Excluded Data.

5. TERM:

The Term of this Agreement shall commence on the Effective Date, and shall terminate on August 31, 2015, unless sooner terminated. The term of this Agreement may be extended for two periods of one (1) year

each, by written amendment to this Agreement. Notwithstanding any other extension of term under this paragraph 4 the term of this Agreement may be extended by the mutual agreement of the parties, confirmed by written notice from the City to the Consultant, to allow the completion of any work which has been commenced prior to the date upon which this Agreement otherwise would terminate. However, no extension of the Term shall increase the Maximum Contract Liability stated herein; such amount may be changed only by a duly executed written amendment to this Agreement.

6. SUBCONTRACTORS:

A. Dell may not subcontract any portion of any consulting or custom development services provided hereunder without DIA's prior written consent. Dell may use technology services subcontractors to perform hardware and software technical, warranty and helpdesk support services without DIA's consent. Although the Consultant may retain, hire and contract with outside subcontractors, no final agreement or contract with any such subcontractor shall be entered into without the prior written consent of the Deputy Manager or his authorized representative. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subcontractor, and any other information requested by the Deputy Manager. 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 the contract.

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

C. The Consultant shall not retain any subcontractor to perform work under this Agreement if the Consultant is aware, after a reasonable written inquiry has been made, that the subcontractor is connected with the sale or promotion of equipment or material which is or may be used on work related to or following on from this Agreement, or that any other conflict of interest exists.

7. STATUS OF CONSULTANT:

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

8. NO AUTHORITY TO BIND CITY TO CONTRACTS:

The Consultant 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 Charter and Ordinance.

9. ASSIGNMENT:

The Consultant shall not assign, pledge or transfer its duties and rights under this Agreement, in whole or in part, without first obtaining the written consent of the Manager. Provided, that Dell may assign to an affiliate without the Manager's prior written consent. Any attempt by the Consultant to assign or transfer its rights hereunder without such prior written consent shall, at the option of the Manager, automatically terminate this Agreement and all rights of the Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the Manager.

10. CONFLICT OF INTEREST:

The Consultant agrees that it and its subsidiaries, affiliates, principals, or employees will not engage in any transaction, activity or conduct which would result in a conflict of interest. The Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interest of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. 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 the Consultant written notice which describes such conflict. The Consultant shall have thirty 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.

11. NO DISCRIMINATION IN EMPLOYMENT:

In connection with the performance of work under this Agreement, the Consultant agrees not to fail or refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Consultant further agrees to insert the foregoing provision in all subcontracts hereunder.

12. DSBO GOALS:

The Consultant may be subject to the City's ordinance, DRMC Chapter 28, Article III (MBE/WBE Ordinance) which prohibits discrimination in the awarding of contracts and subcontracts and directs the DSBO Director to establish goals for MBE and WBE participation in the preconstruction and construction of City-owned facilities. The goal for this Agreement is: *Not Applicable*. If it is determined that project goals apply, such project goals must be met with certified MBE and WBE participants or by demonstrating good faith efforts under the MBE/WBE Ordinance. The Consultant must comply with the terms and conditions of the MBE/WBE Ordinance in soliciting and contracting with its subcontractors in administering the performance of the work hereunder. It shall be an ongoing, affirmative obligation of the Consultant to maintain, at a minimum, compliance with the originally achieved level of MBE/WBE participation upon which this Agreement was awarded, for the duration of this Agreement, unless the City initiates a material alteration to the scope of work.

13. PROMPT PAY:

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

14. INSURANCE:

A. The Consultant shall obtain and keep in force during the entire term of this Agreement, including any warranty periods, all of the minimum insurance coverage forms and amounts set forth in **Exhibit B**, which is incorporated into this Agreement by this reference. The Consultant shall submit to the City fully completed and executed certificates of insurance (ACORD form or equivalent approved by the City) which specifies the issuing company or companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf, and must be submitted to the City at the time the Consultant signs this Agreement.

B. All certificates and any required endorsements must be received and approved by the City before any work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project, including any warranty periods. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the Agreement. All subcontractors' work shall also be subject to the minimum requirements identified in **Exhibit B**. All subcontractors' certificates and endorsements must be received and approved by the Consultant before work commences. The City reserves the right to request copies of these certificates at any time.

C. All certificates required by this Agreement shall be sent directly to Denver International Airport, Risk Management, Airport Office Building, Room 8810, 8500 Pena Boulevard, Denver, Colorado 80249. The City Project/Agreement number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

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

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

F. The insurance coverage forms specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant under the terms of this Agreement, including the Indemnification provisions herein. The Consultant shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

15. COLORADO GOVERNMENTAL IMMUNITY ACT:

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

16. DEFENSE AND INDEMNIFICATION:

A. Consultant hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence

or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Consultant or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

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

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

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

17. INTELLECTUAL PROPERTY INDEMNIFICATION:

Consultant shall (i) defend City against any third party claim that the Work, or materials provided by Consultant to City infringe a patent, copyright or other intellectual property right, and (ii) pay the resulting costs and damages finally awarded against City by a court of competent jurisdiction or the amounts stated in a written settlement signed by Consultant. The foregoing obligations are subject to the following: the City (a) notifies the Consultant promptly in writing of such claim, (b) grants the Consultant sole control over the defense and settlement thereof subject to the final approval of the City Attorney, and (c) reasonably cooperates in response to request for assistance. Should such a claim be made, or in the Consultant's opinion be likely to be made, the Consultant may, at its option and expense, (1) procure for the City the right to make continued use thereof, or (2) replace or modify such so that it becomes non-infringing. If the preceding two options are commercially unreasonable, then Consultant shall refund the pro rata portion of any fee for the affected Work. The Consultant shall have no indemnification obligation to the extent that the infringement arises out of or relates to: (a) the use or combination of the subject Work and/or materials with third party products or services, (b) use for a purpose or in a manner for which the subject Work and/or materials were not designed in accordance with Consultant's standard documentation; (c) any modification to the subject Work and/or materials made by anyone other than the Consultant or its authorized representatives, if the infringement claim could have been avoided by using the unaltered version of the Work and/or materials, (d) any modifications to the subject Work and/or materials made by the Consultant pursuant to the City's specific instructions, or (e) any technology owned or licensed by the indemnitee from third parties. THIS SECTION STATES THE INDEMNITEE'S SOLE AND EXCLUSIVE REMEDY AND THE INDEMNITOR'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

18. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP OF HARDWARE AND SOFTWARE:

All right, title, and interest in and to the intellectual property (including all copyrights, patents, trademarks, trade secrets, and trade dress) embodied in the Software, Products, Deliverables and all content and other items included with or as part of the Products, Services, Software, or Deliverables, such as text, graphics, logos, button icons, images, audio clips, information, data, feedback, photographs, graphs, videos, typefaces, music, sounds, and software, as well as the methods by which any Services are performed and the processes that make up the Services, shall belong solely and exclusively to Dell or its suppliers or licensors, and Customer shall have no rights whatsoever in any of the above, except as expressly granted in this Agreement or the applicable Schedule.

19. PROFESSIONAL SERVICES:

With regard to DIA's purchase of any professional services, Dell will act solely as a billing agent for CommVault for the proposed professional services and shall not be responsible in any way for the provisioning of any such services as clarified in Dell's original response to DIA's Formal Proposal No. 6992. CommVault will have sole responsibility with respect to the liability and provision of the professional services set forth in any resulting Statement of Work pursuant to Formal Proposal No. 6992. Under this Agreement, Dell will only be selling and DIA will only be purchasing the Services as defined herein.

20. COMPLIANCE WITH ALL LAWS AND REGULATIONS:

All of the work performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado, the charter, ordinances and rules and regulations of the City and County of Denver, and all Denver International Airport Rules and Regulations. Each party agrees to comply with all laws and regulations applicable to such party in the course of performance of its obligations under this Agreement. Customer acknowledges that the Solutions provided under this Agreement, which may include technology, authentication and encryption, are subject to the customs and export control laws and regulations of the United States ("U.S."); may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which Customer or its systems are located; and may also be subject to the customs and export laws and regulations of the country in which the Solution is rendered or received. Each party agrees to abide by those laws and regulations applicable to such party in the course of performance of its obligations under this Agreement. Customer also may be subject to import or re-export restrictions in the event Customer transfers the Products, Software or Deliverables from the country of delivery and Customer is responsible for complying with applicable restrictions. If any software provided by Customer and used as part of the Solution contains encryption, then Customer agrees to provide Dell with all of the information needed for Dell to obtain export licenses from the U.S. Government or any other applicable national government and to provide Dell with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Customer is solely responsible for obtaining any necessary permissions relating to software that it exports. Dell also may require export certifications from Customer for Customer-provided software. Dell's acceptance of any order for a Solution is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government. Dell is not liable for delays or failure to deliver Solutions resulting from Customer's failure to obtain such license or to provide such certification.

21. FEDERAL PROVISIONS:

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 Denver Municipal Airport System, including DIA. The provisions of the attached Appendices Nos. 1 and 3 are incorporated herein by reference.

22. AIRPORT SECURITY:

A. It is a material requirement of this Agreement that the Consultant shall comply with all rules, regulations, written policies and authorized directives from the City and/or the Transportation Security Administration with respect to Airport security. The Consultant shall conduct all of its activities at the Airport in compliance with the Airport security program, which is administered by the Security Section of the Airport Operations Division, Department of Aviation. Violation by the Consultant or any of its employees, subcontractors or vendors of any rule, regulation or authorized directive from the City or the Transportation Security Administration with respect to Airport Security shall be grounds for immediate termination by the City of this Agreement for cause.

B. The Consultant shall promptly upon notice of award of this Agreement, meet with the Airport's Assistant Security Manager to establish badging and vehicle permit requirements for the Consultant's operations under this Agreement. The Consultant shall obtain the proper access authorizations for all of its employees, subcontractors and vendors who will enter the Airport to perform work or make deliveries, and shall be responsible for each such person's compliance with all Airport rules and regulations, including without limitation those pertaining to security. Any person who violates such rules may be subject to revocation of his/her access authorization. The failure of the Consultant or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

C. The security status of the Airport is subject to change without notice. If the security status of the Airport changes at any time during the term of this Agreement, the Consultant shall take immediate steps to comply with security modifications which occur as a result of the changed status. The Consultant may at any time obtain current information from the Airport Security Office regarding the Airport's security status in relation to the Consultant's operations at the Airport.

D. The Consultant shall return to the City at the expiration or termination of this Agreement, or upon demand by the City, all access keys or access badges issued to it or any subcontractor for any area of the Airport, whether or not restricted. If the Consultant fails to do so, the Consultant shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of such costs from any amounts due and payable to the Consultant under this Agreement.

23. COMPLIANCE WITH PATENT, TRADEMARK, COPYRIGHT AND SOFTWARE LICENSING LAWS:

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

B. The Consultant further agrees to release, indemnify and defend the City, its officers, agents and employees, pursuant to Paragraph 16, "Defense and Indemnification," and Paragraph 17, "Intellectual Property Indemnification".

