

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2013

COUNCIL BILL NO. CB13-0297  
COMMITTEE OF REFERENCE:  
BUSINESS, WORKFORCE, & SUSTAINABILITY

**A BILL**

**For an ordinance approving a proposed Designated Aviation Channeler (DAC) Services Agreement between the City and County of Denver and Telos Identity Management Solutions (Telos ID), concerning background checks for airport badge applicants at Denver International Airport.**

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

**Section 1.** The proposed Designated Aviation Channeler (DAC) Services Agreement between the City and County of Denver and Telos Identity Management Solutions (Telos ID), in the words and figures contained and set forth in that form in the above-named 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. 2013-0396 is hereby approved.

COMMITTEE APPROVAL DATE: May 9, 2013

MAYOR-COUNCIL DATE: May 14, 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: Max Taylor, Assistant City Attorney  DATE: May 16, 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 16, 2013

**DESIGNATED AVIATION CHANNELER (DAC)  
SERVICES AGREEMENT**

**BETWEEN**

**CITY AND COUNTY OF DENVER**

**AND**

**TELOS ID**

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**AT  
DENVER INTERNATIONAL AIRPORT**

## **AGREEMENT**

**THIS AGREEMENT FOR PROFESSIONAL SERVICES** (Contract Number PLANE-201208848-00) ('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"), Party of the First Part, and **TELOS IDENTITY MANAGEMENT SOLUTIONS (TELOS ID)**, a subsidiary of Telos® Corporation organized under the laws of the State of Virginia and authorized to do business in Colorado, Party of the Second Part;

## **WITNESSETH:**

**WHEREAS**, the City owns and operates Denver International Airport ("DIA" or the "Airport"), and will require professional services for Designated Aviation Channeler (DAC) services providing Criminal History Record Checks (CHRCs) and biographical Security Threat Assessments (STAs) for each individual required under Federal Law and the Rules and Regulations Governing the Denver Municipal Airport System, and such other work as may be requested by the City, at Denver International Airport; and

**WHEREAS**, Telos ID is qualified and ready, willing and able to provide the requested hardware, software and professional services to the City, in accordance with the terms of this Agreement;

**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 Airport Operations as the Manager's authorized representative for the purpose of administering, coordinating and approving work performed by Telos ID under this Agreement. The Deputy Manager's authorized representative for day-to-day administration of Telos ID's services under this Agreement is the Project Manager. Telos ID 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 Telos ID.

### **2. SCOPE OF WORK:**

A. Telos ID, under the general direction of, and in coordination with the Manager, or other designated supervisory personnel as set forth herein, shall diligently perform any and all authorized services provided under this Agreement. Telos ID shall provide the goods and services provided in the attached Exhibit A, "SCOPE OF WORK".

B. Additional Services: Telos ID may also perform services, hereinafter referred to as "Additional Services," which relate to the subject matter of this Agreement, but which the Deputy Manager determines to be not described in the Scope of Work or in excess of the requirements of the Scope of Work. Change orders and/or additional Statements of Work (SOWs) will be provided as needed to document work beyond that identified in Exhibit A. Telos ID shall be compensated for such Additional Services only if the services and the amount of fees and reimbursable expenses for the services have been authorized in writing in advance by the Deputy Manager. The total amount of fees and reimbursable expense costs for Additional Services shall not cause this Agreement to exceed the Maximum Contract Liability set forth herein, and in no event shall the approval of Additional Services and the cost of performing them be deemed to constitute an agreement by the City to an increase in the Maximum Contract Liability.

C. Telos ID shall faithfully perform the work required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent service providers who perform work of a similar nature to the work described in this Agreement.

### 3. TERM:

The Term of this Agreement shall commence on the Effective Date, and shall terminate on May 31, 2016, unless sooner terminated. This contract may be extended for up to two (2) one (1) year periods upon written agreement and approval of the Manager of Aviation and Telos ID.

### 4. COMPENSATION AND PAYMENT:

A. Fee: The City agrees to pay to Telos ID, and Telos ID agrees to accept as its sole compensation for services rendered and costs incurred under this Agreement, the rates set forth on Exhibit B, "RATES AND CHARGES" 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: Telos ID 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.

D. 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 Telos ID under the terms of this Agreement for any amount in excess of One million six hundred thousand Dollars and zero Cents (\$1,600,000.00) (the "Maximum Contract Liability"). Funding under the

provisions of this paragraph 4.D. may be payable from the City's Airport System Capital Replacement Fund and/or Airport Operations and Maintenance Fund. Telos ID 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 Telos ID beyond that specifically described in an Order are performed at Telos ID'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.

#### **5. TAXES AND COSTS:**

A. Telos ID, 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 Telos ID, at no cost, all necessary clearances and permits necessary to install and/or deliver the products and/or services under Agreement. Where such clearances, permits, leases, or fees of a similar nature are required to be obtained and paid for directly by Telos ID, the City shall reimburse Telos ID 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, Telos ID 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. Telos ID is responsible for payment of such Taxes to the appropriate governmental authority.

#### **6. STATUS OF CONSULTANT:**

It is agreed and understood by and between the parties hereto that the status of Telos ID 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 Telos ID or its personnel are employees or officers of the City under Chapter 18 of the Revised Municipal Code for any purpose whatsoever.

#### **7. NO AUTHORITY TO BIND CITY TO CONTRACTS:**

Telos ID 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.

## **8. PERSONNEL ASSIGNMENTS:**

A. Telos ID shall assign a Project Manager to this Project that has experience and knowledge satisfactory to the City. The Project Manager shall be the contact person in dealing with the City's Project Manager on matters concerning this Project and shall have the authority to act for Telos ID. Telos ID's designated Project Manager shall remain assigned on this contract during the entire contract term, while in the employ of the Telos ID, or, until such time that his performance is deemed unsatisfactory by the City and a formal written request is submitted which requests the removal of the Telos ID's Project Manager.

