

**AGREEMENT**

**BETWEEN**

**CITY AND COUNTY OF DENVER**

**AND**

**INTERNATIONAL BUSINESS MACHINES CORPORATION**

**AT**

**DENVER INTERNATIONAL AIRPORT**

**FOR**

**MAXIMO IMPLEMENTATION AND HOSTING SERVICES**

## AGREEMENT

**THIS AGREEMENT FOR PROFESSIONAL SERVICES AND SOFTWARE HOSTING SERVICES** (Contract Number PLANE-201310389-00) and its appendices and exhibits ("Agreement"), made and entered into as of the latest 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 **INTERNATIONAL BUSINESS MACHINES CORPORATION**, a corporation organized under the laws of the state of New York and authorized to do business in Colorado ("Consultant" or "IBM"), Party of the Second Part;

### WITNESSETH:

**WHEREAS**, the City owns and operates Denver International Airport ("DIA" or the "Airport"), and will require software, professional services for staff augmentation support and software maintenance, testing, licensing, software hosting and such other work as may be requested by the City, at Denver International Airport in support of the Maximo 7.5 Implementation at DIA; and

**WHEREAS**, the Consultant is qualified and ready, willing and able to provide the requested 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 Information Technologies - CIO (the "Deputy Manager") as the Manager's authorized representative for the purpose of administering, coordinating and approving work performed by the Consultant under this Agreement. The Deputy Manager's authorized representative for day-to-day administration of the Consultant's services under this Agreement is the City Project Manager. The Consultant shall submit its reports, memoranda, correspondence and submittals to the City 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 City Project Manager, upon written notice to the Consultant.

#### **2. STATEMENT OF WORK:**

A. The Consultant, under the general direction of, and in coordination with the Manager, or other designated supervisory personnel as set forth herein, shall exert commercially reasonable efforts to perform any and all authorized services provided under this

Agreement. The Consultant shall provide the Services provided in the attached **Exhibit A, “Statement of Work for IBM Global Services Maximo 7.5 Implementation”** and **Exhibit A-1, “Statement of Work LCAN-9BEN7Y for IBM Maximo and TRIRIGA Software Hosting Services”**.

B. Additional Services: The Consultant 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 Statement of Work or in excess of the requirements of the Statement of Work. Change orders and/or additional Statements of Work (SOWs) will be provided as needed to document work beyond that identified in **Exhibits A and A-1**. The Consultant 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. Changes to this Agreement described in this section B shall be handled in accordance with the Project Change Control Procedure in the respective Statement of Work in **Exhibits A and A-1**.

C. Additional Requirements for Hosting Based Services: All hosting services provided under this agreement shall be subject to the provisions of this Agreement, **Exhibit A-1 and Exhibit B, “Hosting Services Addendum”**.

D. The Consultant shall exert commercially reasonable efforts to perform the work required under this Agreement in accordance with the Warranty for Consultant Services in section **53** below.

### **3. TERM:**

The Term of this Agreement shall commence on the Effective Date, and shall terminate three years thereafter, unless sooner terminated. The term of this Agreement may be extended for two periods of one (1) year each, by written amendment to this Agreement. Notwithstanding any other extension of term under this paragraph 3, the term of this Agreement may be extended by the mutual agreement of the parties, confirmed by written notice from the City to the Consultant, to allow the completion of any work which has been commenced prior to the date upon which this Agreement otherwise would terminate. However, no extension of the Term shall increase the Maximum Contract Liability stated herein; such amount may be changed only by a duly executed written amendment to this Agreement.

### **4. COMPENSATION AND PAYMENT:**

A. Fee: The City agrees to pay to the Consultant, and the Consultant agrees to accept as its sole compensation for services rendered and costs incurred under this Agreement, the rates set forth in **Exhibit A, Section 2.20 “Charges” and Exhibit A-1, Section 8 “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: Consultant shall provide the City with monthly invoices in a format and with a level of detail acceptable to the City and the Consultant. Invoices are due upon receipt, and 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 the Consultant under the terms of this Agreement for any amount in excess of Two Million One Hundred Forty Three Thousand Four Hundred Fifty Five Dollars and 00 Cents (\$2,143,455.00) (the "Maximum Contract Liability"), allocated as follows:

a. That portion of the Maximum Contract Liability allocated to the Maximo 7.5 Implementation, as more fully described in Exhibit A, as well as any "Additional Services" as described at paragraph 2.B., above, shall not exceed One Million Four Hundred Sixty Six Thousand Three Hundred Seventy One Dollars and 00 Cents (\$1,466,371.00), hereinafter referred to as the "Implementation Maximum Contract Liability".

b. That portion of the Maximum Contract Liability allocated to IBM Maximo and TRIRIGA Software Hosting Services, as more fully described in Exhibit A-1, shall not exceed Six Hundred Seventy Seven Thousand Eighty Four Dollars and 00 Cents (\$677,084.00), hereinafter referred to as the "Hosting Maximum Contract Liability".