24. TAXES AND COSTS:

A. The Consultant, at its own expense, 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.

B. The City shall provide to Consultant, at no cost, all necessary clearances and permits necessary to install and/or deliver the additional remote units required for the Tracking System and/or Aerobahn under this Agreement. Where such clearances, permits, leases, or fees of a similar nature are required to be obtained and paid for directly by Consultant, the City shall reimburse Consultant the actual cost of such items.

C. The City affirms that it is a tax-exempt entity under the Laws of the State of Colorado and this purchase qualifies for the Denver and Colorado sales tax exemption for sales to the United States government, the State of Colorado, its departments and institutions, and its political subdivisions (county and local governmental, school districts and special districts); is a government purchase used only in an official governmental capacity; and will be paid directly by a government agency. Taking into account the City's status, Consultant confirms that all Charges are inclusive of all taxes, levies, duties and assessments ("Taxes") of every nature in effect as of the Effective Date and due in connection with its performance of its obligations under this Agreement. Consultant is responsible for payment of such Taxes to the appropriate governmental authority.

25. ADVERTISING AND PUBLIC DISCLOSURES:

The Consultant shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to DIA 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. The Manager shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude the Consultant's use of this contract and its component parts in GSA form 254 or 255 presentations, or the transmittal of any information to officials of the City, including without limitation, the Mayor, the Manager, any member or members of City Council, and the Auditor.

26. COLORADO OPEN RECORDS ACT:

The Consultant acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., and the Consultant 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 the Consultant asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments and other documents incorporated into this Agreement by reference, all materials, records and information provided by the Consultant to the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and the Consultant agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City.

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

The Consultant and Consultant's agents shall cooperate and comply with the provisions of the City and County of Denver Executive Order No. 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's barring the Consultant and Consultant's agents from City facilities or participating in City operations.

28. CITY SMOKING POLICY:

Consultant acknowledges that smoking is not permitted in Airport buildings and facilities except for designated Airport Smoking Concessions, and so agrees that it will prohibit smoking by its employees and the public in indoor areas and within 15 feet of entryways of the Airport Premises, except as may otherwise be permitted by the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209. Consultant and its officers, agents, and employees shall cooperate and comply with the provisions of the Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209, City's Executive Order No. 99 dated December 1, 1993, and Executive Order No. 13 dated July 31, 2002.

29. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

- (a) The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and Den. Rev. Mun. Code 20-90 and the Consultant is liable for any violations as provided in said statute and ordinance.
- (b) The Consultant certifies that:
 - (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
 - (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- (c) The Consultant also agrees and represents that:
 - (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (2) It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
 - (4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.
 - (5) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three days. The Consultant will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or

contracting with the illegal alien, unless during such three-day period the subcontractor or subcontractor provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.

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

30. EXAMINATION OF RECORDS:

A. The Consultant agrees that the City's duly authorized representatives, including the City's Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent invoices and purchase orders of the Consultant involving this Agreement.

B. In connection with any services performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Development Act of 1970, as amended, the City, the Federal Aviation Administration, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any invoices and purchase orders of the Consultant which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. The Consultant further agrees that such invoices and purchase orders will contain information concerning the personnel, hours and specific tasks performed, along with the applicable federal project number.

31 INFORMATION FURNISHED BY CITY:

The City will furnish to the Consultant available information concerning DIA and any such other matters that may be necessary or useful in connection with the Services to be performed by the Consultant under this Contract. The Consultant shall be responsible for the verification of the information provided to the Consultant.

32. CITY REVIEW OF PROCEDURES:

The Consultant agrees that, upon request of the Deputy Manager, at any time during the term of the Agreement or three years thereafter, it will make full disclosure to the City of the means, methods, and procedures used in performance of Services hereunder.

33. TERMINATION:

A. Either Party has the right to terminate this Agreement without cause on thirty (30) days written notice to the other Party, and with cause on ten (10) days written notice to the other Party.

B. Either party may terminate this Agreement, any Schedules and/or any SOWs immediately if the other party (1) fails to make any payment when due; (2) is acquired by or merged with a competitor of the terminating party; (3) declares bankruptcy or is adjudicated bankrupt; or (4) has a receiver or trustee appointed to it for all or substantially all of its assets. Upon termination of this Agreement, all rights and obligations of the parties under this Agreement will automatically terminate except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination. Termination of the Agreement will terminate all Schedules. Any active SOW, unless earlier terminated, will continue for the term stated in such SOW and be subject to

the terms of this Agreement and the applicable Schedule(s). Termination of one or more Schedules or SOWs will not, by itself, terminate this Agreement.

C. If this Agreement is terminated, the Consultant shall deliver to the City all Deliverables it has completed under this Agreement and which have been paid for by the City.

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

34. SURVIVAL OF CERTAIN CONTRACT PROVISIONS:

The parties understand and agree that all terms and conditions of this Agreement, including any warranty provision, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term or otherwise) shall survive such termination and shall continue to be enforceable as provided herein.

35. NOTICES:

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

by Consultant to: Manager of Aviation
Denver International Airport
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

And by City to: Dell Marketing, L.P.
Attn: Contract Manager
One Dell Way
Round Rock, TX 78682

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

36. 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 the Consultant, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach

of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any other breach.

37. NO THIRD PARTY BENEFICIARIES:

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the City and the Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the Consultant that any person other than the City or the Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

38. GOVERNING LAW; BOND ORDINANCES; VENUE; DISPUTES:

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

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

C. All disputes between the City and Consultant regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 5-17.

39. DATA CONFIDENTIALITY:

For the purpose of this Agreement, confidential information means any information, knowledge and data marked "Confidential Information" or "Proprietary Information" or similar legend. All oral and/or visual disclosures of Confidential Information shall be designated as confidential at the time of disclosure, and be summarized, in writing, by the disclosing Party and given to the receiving Party within thirty (30) days of such oral and/or visual disclosures.