B. Telos ID may submit and the City will consider a request for reassignment of a Project Manager, should Telos ID deem it to be in the best interest of the City, the best interest of Telos ID's organization or in the best interest of Telos ID's Project Manager.

C. If the City allows the removal of a Project Manager, the replacement Project Manager must have, at least, similar or equal experience and qualifications to that of the original Project Manager. The replacement Project Manager's assignment is subject to the approval of the Deputy Manager of Aviation.

D. All key professional personnel identified by Telos ID will be assigned by Telos ID or subcontractors to perform work under the Work. The Deputy Manager must approve additional personnel in writing. It is the intent of the parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by the Work, and that Telos ID's and the sub-consultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.

E. If Telos ID decides to replace any of its key professional personnel, it shall notify the Deputy Manager in writing of the changes it desires to make. No such replacement shall be made until the replacement is approved in writing by the Deputy Manager, which approval shall not be unreasonably withheld. The Deputy Manager shall respond to Telos ID's written notice regarding replacement of key professional personnel within fifteen days after the Deputy Manager receives the list of key professional personnel, which Telos ID desires to replace. If the Deputy Manager or his designated representative does not respond within that time, the listed personnel shall be deemed to be approved.

F. If, during the term of this Agreement, the Deputy Manager determines that the performance of approved key personnel is not acceptable, he shall notify Telos ID, and he may give Telos ID notice of the period of time, which the Deputy Manager considers reasonable to correct such performance. If the Deputy Manager notifies Telos ID that certain of its key

personnel should be reassigned, Telos ID will use its best efforts to obtain adequate substitute personnel within ten days from the date of the Deputy Manager's notice.

**9. SUBCONTRACTORS:**

A. Although Telos ID 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 Telos ID'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. Telos ID shall not retain any subcontractor to perform work under this Agreement if Telos ID 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.

**10. 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 Telos ID is liable for any violations as provided in said statute and ordinance.

B. Telos ID 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. Telos ID 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 Telos ID 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. Telos ID will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor or subconsultant provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.

(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.

#### **11. NO DISCRIMINATION IN EMPLOYMENT:**

In connection with the performance of work under this Agreement, Telos ID 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 Telos ID further agrees to insert the foregoing provision in all subcontracts hereunder.

#### **12. DSBO GOALS:**

Telos ID 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. Telos ID 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 Telos ID 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. PREVAILING WAGES:**

Employees of Telos ID 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, Telos ID 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 Telos ID's or its subcontractor's employees. The schedule of prevailing wage is periodically updated and Telos ID is responsible for payment of then current prevailing wage. Telos ID may obtain a current schedule of prevailing wage rates at any time from the City Auditor's Office.

**14. PROMPT PAY:**

Telos ID is subject to D.R.M.C. Section 20-112 wherein Telos ID 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).

**15. CITY REVIEW OF PROCEDURES:**

Telos ID 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.

**16. COORDINATION OF SERVICES:**

Telos ID agrees to perform its work under this Agreement in accordance with the operational requirements of DIA, and all work and movement of personnel or equipment on areas included within the DIA site shall be subject to the regulations and restrictions established by the City or its authorized agents.

**17. INSURANCE:**

A. Telos ID 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 D, which is incorporated into this Agreement by this reference. Telos ID 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 Telos ID 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 D. All subcontractors' certificates and endorsements must be received and approved by Telos ID 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. Telos ID 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 Telos ID under the terms of this Agreement, including the Indemnification provisions herein. Telos ID 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.

## **18. DEFENSE AND INDEMNIFICATION:**

A. Telos ID 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 Telos ID 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. Telos ID'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. Telos ID'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. Telos ID 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 Telos ID under the terms of this indemnification obligation. Telos ID 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.

#### **19. 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.

#### **20. INTELLECTUAL PROPERTY INDEMNIFICATION AND LIMITATION OF LIABILITY:**

Telos ID shall (i) defend City against any third party claim that the Work, or materials provided by Telos ID 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 Telos ID. The foregoing obligations are subject to the following: the City (a) notifies Telos ID promptly in writing of such claim, (b) grants Telos ID 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 Telos ID's opinion be likely to be made, Telos ID 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 Telos ID shall refund the portion of any fee for the affected

Work. Telos ID 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 Telos ID's standard documentation; (c) any modification to the subject Work and/or materials made by anyone other than Telos ID 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 Telos ID 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.

## **21. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP OF HARDWARE AND SOFTWARE:**

A. Ownership: The City and Telos ID intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by Telos ID and paid for by the City pursuant to this Agreement, in preliminary or final forms and on any media (collectively, "Materials"), shall belong to the City. Telos ID shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, et seq., the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. Upon the City's written concurrence that the hardware and software are satisfactorily installed and payment to Telos ID by City under the terms of this Agreement, title to the hardware shall automatically pass to the City.

B. License Grant: Subject to the terms and conditions of this Agreement, Telos ID grants City the license set forth in Exhibit C.

C. Reservation of Rights: Telos ID reserves all rights not expressly granted to City in this Agreement. Except as expressly stated, nothing herein shall be construed to: (1) directly or indirectly grant to a receiving party any title to or ownership of a providing party's intellectual property rights in services or materials furnished by such providing party hereunder, or (2) preclude such providing party from developing, marketing, using, licensing, modifying or otherwise freely exploiting services or materials that are similar to or related to the Work or materials provided hereunder. Notwithstanding anything to the contrary herein, City acknowledges that Telos ID has the right to use any City provided materials solely for the benefit of City in connection with the Work performed hereunder for City.

## **22. OWNERSHIP OF WORK PRODUCT:**

Except as otherwise set forth at paragraph 21, above, all plans, drawings, reports, other submittals, and other documents submitted to the City or its authorized agents by Telos ID shall become and are the property of the City, and the City may, without restriction, make use of such documents and underlying concepts as it sees fit. Telos ID shall not be liable for any damage

which may result from the City's use of such documents for purposes other than those described in this Agreement.