The disclosing Party agrees to make known to the receiving Party, and the receiving Party agrees to receive Confidential Information solely for the purposes of this Agreement. All Confidential Information delivered pursuant to this Agreement:

- a) shall not be distributed, disclosed, or disseminated in any way or form by the receiving Party to anyone except its own employees, corporate partners, affiliates and alliance partners who have a need to know said Confidential Information;
- b) shall be treated by the receiving Party with the same degree of care to avoid disclosure to any third Party as is used with respect to the receiving Party's own information of like importance which is to be kept confidential.

These obligations shall not apply, however, to any information which:

- a) is already in the public domain or becomes available to the public through no breach of this Agreement by the receiving Party; or

- b) was in the receiving Party's possession prior to receipt from the disclosing Party;
or
- c) is received by the receiving Party independently from a third Party free to disclose such information; or
- d) is subsequently independently developed by the receiving Party as proven by its written records; or
- e) is disclosed when such disclosure is compelled pursuant to legal, judicial, or administrative proceeding, or otherwise required by law, subject to the receiving Party giving all reasonable prior notice to the disclosing Party to allow the disclosing Party to seek protective or other court orders.

Upon the request from the disclosing Party, the receiving Party shall return to the disclosing Party all Confidential Information, or if directed by the disclosing Party, shall destroy such Confidential Information.

40. PREVAILING WAGES:

Employees of the Consultant or its subcontractors may be subject to the payment of prevailing wages pursuant to D.R.M.C. 20-76, depending upon the nature of the Work. By executing this Agreement, the Consultant covenants that it is familiar with this Code Section and is prepared to pay or cause to be paid prevailing wages, if any, applicable to the work conducted by the Consultant's or its subcontractor's employees. The schedule of prevailing wage is periodically updated and Consultant is responsible for payment of then current prevailing wage. The Consultant may obtain a current schedule of prevailing wage rates at any time from the City Auditor's Office.

41. PARAGRAPH HEADINGS:

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

42. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:

This Agreement consists of Sections 1 through 49 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference (the "Contract Documents"):

- Appendix No. 1: Standard Federal Assurances
- Appendix No. 3: Nondiscrimination in Airport Employment Opportunities
- Exhibit A: Schedules
- Exhibit B: Certificate of Insurance

In the event of an irreconcilable conflict between a provision of Sections 1 through 49 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:

- Appendices No. 1 and 3
- Sections 1 through 49 hereof
- Exhibit A

43. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:

This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

44. 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.

45. FORCE MAJEURE:

Neither party shall 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 (a "Force Majeure Event"). Both parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes. The delayed party's time for performance will be excused for the duration of the Force Majeure Event, but if the Force Majeure Event lasts longer than thirty (30) days, then the other party may immediately terminate, in whole or in part, this Agreement or the applicable Schedule or SOW by giving written notice to the delayed party.

46. SEVERABILITY; ENTIRE AGREEMENT:

If any part, portion or provision of this Agreement shall be found or declared null, void, or unenforceable for any reason whatsoever by any court of competent jurisdiction or any governmental agency having applicable authority, only such part, portion, or provision shall be affected thereby and all other parts, portions and provisions of this Agreement shall remain in full force and effect. The Contract Documents form the entire agreement between the parties and are fully binding on the parties. No oral representations or other agreements have been made except as specifically stated in the Contract Documents.

47. COUNTERPARTS OF THIS AGREEMENT:

This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

48. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

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

49. CITY EXECUTION OF AGREEMENT:

This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been approved by City Council, if so required by law, and fully executed by all signatories of the City and County of Denver.

[SIGNATURE PAGE FOLLOWS]

Contract Control Number: PLANE-201206123-00

Contractor Name: Dell Marketing L.P.

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:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



Contract Control Number: PLANE-201206123-00

Contractor Name: Dell Marketing L.P.

By: CM Mc Cally

Name: Christina M. Mc Cally
(please print)

Title: Contracts Consultant
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



APPENDIX NO. 1

STANDARD FEDERAL ASSURANCES

NOTE: As used below the term "contractor" shall mean and include the "Party of the Second Part," and the term "sponsor" shall mean the "City".

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

1. Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, creed or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

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

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

5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX NO. 3

NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Party of the Second Part assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is to provide, or is in the form of personal property or real property or an interest herein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

EXHIBIT A - Schedules

Product Schedule

to

**Agreement for Data Management and Data Reduction System, Software, Support and Maintenance
(Contract Number PLANE-201206123-00)**