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

A. Telos ID 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. Telos ID 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 Telos ID prepares any design documents which specify any material, equipment, process or procedure which is protected, Telos ID shall disclose such patents, trademarks and copyrights in the construction drawings or specifications.

B. Telos ID further agrees to release, indemnify and save harmless the City, its officers, agents and employees, pursuant to Paragraph 18, "Defense and Indemnification," and Paragraph 20, "Intellectual Property Indemnification and Limitation of Liability," from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which violates or infringes upon any patent, trademark, copyright or software license protected by law, except in cases where Telos ID's personnel are working under the direction of City personnel and do not have direct knowledge or control of information regarding patents, trademarks, copyrights and software licensing.

**24. SOFTWARE SOURCE CODE ESCROW:**

If required by Exhibit A, B or C Telos ID and City will execute a Software Source Code Escrow agreement for the software more fully described in Exhibit A, B or C. Such agreement shall be supplementary to this Agreement and to any software license agreement between City and Telos ID, pursuant to 11 United States Bankruptcy Code, Section 365(n) (11 U.S.C. §365(n)).

**25. ADVERTISING AND PUBLIC DISCLOSURES:**

Telos ID 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 Telos ID'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:**

Telos ID acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., and Telos ID 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 Telos ID 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 Telos ID to the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and Telos ID 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. DATA CONFIDENTIALITY:**

A. 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.

B. 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:

(i) 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;

(ii) 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.

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

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

(ii) was in the receiving Party's possession prior to receipt from the disclosing Party; or

(iii) is received by the receiving Party independently from a third Party free to disclose such information; or

(iv) is subsequently independently developed by the receiving Party as proven by its written records; or

(v) 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.

D. 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.

## **28. EXAMINATION OF RECORDS:**

A. Telos ID agrees that the City's duly authorized representatives, including but not limited to 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 books, documents, papers and records of Telos ID 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 books, documents, papers and records of Telos ID which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Telos ID further agrees that such records will contain information concerning the personnel, hours and specific tasks performed, along with the applicable federal project number.

## **29. INFORMATION FURNISHED BY CITY:**

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

## **30. TERMINATION:**

A. The City has the right to terminate this Agreement without cause on thirty (30) days written notice to Telos ID, and with cause on ten (10) days written notice to Telos ID. However, nothing herein shall be construed as giving Telos ID the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.

B. If Telos ID is discharged before all the services contemplated hereunder have been completed, or if Telos ID's services are for any reason terminated, stopped or discontinued

because of the inability of Telos ID to provide service under this Agreement, Telos ID shall be paid only for those services satisfactorily performed prior to the time of termination.

C. If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City which Telos ID is using by whatever method it deems expedient, and Telos ID shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City, and these documents and materials shall be the property of the City.

D. Upon termination of this Agreement by the City, Telos ID 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 Telos ID shall be entitled to reimbursement for the reasonable cost of the Work 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. Telos ID 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 Contract Amount.

**31. 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 Telos ID, 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.

**32. 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.

**33. 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 Telos ID to:                   Manager of Aviation  
  Denver International Airport  
  8500 Peña Boulevard, 9th Floor  
  Denver, Colorado 80249-6340

And by City to:                   Telos Identity Management Solutions, LLC  
  Attn: Sharon King  
  19886 Ashburn Rd.  
  Ashburn, VA 20147

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.

**34. 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 Telos ID, 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 Telos ID that any person other than the City or Telos ID receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**35. ASSIGNMENT:**

Telos ID 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. Any attempt by Telos ID 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 Telos ID hereunder. Such consent may be granted or denied at the sole and absolute discretion of the Manager.

**36. CONFLICT OF INTEREST:**

Telos ID agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees will not engage in any transaction, activity or conduct which would result in a conflict of interest. Telos ID 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 Telos ID by placing Telos ID's own interests, or the interest of any party with whom Telos ID 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 Telos ID written notice which describes such conflict. Telos ID 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.

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

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 Telos ID regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 5-17.

**38. COMPLIANCE WITH ALL LAWS AND REGULATIONS:**

All of the work performed under this Agreement by Telos ID 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.

**39. 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.

**40. AIRPORT SECURITY:**

A. It is a material requirement of this Contract that Telos ID 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. Telos ID 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 Telos ID 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 Contract for cause.

B. Telos ID shall promptly upon notice of award of this Contract, meet with the Airport's Assistant Security Manager to establish badging and vehicle permit requirements for Telos ID's operations under this Contract. Telos ID 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 Telos ID 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 Contract, Telos ID shall take immediate steps to comply with security modifications which occur as a result of the changed status. Telos ID may at any time obtain current information from the Airport Security Office regarding the Airport's security status in relation to Telos ID's operations at the Airport.

D. Telos ID shall return to the City at the expiration or termination of this Contract, 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 Telos ID fails to do so, Telos ID 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 Telos ID under this Contract.

#### **41. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:**

Telos ID and Telos ID'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 Telos ID and Telos ID's agents from City facilities or participating in City operations.

#### **42. CITY SMOKING POLICY:**

Telos ID 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. Telos ID 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.

**43. 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.

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

This Agreement consists of Sections 1 through 51 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:	Scope of Work
Exhibit B:	Rates and Charges
Exhibit C:	[LICENSE OR VENDOR MSA]
Exhibit D	Certificate of Insurance

In the event of an irreconcilable conflict between a provision of Sections 1 through 51 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 51 hereof  
Exhibit A  
Exhibit B  
Exhibit C  
Exhibit D

**45. 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.

**46. 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.

**47. 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. Both parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

**48. 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.

**49. COUNTERPARTS OF THIS AGREEMENT:**

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

**50. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Telos ID 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.