1. **General.** This Product Schedule ("Schedule"), in addition to the Agreement for Data Management and Data Reduction System, Software, Support and Maintenance (Contract Number PLANE-201206123-00) dated _____ ("Agreement"), which is hereby incorporated, set forth the terms of all purchases of Products by Customer from Dell. In the event of a conflict between this Schedule and the Agreement, the terms of this Schedule shall take precedence. Unless otherwise defined in this Schedule, capitalized terms herein shall have the meaning defined in the Agreement.
2. **Shipping Charges; Title; Risk of Loss.** Taxes and shipping and handling charges are not included in Product prices unless expressly indicated by Dell at the time of sale. Title to Products passes from Dell to Customer upon shipment to Customer (except title to any Software included with the Products remains with the applicable licensors). Loss or damage that occurs during shipping by a carrier selected by Dell is Dell's responsibility. Loss or damage that occurs during shipping by a carrier selected by Customer is Customer's responsibility. Shipping and delivery dates are provided as estimates only. Customer must notify Dell within twenty-one (21) days of the date of its invoice or acknowledgement if Customer believes any part of its order is missing, wrong, or damaged.
3. **Returns, Exchanges and Repairs.** Return of Products is subject to the policy at www.Dell.com/ReturnPolicy, which is available in hard copy from Dell upon request. Before returning or exchanging a Product, Customer must contact Dell directly to obtain an authorization number to include with Customer's return. Customer must return Products to Dell in their original or equivalent packaging, and Customer is responsible for risk of loss, as well as shipping and handling fees. Additional fees, including up to a 15% restocking fee, may apply. If Customer fails to follow the return or exchange instructions provided by Dell, Dell will not be responsible for any loss, damage, or modification of a Product, or processing of a Product for disposal or resale. Credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing associated with Customer's original purchase. Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned.
4. **Cancellation of Order.** Customer may change or cancel an order for Dell-branded Products only up until the time Dell begins manufacturing the Products. Otherwise, Customer may change or cancel an order as set forth in the applicable Dell quote or as expressly agreed by both parties.
5. **Termination.** Either party may terminate this Schedule at any time by providing at least thirty (30) days prior written notice to the other party. Upon termination of this Schedule, all rights and obligations of the parties under this Schedule will automatically terminate except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.
6. **Limited Warranty.** THE LIMITED WARRANTIES FOR DELL-BRANDED PRODUCTS CAN BE FOUND AT www.Dell.com/Warranty OR IN THE DOCUMENTATION DELL PROVIDES WITH SUCH PRODUCTS. SUCH DOCUMENTS ARE AVAILABLE IN HARD COPY FROM DELL UPON REQUEST.

By their signatures below, Dell and Customer indicate their agreement to the terms and conditions set forth in this Product Schedule and the Agreement.

Dell Marketing L.P.
Signature:
Name:

Customer
Signature:
Name:

Position:

Date:

Position:

Date:

Services Schedule

to

Agreement for Data Management and Data Reduction System, Software, Support and Maintenance (Contract Number PLANE-201206123-00)

1. **General.** This Services Schedule ("Schedule"), in addition to the Agreement for Data Management and Data Reduction System, Software, Support and Maintenance (Contract Number PLANE-201206123-00) dated _____ ("Agreement"), which is hereby incorporated, and any SOWs executed hereunder, set forth the terms of all Services performed by Dell for Customer. Unless otherwise defined in this Schedule, capitalized terms herein shall have the meaning defined in the Agreement. For purposes of this Schedule, each SOW will be interpreted as a single agreement, independent of any other SOW, so that all of the provisions are given as full effect as possible.
2. **Additional Charges.** Additional charges will apply if Customer requests Services that are performed outside of contracted hours or are beyond the normal coverage for the particular Service.
3. **Termination of Services.** Either party may terminate this Schedule for convenience by providing at least thirty (30) days prior written notice to the other. Termination of this Schedule will not terminate any outstanding SOW that provides for a specific term over which the Services are to be provided. In such case, the terms of this Schedule, as incorporated into the SOW, and the SOW itself will remain in effect for the remainder of the specified term. Any licenses to Software provided as part of the Services shall terminate at the termination of the applicable SOW, unless otherwise stated in the SOW. Upon termination of this Schedule, all rights and obligations of the parties under this Schedule will automatically terminate except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.
4. **Deliverables.** Dell and its applicable suppliers and licensors will retain exclusive ownership of all Deliverables, and will own all intellectual property rights, title and interest in any ideas, concepts, know-how, documentation, and techniques associated with such Deliverables. Subject to payment in full for the applicable Services, Dell grants Customer an on-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country or countries in which Customer does business, solely for Customer's internal use, and solely as necessary for Customer to enjoy the benefit of the Services as stated in the applicable SOW.
5. **Suspension or Modification of Software or Services.** Dell may suspend, terminate, withdraw, or discontinue all or part of the Services or Customer's access or one or more users' access to the Software (and third-party software) upon receipt of a subpoena or law-enforcement request, or when Dell believes, in its sole discretion, that Customer (or its users) have breached any term of this Schedule or an applicable SOW, or are involved in any fraudulent, misleading, or illegal activities.
6. **Updates.** With respect to Software provided or otherwise made available to Customer by Dell in connection with Services, it may be necessary for Dell to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Software, which may temporarily degrade the quality of the Services or result in a partial or complete outage of the Software. Dell may provide advance notification of such activities, Dell provides no assurance that the Software or Services will be uninterrupted or error-free, and any degradation or interruption in the Services or related Software shall not give rise to a refund or credit of any fees paid by Customer.
7. **Availability of Online Services.** CUSTOMER AGREES THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SOFTWARE PROVIDED AS PART OF THE SERVICES, INCLUDING TELEPHONE, COMPUTER NETWORKS, AND THE INTERNET, OR TO TRANSMIT INFORMATION, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF SUCH SOFTWARE. DELL SHALL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF CUSTOMER'S ACCESS TO OR USE OF THE SOFTWARE.
8. **Limited Warranty.** THE SERVICES WILL BE PROVIDED IN A GOOD AND WORKMANLIKE MANNER.
9. **Support Services.**
 - a. **Customer Responsibilities.** When Services consist of repair of Dell-branded systems, such Services shall be those repair services that are necessary to fix a defect in materials or workmanship of such systems or any standard system component covered by this Schedule. Preventive maintenance is not included.

Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Dell (or its representatives) are not included under this Schedule. Unless otherwise expressly provided in a SOW, Services do not include repair of any system or system component that has been damaged as a result of (1) accident, misuse, or abuse of the system or component (such as use of incorrect line voltages or fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Dell (or its representatives); (2) the moving of the system from one geographic location or entity to another; or (3) an act of nature such as lightning, flooding, tornado, earthquake, or hurricane.

b. Customer Authorization for Provision of Services. Some warranties or service contracts for Third-Party Products may become void if Dell or anyone other than an authorized service provider provides services for or works on such hardware or software (such as providing maintenance or repair services for the Third-Party Products). **DELL DOES NOT TAKE**

RESPONSIBILITY FOR ANY EFFECT THAT THE DELL SERVICES MAY HAVE ON THOSE WARRANTIES OR SERVICE CONTRACTS.

Customer authorizes Dell to use or otherwise access any and all Customer-provided Third-Party Products as necessary or as requested by Customer in Dell's performance of the Services, including copying, storing, and reinstalling backup systems or data. Customer shall defend, indemnify, and hold Dell harmless from any third-party claim or action arising out of Customer's failure to properly provide such authorization (such as obtain appropriate licenses, intellectual-property rights, or any other permissions, regulatory certifications, or approvals associated with technology, software, or other components).

10. Customer to Back up Data. Unless otherwise stated in an SOW, it is Customer's responsibility to back up its data on Customer systems and to carry out any equipment and technology upgrades, refreshes and replacements on its systems.

By their signatures below, Dell and Customer indicate their agreement to the terms and conditions set forth in this Services Schedule to the Agreement.

Dell Marketing L.P.
Signature:
Name:
Position:
Date:

Customer
Signature:
Name:
Position:
Date:

Software License Schedule

to

Agreement for Data Management and Data Reduction System, Software, Support and Maintenance (Contract Number PLANE-201206123-00)

1. **General.** This Software License Schedule ("Schedule"), in addition to the Agreement for Data Management and Data Reduction System, Software, Support and Maintenance (Contract Number PLANE-201206123-00) dated _____ ("Agreement"), which is hereby incorporated, set forth the terms of use for the Dell-branded Software provided by Dell. In the event of a conflict between this Schedule and the Agreement, the terms of this Schedule shall take precedence. Unless otherwise defined in this Schedule, capitalized terms herein shall have the meaning defined in the Agreement.
2. **License.** Provided that Customer timely pays amounts due and complies with the terms, conditions and restrictions of this Schedule (as a condition to the grant below), Dell hereby grants Customer a limited, personal, nonexclusive, nontransferable, non-assignable license, without rights to sublicense, to (A) install or have installed, display and use the Software (in object code only) solely for internal business purposes, and (B) only on as many computers, devices and/or in such configurations as expressly permitted by Dell. The terms and conditions of this Schedule will govern use of the Software and any upgrades, updates, patches, hotfixes, modules, routines, feature enhancement and/or additional versions of the Software provided by Dell, at Dell's sole discretion, that replace and/or supplement the original Software (collectively, "Update"), unless such Update is accompanied by or references a separate license agreement, in which case the terms and conditions of that agreement will govern. If this Schedule governs Customer's use of an Update, such Update shall be considered Software for purposes of this Schedule. Unless earlier terminated as provided herein, the term of each individual license granted under this Schedule begins on the date of execution by Customer of this Schedule, and continues only for such period as expressly permitted by Dell and continues only for such period as Customer has purchased, in the case of a term license, and is perpetual if no term is specified. Customer may use only portions of Software for which it has paid the applicable license fee.
3. **License Limitations.** Customer may not copy the Software except for a reasonable number of copies solely as needed for backup or archival purposes or as otherwise expressly permitted in in Section 2 "License" above. Customer may not modify or remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary notices or markings on or in the Software. The rights granted herein are limited to Dell's and its licensors' and suppliers' intellectual property rights in the Software and do not include any other third party's intellectual property rights. If the software was provided to Customer on removable media (e.g., CD, DVD, or USB drive), Customer may own the media on which the Software is recorded but Dell, Dell's licensor(s) and/or supplier(s) retain ownership of the Software itself and all related intellectual property rights. Customer is not granted any rights to any trademarks or service marks of Dell. This Schedule does not apply to any third party software that is not included as part of the Software. The use of any other software, including any software package or file, whether licensed to Customer separately by Dell or by a third party, is subject to the terms and conditions that come with or are associated with such software.
4. **Rights Reserved.** THE SOFTWARE IS LICENSED, NOT SOLD. Except for the license expressly granted in this Schedule, Dell, on behalf of itself and its licensors and suppliers, retains all right, title, and interest in and to the Software and in all related content, materials, copyrights, trade secrets, patents, trademarks, derivative works and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals, and extensions of such rights (the "Works"). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereinafter developed and any use other than as contemplated herein, including the reproduction, modification, distribution, transmission, adaptations, translation, display, republication or performance of the Works, except as specifically permitted herein, is strictly prohibited. Dell, on behalf of itself and its licensors and suppliers, retains all rights not expressly granted herein.
5. **Restrictions.** Except as otherwise provided herein or expressly agreed by Dell, Customer may not, and will not allow a third party to: (A) sell, lease, license, sublicense, assign, distribute or otherwise transfer or encumber in whole or in part the Software; (B) provide, make available to, or permit use of the Software in whole or in part by, any third party, including contractors, without Dell's prior written consent, unless such use by the third party is solely on Customer's behalf, is strictly in compliance with the terms and conditions of this Schedule, and Customer is liable for any breach of this Schedule by such third party (a "Permitted Third Party"); (C) copy, reproduce,

republish, upload, post, or transmit the Software in any way; (D) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code (or underlying ideas, algorithms, structure or organization) from the Software program, in whole or in part; (E) modify or create derivative works based upon the Software (except as set forth in Section 16 – Development Tools); (F) use the Software on a service bureau, rental or managed services basis or permit other individuals or entities to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server or wireless or Internet-based device; or (G) use the Software to create a competitive offering. Customer may not, and will not allow a Permitted Third Party to, use the Software in excess of the number of licenses expressly authorized by Dell. In addition, Customer may not share the results of any benchmarking of the Software without Dell's prior written consent.