**51. 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-201208848-00

**Contractor Name:** Telos Identity Management Solutions LLC

By: Sharon King 4/22/13

Name: Sharon King  
(please print) **Contracts Administrator**  
**Telos ID**

Title: \_\_\_\_\_  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**Contract Control Number:** PLANE-201208848-00

**Contractor Name:** Telos Identity Management Solutions LLC

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

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

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_





## **Exhibit A Scope of Work**

### **Overview / Introduction**

- 1.1 **Denver International Airport (DIA) is required under Transportation Security Administration (TSA) Regulations and Security Directives to process fingerprint based Criminal History Record Checks (CHRCs), Security Threat Assessments (STAs) and providing access media updates through a certified Aviation Channeling Service Provider (ACSP).**
- 1.2 **DIA currently completes CHRCs and STAs for applicants being issued a Security Identification Display Area (SIDA) or Ground Transportation (Public Area) badge. SIDA badges are issued only after both a CHRC and STA have been successfully completed. Ground Transportation badges are issued after an STA has been successfully completed and pending a successful CHRC result.**
- 1.3 **DIA has an active badge population of approximately 30,000 SIDA and approximately 3,000 Ground Transportation badge holders.**
- 1.4 **DIA revalidates SIDA badges annually and Ground Transportation badges every two years.**
- 1.5 **DIA issues badges to applicants for each company that they are employed with.**
- 1.6 **DIA operates its credentialing system on an isolated network that is not accessible from public networks.**

### **Specifications / Scope of Work**

- 2.1 **PURPOSE: This contract is to establish services with a TSA certified ACSP that will efficiently and reliably process CHRCs, STAs and applicant biographical information updates to the TSA in accordance formatting and timeline standards outlined in Security Directive 1642-04-08G.**
- 2.2 **CAPABILITIES: The Proposer must be certified and authorized by the TSA as a DAC prior to the contract award date.**
- 2.3 **The Proposer must be able to provide documentation which demonstrates that the Proposer maintains a database infrastructure that is capable of managing large amounts of data. It must also be demonstrated how uniqueness of identity data is maintained in support of an identity management system.**
- 2.4 **The Proposer must provide a general description of practices in place to ensure data is maintained in the event of natural disaster and system or power failure.**
- 2.5 **The Proposer must provide documentation explaining how the integrity and security of Personally Identifiable Information (PII) is protected in the Proposer's database and in data transmission to DIA.**

- 2.6 **WORK PLAN:** The Proposer must provide a work plan to include the methods, formats and security for receiving CHRC and STA data from DIA and the means to confirm successful or unsuccessful transmission of data.
- 2.7 The Proposer will provide a detailed description of how current CHRC and STA records being held by DIA will be transitioned and/or reconciled. Description must include platform for testing and development to ensure continuity of service.
- 2.8 The Proposer must be able to accept CHRC data through the use of a secure Virtual Private Network (VPN) using DIA's current CrossMatch LScan Guardian equipment.
- 2.9 The Proposer must provide the method and frequency of billing for services and the means for reconciliation of charges. The methods must include the ability for DIA to query the Proposer's records through reports.
- 2.10 The Proposer must provide a detailed price schedule to include per record costs for CHRC and STA submissions. This price schedule should include any initial or recurrent processing costs for records.
- 2.11 The Proposer must provide a detailed price schedule for any implementation costs to include required software licensing, training or hardware required.
- 2.12 The Proposer must outline the expected communication media to be used by the Proposer's customer service representatives in response to service inquiries.
- 2.13 The Proposer must describe the available customer service hours and the number of dedicated customer service representatives. The Proposer must outline the expected response time for customer service requests outside of normal business hours.
- 2.14 The Proposer must describe how any necessary user accounts and passwords are administered to include any limitations on the number of authorized users and password management requirements.

**EXHIBIT B**  
**Rates and Charges**

Item	Year 1	Year 2	Year 3
Electronic Fingerprint Submittal*	\$18.50	\$18.25	\$18.00
Recruiting Fee for Maintenance – Monthly Per Active Record**	\$0.16	\$0.15	\$0.13
FBI Name Check***	No Charge	No Charge	No Charge
Telos ID Web Based Fingerprint Capture	No Charge	No Charge	No Charge
Optional Signatory Portal – Monthly Per Active Record	No Charge	No Charge	No Charge

\* Includes the FBI Fee (currently @ \$14.50). Any increase in the FBI Fee could result in changes to pricing for Denver International Airport.

\*\* Telos ID charges a monthly maintenance fee for active records. This maintenance fee covers all updates to the record as well as recurring STA submissions. There are no separate charges for STA submissions.

\*\*\* When accomplished in conjunction with an electronic fingerprint check

**Exhibit C**



19886 Ashburn Road  
Ashburn, VA 20147-2358 U.S.A  
PHONE: 703.724.3800 FAX: 703.724.3867

**Telos ID DAC Master Services Agreement**

**CUSTOMER**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

MSA CONTRACT NO. 201208848DIATEL

**CUSTOMER PRINCIPAL CONTACT**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**TELOS ID PRINCIPAL CONTACT**

Name: Sharon King  
Title: Sr. Contracts Administrator  
Phone: (703) 724-4547  
Fax: (703) 724-3854  
Email: Sharon.king@telos.com

**EFFECTIVE DATE:** June 30, 2013

This Telos ID DAC Master Services Agreement ("MSA") is made and entered into as of the Effective Date identified above by and between Telos Identity Management Solutions, LLC, doing business as Telos ID, and any Affiliate thereof that is directly or indirectly involved with the provision of any Services, Software, or Hardware hereunder (collectively "Telos ID"), and the company identified above and any Affiliate thereof that executes an Order Document hereunder (collectively "Customer"). If no Effective Date is indicated above, the Effective Date is the later of the execution dates. Telos ID and Customer may also be referred to individually as a "Party" or collectively as the "Parties" throughout this MSA.

IN WITNESS WHEREOF, the Parties have caused this MSA to be duly executed and delivered as of the Effective Date.

**CUSTOMER**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**TELOS ID**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Name Sharon King

\_\_\_\_\_  
Title Sr. Contracts Administrator

\_\_\_\_\_  
Date

**TELOS ID MASTER SERVICES**  
**AGREEMENT**  
**GENERAL TERMS AND CONDITIONS**

**1. DEFINITIONS**

Unless otherwise specified, capitalized terms used in this MSA will have the meanings attributed to them in this Section 1 or in the Order Document in which such term appears.

**"Affiliate"** means, with respect to each Party, any entity which directly or indirectly controls, is controlled by, or is under common control with, such Party.

**"Agreement"** means this MSA, all Order Documents, and any amendments, annexes or exhibits to the foregoing.

**"Confidential Information"** means material, data, systems and other information concerning the operation, business, projections, market goals, financial affairs, products, services, customers and Intellectual Property Rights of the other Party that may not be accessible or known to the general public. Confidential Information shall include, but shall not be limited to, the terms of the Agreement, and any information which concerns technical details of operation of any of Telos ID's DAC Services, Software or Hardware offered or provided hereunder.

**"Customer"** means the entity requesting the Designated Aviation Channeling services.

**"DAC"** means Designated Aviation Channeler, a trusted agent under agreement with TSA to perform collection of data.

**"DAC Services"** means services in which DAC collects or receives biographic and fingerprint data, performs quality control of this data, and transmits such data to TSA.

**"Hardware"** means hardware, if any, provided to Customer under any Order Document issued hereunder in connection with the Services.

**"Intellectual Property Rights"** means any and all now known or hereafter existing rights associated with intangible property, including but not limited to registered and unregistered, United States and foreign copyrights, trade dress, trade names, corporate names, logos, inventions, patents, patent applications, software, know-how and all other intellectual property and proprietary rights (of every kind and nature throughout the universe and however designated).

**"MSA"** means Master Services Agreement.

**"Order Document"** means either a funded purchase order or such other similar document,

as applicable that has been issued pursuant to this MSA and executed by the Parties.

**"Services"** means the Telos ID DAC services to be provided to Customer under any Order Document issued pursuant to this MSA, and includes Hardware or Software, if any is provided.

**"Software"** means software owned or licensed by Telos ID, which may be provided to Customer under any Order Document issued pursuant to this MSA in connection with the Services, whether stand-alone, or as incorporated in Hardware, including any APIs, guides, or documentation provided therewith.

**"SOW"** means Statement of Work.

**"TSA"** means Transportation Security Administration.

**2. RIGHTS AND OBLIGATIONS**

**(a) *Purchase and Provision of Services.***

All Services, Software and/or Hardware to be provided by Telos ID hereunder shall be purchased or licensed under an Order Document. An Order Document shall contain a description of the Services being obtained, and/or additional terms and conditions specific to such Services. All signed Order Documents are subject to the terms and conditions of this MSA which shall take precedence and govern. Each Order Document will cover only the Customer entity(ies) specifically identified therein. Upon request, Customer will provide Telos ID with an internal purchase order or reference number for invoicing purposes.

**(b) *Installation and Configuration.***

Services do not include Software or Hardware installation and/or system configuration services unless expressly provided in an Order Document (collectively, "Installation Services"). Any professional services work in addition to or separate from Installation Services may be provided at Telos ID's then-current rates under a SOW to be agreed upon by the Parties.

**(c) *Fees and Payment Terms.*** Customer shall pay Telos ID as specified in the applicable Order Document without deduction or setoff arising from any other Order Documents. Such payment shall be made: (i) in U.S. Dollars; (ii) within thirty (30) days from the invoice date unless otherwise stated in the applicable Order Document; and (iii) in accordance with the remittance instructions as set forth in the applicable invoice. All fees paid are non-refundable. Beginning the day after the due date of the invoice, interest shall be due and payable by Customer at the rate of one and one-half

percent (1.5%) per month or the highest rate allowed by law, whichever is less, on any portion of the invoice which has not been paid.

**(d) Taxes.** The fees stated are exclusive of tax. All taxes, duties, fees and other governmental charges of any kind (including sales, services, use, and value-added taxes, but excluding taxes based on the net income of Telos ID) which are imposed by or under the authority of any government or any political subdivision thereof on the fees for any of Services, Software and/or Hardware shall be borne by Customer and shall not be considered a part of, a deduction from or an offset against such fees. All payments due to Telos ID shall be made without any deduction or withholding on account of any tax, duty, charge or penalty except as required by law, in which case the sum payable by Customer from which such deduction or withholding is to be made shall be increased to the extent necessary to ensure that, after making such deduction or withholding, Telos ID receives and retains (free from any liability in respect thereof) a net sum equal to the sum it would have received but for such deduction or withholding being required.

**(e) Publicity.** Any and all press releases and other public announcements relating to the existence or terms of the Agreement or the related transactions between Telos ID and Customer must be approved in advance by the Parties in writing.

### 3. GRANT OF LICENSE

In consideration of Customer's payment of applicable fees, Telos ID grants Customer a limited, non-exclusive, non-transferable, non-sublicenseable license, during the term of Services to:

- (a) access and use the Telos ID DAC Services; and
- (b) if applicable, use any Software provided hereunder in object code form on systems under Customer's control solely in connection with Customer's use of the Services for which such copy was provided; in accordance with the applicable Order Document, instructions or documentation and any end-user license restrictions.