6. RESERVED

7. Compliance. Customer will certify in writing, upon reasonable request by Dell, that all use of Software is in compliance with the terms of this Schedule, indicating the number of Software licenses deployed at that time. Customer grants Dell, or an agent selected by Dell, the right to perform a reasonable audit of Customer's compliance with this Schedule during normal business hours. Customer agrees to cooperate and provide Dell with all records reasonably related to Customer's compliance with this Schedule. If, as a result of the audit, a deficiency of greater than five percent (5%) is found in the license fees paid, then Customer shall bear the total cost of the audit, in addition to any other liabilities Customer may have.

8. Limited Warranty. Dell has the right to grant the licenses to the Software, and such Software will substantially conform in material respects to the functional specifications and current documentation provided by Dell with the Software. This limited warranty is not transferable and extends only for thirty (30) days from the date of delivery of the Software. This limited warranty does not cover damages, defects, malfunctions or failures caused by any unauthorized modification by Customer, or its agents, of the Software; any abuse, misuse or negligent acts of Customer; modification by Customer of any interfaces or any software or hardware interfacing with the Software; or any failure by Customer to follow Dell's installation, operation or maintenance instructions. **DELL DOES NOT WARRANT THAT THE FUNCTIONS OF THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER ASSUMES RESPONSIBILITY FOR SELECTING THE**

SOFTWARE AND THE RESULTS ACHIEVED. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND DELL'S ENTIRE LIABILITY FOR BREACH OF THE WARRANTIES PROVIDED HEREIN, IS FOR DELL, AT ITS SOLE DISCRETION, TO EITHER USE COMMERCIALY REASONABLE EFFORTS TO REMEDY ANY NON -CONFORMANCE OR TO PROVIDE A REFUND OF THE LICENSE FEES PAID BY CUSTOMER TO DELL FOR THE SOFTWARE. THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND CUSTOMER MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED -- ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THE SOFTWARE. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER.

9. Support and Subscription Services Not Included. Dell does not provide any maintenance or support services under this Schedule. Maintenance and support services, if any, are provided under a separate agreement. Additionally, this Schedule, in and of itself, does not entitle Customer to any Updates at any time in the future.

10. Termination. Dell may terminate this Schedule immediately and without prior notice if Customer fails to comply with any term or condition of this Schedule or if Customer fails to timely pay for the licenses to the Software. In addition, Dell may terminate any license to Software distributed for free at any time in its sole discretion. Either party may terminate this Schedule at any time by providing at least thirty (30) days prior written notice to the other party. In the event of termination of this Schedule, all licenses granted hereunder shall automatically terminate and Customer must immediately cease use of the Software and destroy all copies of the Software. The parties recognize and agree that their obligations under Sections 3, 4, 5, 6, 8, 10, 12, 15 and 16 of this Schedule, as well as obligations for payment, shall survive the cancellation, termination, and/or expiration of this Schedule, and/or the license(s) granted hereunder.

11. Export, Import and Government Restrictions. Customer is advised that the Software is subject to U.S. export laws as well as the laws of the country where it is delivered or used. Customer agrees to abide by these laws. Under these laws, the Software may not be sold, leased, or transferred to restricted countries (currently Cuba, Iran, North Korea, Sudan and Syria), restricted end-users, or for restricted end-uses. Customer specifically agrees that the Software will not be used for activities related to weapons of mass destruction,

including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. Customer understands that certain functionality of the Software such as encryption or authentication may be subject to import restrictions in the event Customer transfers the Software from the country of delivery and Customer is responsible for complying with applicable restrictions.

The software and documentation are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the software and documentation with only those rights set forth herein. Contractor/manufacturer is Dell Products L.P., One Dell Way, Round Rock, Texas 78682.

12. **Open Source and Third Party Software.** The Software may come bundled or otherwise be distributed with open source software, which is subject to the terms and conditions of the specific license under which the open source software is distributed. THIS OPEN SOURCE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SCHEDULE, AS IT RELATES TO ANY AND ALL CLAIMS TO THE EXTENT ARISING OUT OF OPEN SOURCE SOFTWARE, DELL SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. Under certain open source software licenses, Customer is entitled to obtain the corresponding source files. Customer may find corresponding source files for the Software at <http://opensource.dell.com> or other locations that may be specified to Customer by Dell.
13. **Evaluation Software.** Unless otherwise specified in a written agreement between the parties relating to an evaluation, if Customer has received the Software for evaluation purposes ("Evaluation Software"), despite anything to the contrary in this Schedule or the Agreement, Customer may use the Evaluation Software only during the limited evaluation period and for internal evaluation purposes only. Customer agrees not to use the Evaluation Software in a production environment, and acknowledges that Dell may terminate Customer's right

to evaluate or use the Evaluation Software, for any or no reason, effective immediately upon notice to Customer and Dell shall have no liability for Customer's loss of or access to data resulting from such termination.