Other than as expressly permitted under the Agreement or applicable law, Customer is prohibited from copying, sublicensing, selling, renting, leasing or otherwise distributing copies of the Software, or permitting either direct or indirect use of the Services or Software by any third party. Customer shall not modify, reverse

engineer, or create derivative works of, or otherwise make any attempt to build a competitive product or service using the Services procured hereunder. Customer further agrees not to modify, disassemble, decompile, reverse engineer, create derivative works of, or make any other attempt to discover or obtain the source code for the Software. In the event modifications are made to the Services or Software by anyone other than Telos ID or its authorized subcontractors (excluding Customer), any and all warranties with respect to the Services or Software shall immediately terminate. Notwithstanding the foregoing, the license rights set forth above may be limited with respect to particular Services or Software in the manner set forth in any applicable Order Document.

### 4. PROPRIETARY RIGHTS

Except as otherwise stated in an Order Document, Customer acknowledges that Telos ID and its licensors retain all Intellectual Property Rights and title in and to all of their Confidential Information or other proprietary information, products, services, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, embodied in, or practiced in connection with the Services, Software or Hardware provided by Telos ID hereunder, including without limitation all modifications, enhancements, derivative works, configurations, translations, upgrades, and interfaces thereto (all of the foregoing "Telos ID Works"). Telos ID Works do not include Customer's preexisting hardware, software, or networks. Except as otherwise stated herein (or in an Order Document), nothing in this MSA shall create any right of ownership or license in and to the other Party's Intellectual Property Rights, and each Party shall continue to independently own and maintain its Intellectual Property Rights.

### 5. CONFIDENTIAL INFORMATION

The Parties acknowledge that by reason of their relationship under the Agreement, they may have access to and acquire Confidential Information of the other Party. Each Party receiving Confidential Information (the "Receiving Party") agrees to maintain all such Confidential Information received from the other Party (the "Disclosing Party"), both orally and in writing, in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior

written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the terms of the Agreement to its legal and business advisors if such third parties agree to maintain the confidentiality of such Confidential Information under terms no less restrictive than those set forth herein. The Receiving Party further agrees to use the Confidential Information only for the purpose of performing the Agreement.

Notwithstanding the foregoing, the obligations set forth herein shall not apply to Confidential Information which: (a) is or becomes a matter of public knowledge through no fault of or action by the Receiving Party; (b) was lawfully in the Receiving Party's possession prior to disclosure by the Disclosing Party; (c) subsequent to disclosure, is rightfully obtained by the Receiving Party from a third party who is lawfully in possession of such Confidential Information without restriction; (d) is independently developed by the Receiving Party without resort to the Confidential Information; or (e) is required by law or judicial order, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such required disclosure in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent the disclosure, and shall reasonably cooperate with the Disclosing Party's efforts to secure such a protective order or other legal remedy to prevent the disclosure. In addition, Telos ID shall treat any Customer information collected through the Telos ID DAC in accordance with Telos Corporation's published *Privacy Statement*.

## 6. RESERVED

## 7. REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION; DISCLAIMER; LIMITED REMEDIES

*(a) Customer's Representations and Warranties.* Customer represents and warrants that (i) it has the corporate power and authority to enter into, and perform its obligations under, the Agreement; and (ii) it will not make any unauthorized representation or warranty to any third party relating to any Services, Software or Hardware.

*(b) Telos ID's Representations and Warranties.* Telos ID represents and warrants that it has the corporate power and authority to enter into, and perform its obligations under, the Agreement.

*(c) General Indemnification.* N/A

### *(d) Telos ID's Indemnification Related to Intellectual Property Infringement.*

To the extent any third party claim, suit, proceeding or judgment is based on a claim that the Services, Software or Hardware infringe any United States patent, copyright or trade secret (an "Infringement Claim"), Telos ID (as Indemnitor) shall defend and hold harmless Customer (as Indemnitee) and its directors, officers, agents, employees, successors and assigns from such Infringement Claim, and indemnify Customer for damages finally awarded against Customer to the extent such damages are attributable to direct infringement by the Services, Software or Hardware or agreed to in settlement by Telos ID, plus costs (including reasonable attorneys' fees and expenses).

In the event of any Infringement Claim, Telos ID shall have the right, at its sole option, to obtain the right to continue use of the affected Services, Software or Hardware or to replace or modify the affected Services, Software or Hardware so that they may be provided by Telos ID and used by Customer without infringement of third party United States patent, copyright or trade secret rights. If neither of the foregoing options is available to Telos ID on a commercially reasonable basis, Telos ID may terminate the applicable Order Document immediately upon written notice to Customer, and within thirty (30) days after such termination shall pay Customer a termination fee equal to the prorated portion of any fees (excluding installation and any other non-recurring fees) paid in advance by Customer commensurate with the remaining portion of the service period for which such fees were assessed and paid.

The foregoing indemnity shall not apply to any infringement resulting from: (i) any open source or third party components or products; (ii) any use of the Services, Software or Hardware not in accordance with the Agreement; (iii) any use of the Services, Software or Hardware in combination with other services, software or hardware not supplied by Telos ID if the alleged infringement would not have occurred but for such combination; (iv) any modification of the Services, Software or Hardware not performed by Telos ID if the alleged infringement would not have occurred but for such modification; or (v) use of an allegedly infringing version of the Services, Software or Hardware if the alleged infringement could be avoided by the use of a more current version of the Services, Software or Hardware made available to Customer.

**(e) Indemnification Process.** The Indemnitee shall promptly notify the Indemnitor of any claim for indemnity by providing written notice pursuant to Section 10(a) hereof. When notifying an Infringement Claim, any such notice shall (i) identify the United States patent, copyright or trade secret asserted by a third party and the Services, Software or Hardware potentially impacted by the third party claim; and (ii) identify, initially and on an ongoing basis, any other potential indemnitor to whom Customer has provided notice of the third party claim and the services, software or hardware supplied to Customer by such other potential indemnitor.