14. **System Software.** Despite anything to the contrary in this Schedule or the Agreement, Customer may use the System Software only on Dell computers or devices, with the exception of mobile device application software specifically designed by Dell to be run on non-Dell hardware. Customer may transfer the System Software and all accompanying materials on a permanent basis as part of a sale or transfer of the Product on which it was preloaded by Dell, where applicable, only if Customer retains no copies and the recipient agrees to the terms located at <http://content.dell.com/us/en/gen/d/solutions/software-re-license-agreements.aspx>. Any such transfer must include the most recent update and all prior versions of the System Software.
15. **Warranty, Indemnity and Liability on Evaluation and System Software.** DESPITE ANYTHING TO THE CONTRARY IN THIS SCHEDULE OR THE MCCA, ANY EVALUATION SOFTWARE AND SYSTEM SOFTWARE IS PROVIDED TO CUSTOMER "AS IS" WITHOUT INDEMNITY OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. DELL BEARS NO LIABILITY FOR ANY DAMAGES WHATSOEVER RESULTING FROM USE (OR ATTEMPTED USE) OF THE EVALUATION SOFTWARE OR SYSTEM SOFTWARE AND HAS NO DUTY TO PROVIDE SUPPORT OF SUCH SOFTWARE TO CUSTOMER.
16. **Development Tools.** If the Software includes development tools, such as scripting tools, APIs, or sample scripts (collectively "Development Tools"), customer may use such Development Tools to create new scripts and code for the purpose of customizing Customer's use of the Software (within the parameters set forth in this Schedule and within the parameters set forth in the Development Tools themselves) and for no other purpose. Notwithstanding anything to the contrary set forth in this Schedule, no warranty, indemnity or technical support is provided for and Dell accepts no liability with regard to such sample scripts contained in such Development Tools or scripts or other code written by Customer or any third party.
17. **Hosted and Internet-Accessible Software.** Some or all of the Software may be remotely hosted or accessible to Customer through the Internet ("Hosted Software"). In such case, Dell may suspend, terminate, withdraw, or discontinue all or part of the Hosted Software or Customer's access to the Hosted Software upon receipt

of a subpoena or law-enforcement request, or when Dell believes, in its sole discretion, that Customer has breached any term of this Schedule or are involved in any fraudulent, misleading, or illegal activities. Dell may modify the Hosted Software at any time with or without prior notice to Customer. Dell may perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Hosted Software installed on its and Customer's system(s), which may temporarily degrade the quality of the Hosted Software or result in a partial or complete outage of the Hosted Software. Updates, patches or alerts may be delivered from Dell servers, which may be located outside of Customer's country. Dell provides no assurance that Customer will receive advance notification of such activities or that Customer's use of the Hosted Software will be uninterrupted or error-free.

By their signatures below, Dell and Customer indicate their agreement to the terms and conditions set forth in this Software License Schedule to the Agreement.

Dell Marketing L.P.
Signature:
Name:
Position:
Date:

Customer
Signature:
Name:
Position:
Date:

**CITY AND COUNTY OF DENVER
CERTIFICATE OF INSURANCE FOR DEPARTMENT OF AVIATION**

Original COI

Advice of Renewal

Change

Party to Whom this Certificate is Issued:

Name and Address of Insured:

CITY AND COUNTY OF DENVER
Manager of Aviation
Denver International Airport
8500 Peña Boulevard, Room 8810
Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201103815 – Data Management and Reduction Solution

I. MANDATORY COVERAGE

Colorado Workers' Compensation and Employer Liability Coverage

Coverage: COLORADO Workers' Compensation

Minimum Limits of Liability (In Thousands)

WC Limits: \$100, \$500, \$100

And Employer's Liability Limits:

Any Policy issued under this section must contain, include or provide for the following:

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

Commercial General Liability Coverage

Coverage: Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)

Minimum Limits of Liability (In Thousands):

Each Occurrence:	\$1,000
General Aggregate Limit:	\$2,000
Products-Completed Operations Aggregate Limit:	\$2,000
Personal & Advertising Injury:	\$1,000
Fire Damage Legal - Any one fire	\$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 and CG 2037 or equivalents.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
4. The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. Separation of Insureds Provision required
7. General Aggregate Limit Applies Per: Policy ___ Project ___ Location ___, if applicable

Business Automobile Liability Coverage

Coverage: Business Automobile Liability (coverage at least as broad as ISO form CA0001)

Minimum Limits of Liability (In Thousands): Combined Single Limit \$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

II. ADDITIONAL COVERAGE

Umbrella Liability

Coverage:

Umbrella Liability, Non Restricted Area

Minimum Limits of Liability (In Thousands)

Each Occurrence and aggregate

\$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

Professional Liability only as applicable Information Technology Contracts

Coverage: Professional Liability including Cyber Liability for Errors and Omissions

(If contract involves software development, computer consulting, website design/programming, multi-media designers, integrated computer system design, data management, and other computer service providers.)

Minimum Limits of Liability (In Thousands)

Per Claim

\$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. The insurance shall provide coverage for the following risks:
 - a. Liability arising from theft, dissemination and / or use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc. information) stored or transmitted in electronic form
 - b. Network Security Liability arising from the unauthorized access to, use of or tampering with computer systems including hacker attacks, inability of an authorized third party, to gain access to your services including denial of service, unless caused by a mechanical or electrical failure
 - c. Liability arising from the 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.
2. Policies written on a claims-made basis must remain in full force and effect in accordance with CRS 13-80-104. The Insured warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under the Contract is completed.
3. Any cancellation notice required herein may be provided by either certified or regular mail.
4. The policy shall be endorsed to include the City, its elected officials, officers and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Insured
5. Coverage must include advertising injury, personal injury (including invasion of privacy) and intellectual property offenses related to internet.

III. ADDITIONAL CONDITIONS

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

- All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
- With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
- The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
- Advice of renewal is required.
- All insurance companies issuing policies hereunder must carry at least an A -VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
- Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
- No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

NOTICE OF CANCELLATION

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