After receipt of such notice, the Indemnitor shall have a reasonable time to investigate whether the third party claim might fall within the scope of the indemnification prior to assuming the defense of such claim. With respect to any claim for which such notification is provided or otherwise within the scope of the indemnity, the Indemnitor shall have the right to control and bear full responsibility for the defense of such claim (including any settlements); provided however, that: (i) the Indemnitor shall keep the Indemnitee informed of, and consult with the Indemnitee in connection with the progress of such litigation or settlement; (ii) the Indemnitor shall not have any right, without the Indemnitee's written consent, which consent shall not be unreasonably withheld, to settle any such claim if such settlement arises from or is part of any criminal action, suit or proceeding or contains a stipulation to or admission or acknowledgment of, any liability or wrongdoing (whether in contract, tort or otherwise) on the part of the Indemnitee, or requires any specific performance or non-pecuniary remedy by the Indemnitee; and (iii) the Indemnitee shall have the right to participate in the defense of a claim with counsel of its choice at its own expense.

The Indemnitor's assumption of the defense of any claim asserted to be within the scope of the indemnity shall not prejudice the determination of whether a claim is properly subject to indemnification hereunder nor waive the Indemnitor's right at any time to disclaim obligations under Section 7(c) or (d) with respect to any claim or damages to the extent they are not subject to indemnification under Section 7(c) or (d).

**(F) DISCLAIMER; LIMITED REMEDIES.**

EXCEPT FOR THE EXPRESS LIMITED WARRANTIES CONTAINED IN THIS SECTION 7 OR AN APPLICABLE ORDER DOCUMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW TELOS ID DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTION OF CUSTOMER REQUIREMENTS, NON-INFRINGEMENT, AND ANY WARRANTY ARISING OUT OF A COURSE OF PERFORMANCE, DEALING OR TRADE USAGE. TELOS ID DOES NOT WARRANT THAT USE OF THE SERVICES, SOFTWARE OR HARDWARE WILL BE UNINTERRUPTED OR ERROR FREE.

NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, THE RIGHTS AND REMEDIES SET FORTH IN SECTION 7(D) CONSTITUTE THE ENTIRE OBLIGATION OF TELOS ID AND THE EXCLUSIVE REMEDIES OF CUSTOMER WITH RESPECT TO THE SUBJECT MATTER THEREOF.

**8. TERM AND TERMINATION**

**(a) Term and Renewal.** This MSA will commence as of the Effective Date and will continue until terminated in accordance with this Section 8. Each Order Document will commence on the effective date identified therein.

Each SOW shall terminate pursuant to the terms and conditions thereof.

Each Services Order will continue for the term identified therein ("Initial Term") unless terminated earlier as set forth below. Following expiration of the Initial Term, Services Orders will automatically renew for successive one (1) year terms (each a "Renewal Term") unless either Party provides written notice to the other Party at least sixty (60) days prior to the commencement of a Renewal Term of its intent not to renew. The Initial Term and any Renewal Terms of a Services Order are collectively referred to as the "Term."

Termination of any one Order Document shall not modify the term of this MSA or any other Order Documents. Termination of this MSA shall immediately terminate any and all Order Documents executed hereunder. The terms and conditions applicable to any Renewal Term(s) will be the same as those in effect for



the immediately preceding portion of the Term unless otherwise stated in the applicable Order Document. Notwithstanding the foregoing, Telos ID may increase fees for any Renewal Term by providing written notice of such increase to Customer at least ninety (90) days prior to the commencement of such Renewal Term.

**(b) Termination for Default.** In the event of a material breach of this MSA or any Order Document (excluding any breaches for which an exclusive remedy is expressly provided), the other Party may terminate this MSA or Order Document, as applicable, if such breach is not cured within thirty (30) days after written notice of the breach.

**(c) Termination for Insolvency.** Each Party may terminate this MSA or any Order Document, effective immediately upon written notice, should the other Party: (i) admit in writing its inability to pay its debts generally as they become due; (ii) make a general assignment for the benefit of creditors; (iii) institute proceedings, or have proceedings instituted against it, seeking relief or reorganization under any laws relating to bankruptcy or insolvency; or (iv) have a court of competent jurisdiction appoint a receiver, liquidator, or trustee over all or substantially all of such Party's property or provide for the liquidation of such Party's property or business affairs.

**(d) Survival of Terms.** The following shall survive the expiration or termination of this MSA or any Order Document:

(i) Any payment obligations which accrued prior to termination or expiration of this MSA or any Order Document;

(ii) Sections 1 (Definitions), 2(d) (Taxes), 2(e) (Publicity), 4 (Proprietary Rights), 5 (Confidential Information), 7(c) (General Indemnification), 7(d) (Telos ID's Indemnification Related to Intellectual Property Infringement), 7(e) (Indemnification Process), 7(f) (Disclaimer; Limited Remedies), 8(d) (Survival of Terms), 9 (Limitation of Liability), and 10 (General Provisions) of this MSA; and

(iii) Any section of an Order Document titled "Disclaimer", "Limitation of Liability", or an equivalent thereof, as applicable.

## **9. LIMITATION OF LIABILITY**

**Not Applicable**

## **10. GENERAL PROVISIONS**

**(a) Notices.** All notices shall be in writing and addressed to the Party to be served at the respective addresses set forth in the Order Document, or on the cover page of this MSA, as applicable. Any such notice may be served personally or by certified mail (postage prepaid), internationally recognized overnight delivery service (such as Federal Express or DHL), or courier. Notice shall be deemed served (i) upon personal delivery or delivery by courier, (ii) upon the second business day after the date sent for notices sent via overnight delivery, or (iii) upon the fifth business day after the date sent for notices sent via certified mail. Either Party may change the address to which notices are to be delivered by written notice to the other Party. Notices to Telos ID shall be addressed to the General Counsel.

**(b) Entire Agreement.** This MSA, Order Documents, any schedules or exhibits hereto, and any end user license terms, where applicable, constitute the entire understanding and agreement between Telos ID and Customer with respect to any Software, Hardware and/or Services ordered hereunder, and supersedes any and all prior or contemporaneous oral or written representation, understanding, agreement or communication relating thereto.

**(c) Amendments and Waiver.** Any term or provision of the Agreement may be amended, and the observance of any term of the Agreement may be waived, only by a writing referencing the Agreement and signed by the Parties to be bound. The Agreement may not be modified solely by submission of a purchase order or similar instrument referencing the Agreement.

**(d) Force Majeure.** Neither Party shall be deemed in default hereunder, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of such Party, provided that the Party relying upon this provision: (i) gives prompt written notice, and (ii) takes all steps reasonably necessary to mitigate the effects of the force majeure event; provided further, that if a force majeure event continues longer than thirty (30) days in the aggregate, either Party may immediately terminate the Agreement upon written notice.

**(e) Severability.** If any provision of the Agreement should be found by a court of

competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

**(f) Compliance with Law, Export Requirements, and Foreign Reshipment Liability.** Each Party shall comply with all applicable federal, state and local laws and regulations in connection with its performance under the Agreement.

To the extent required by the International Traffic in Arms Regulations (the "ITAR"), Customer is, or by the time this Agreement is effective will be, registered with the U.S. Department of State Directorate of Defense Trade Controls ("DDTC") as a "defense manufacturer" or "broker" or both. In all dealings that directly or indirectly involve Telos ID, Customer agrees to abide by any and all applicable requirements under the ITAR, Export Administration Regulation ("EAR"), and other export control and trade sanctions-related statutes and regulations relating to the products, services, technologies, software, and information of the Customer, Telos ID, and third parties. The Customer shall indemnify and hold Telos ID harmless with respect to any and all claims, damages, losses or expenses arising in whole or in part from its breach of this representation, including but not limited to reasonable attorney fees and settlement costs. To the extent that either Party provides items, information, technology, or services to the other Party that are subject to export control restrictions, the providing Party shall mark such items in a manner so as to clearly communicate the applicable nature of the restrictions.

Regardless of any disclosure made by Customer to Telos ID of an ultimate destination of the Software, Hardware, or technical data (or portions thereof) supplied by Telos ID ("Telos ID Technology") and, notwithstanding anything contained in the Agreement to the contrary, Customer will not:

(i) modify, export, or re-export, either directly or indirectly, any Telos ID Technology to any destination restricted or prohibited by Export Control, without first obtaining any and all necessary licenses from the government of the United States or any other country that imposes Export Control;

(ii) provide Telos ID Technology to any proscribed party on the United States Treasury Department's Office of Foreign Asset Control list of "specially designated nationals and blocked persons", the United States Commerce

Department's "denied parties list", the United States Commerce Department's "BIS Entity List" or such other applicable lists; or

(iii) export or re-export Telos ID Technology, directly or indirectly, for nuclear, missile, or chemical/biological weaponry end uses prohibited by Export Control.

Telos ID shall have the right to suspend performance of any of its obligations under the Agreement, without prior notice and without any liability to Customer if Customer fails to comply with this provision.

**(g) Assignment.** Neither Party may assign or transfer the Agreement or any obligation hereunder without the prior written approval of the other Party, except that, upon written notice, a Party may assign or transfer the Agreement or any obligation hereunder to an entity acquiring all or substantially all of the assets of that Party, whether by acquisition of assets or shares, or by merger or consolidation. Any assignment in violation of this Section 10(g) shall be void. Subject to the foregoing, the Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

**(h) Independent Contractors.** The Parties to the Agreement are independent contractors. Neither Party is an agent, representative, joint venturer, or partner of the other Party. Neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. Each Party shall bear its own costs and expenses in performing the Agreement.

**(i) Governing Law.** The Parties agree that the Agreement, and any disputes arising out of or related to the Agreement, shall be governed by, construed, and enforced in all respects in accordance with the laws of the Commonwealth of Virginia, United States of America, excluding its conflict of laws rules. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement. For all disputes arising out of or related to the Agreement, the Parties submit to the jurisdiction and venue of the United States District Court for the Eastern District of Virginia, Alexandria Division. If there is no jurisdiction in the United States District Court for the Eastern District of Virginia, Alexandria Division, then jurisdiction shall be in the state courts of Fairfax County, Fairfax, Virginia.

**(j) Third Party Beneficiaries.** No provisions of the Agreement are intended nor shall be interpreted to provide or create any third

party beneficiary rights or any other rights of any kind in any other party.

**(k) Order of Precedence.** All terms and conditions of this MSA apply to every Order Document without exception. In the event of a conflict between this MSA and any Order Document, the terms of the MSA shall govern and take precedence. An Order Document may not amend any term or condition of this MSA, and no term or condition contained in an Order Document shall be construed to amend in any way the terms and conditions of this MSA.

**(l) English Version.** If the Agreement is translated into any language other than English, and if there is a conflict between the English version and the translated version, then the English version shall prevail in all respects.

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**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  
Attn: Risk Management, Suite 8810  
Manager of Aviation  
Denver International Airport  
8500 Peña Boulevard, Room 8810  
Denver CO 80249

**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201208848 – Aviation Channeling Service Provider**

**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:**

<b>Umbrella Liability, Non Restricted Area Minimum Limits of Liability (In Thousands)</b>	<b>Each Occurrence and aggregate</b>	<b>\$1,000</b>
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**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.)

<b>Minimum Limits of Liability (In Thousands)</b>	<b>Per Claim</b>	<b>\$2,000</b>
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**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.

## APPENDIX NO. 1 & 3

### STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION

NOTE: As used below the term "contractor" shall mean and include the Airline, 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, creed, color, sex, 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.



## **7.. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES**

The Airline 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.

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.