(ii) 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. The Consultant acknowledges that the City is not obligated to execute an Order, agreement or an amendment to this Agreement for any services and that any services performed by Consultant beyond that specifically described in an Order are performed at Consultant's risk and without authorization under this Agreement. 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. The Consultant, at its own expense, shall endeavor to promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and thus no valid lien, mortgage, judgment or execution should be filed against land, facilities or improvements owned by the City with regards to this Agreement.

B. The City shall provide to Consultant, 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 Consultant, the City shall reimburse Consultant the actual cost of such items.

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

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

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

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

The Consultant has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by Charter and Ordinance.

## **8. PERSONNEL ASSIGNMENTS:**

A. The Consultant 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 the Consultant's organization. To the extent possible, consultant shall endeavor to keep Consultant's designated Project Manager assigned on this contract during the entire contract term, while in the employ of the Consultant, 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 Consultant's Project Manager. Prior to replacing Consultant's Project Manager, Consultant shall provide written notice of at least fifteen (15) calendar days for reassignment or five (5) calendar days for voluntary resignation to the City Project Manager. Consultant shall have thirty (30) days from the written notice to provide resumes of qualified candidates to the City Project Manager, and the City shall in its sole discretion, either approve or disapprove of IBM's candidates as to whether they are suitable to perform in the vacated position, such approval shall not be unreasonably withheld or delayed.

B. The Consultant may submit and the City will consider a request for reassignment of a Project Manager, should the Consultant deem it to be in the best interest of the City, the best interest of the Consultant's organization or in the best interest of the Consultant'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 the Consultant will be assigned by the Consultant or subcontractors to perform work under the applicable Statement of Work. The Deputy Manager must approve additional key professional 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 applicable Statement of Work, and that the Consultant'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 the Consultant 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 be timely and shall not be unreasonably withheld. The Deputy Manager shall respond to the Consultant's written notice regarding replacement of key professional personnel within fifteen days after the Deputy Manager receives the list of key professional personnel, which the Consultant 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 the Consultant, and he may give the Consultant notice of the period of time, which the Deputy Manager considers reasonable to correct such performance. If the Deputy Manager notifies the Consultant that certain of its key personnel should be reassigned, the Consultant shall exert commercially reasonable efforts to obtain adequate substitute personnel within ten days from the date of the Deputy Manager's notice.

## **9. SUBCONTRACTORS:**

A. Although the Consultant may retain, hire and contract with outside subcontractors, no final agreement or contract with any such subcontractor shall be entered into without the prior written consent of the Deputy Manager or his authorized representative. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subcontractor, and other pertinent information requested by the Deputy Manager.

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

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

#### **10. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

Pursuant to CRS 8-17.5-101, as amended, Colorado's Illegal Aliens – Public Contracts for Services statute is not applicable *to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services.*

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

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

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

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

Agreement, unless the City initiates a material alteration to the scope of work.

**13. PREVAILING WAGES:**

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

**14. PROMPT PAY:**

The Consultant is subject to D.R.M.C. Section 20-112 wherein the Consultant is to pay its subcontractors in a timely fashion. A payment is timely if it is paid within the terms specified in the Consultant's subcontract agreement. . 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. RESERVED.**

**16. COORDINATION OF SERVICES:**

The Consultant 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, provided that any such regulations or restrictions are provided in writing in advance to IBM.

**17. INSURANCE:**

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

B. All certificates and any required endorsements must be received and approved by



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

C. All certificates required by this Agreement shall be sent directly to Denver International Airport, Risk Management, Airport Office Building, Room 8810, 8500 Pena Boulevard, Denver, Colorado 80249. The City Project/Agreement number and project description shall be noted on the certificate of insurance.

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

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

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

## **18. INTELLECTUAL PROPERTY PROTECTION:**

A. **Third Party Claims.** If a third party asserts a claim against the City that a Material Consultant provides to the City under this Agreement infringes that party's patent or copyright, Consultant will defend the City against that claim at Consultant's expense and pay all costs, damages, and attorney's fees that a court finally awards against the City or that are included in a settlement approved in advance by Consultant, provided that the City:

- promptly notifies Consultant in writing of the claim;
- allows Consultant to control, and cooperates with Consultant in, the defense and any related settlement negotiations; and
- is and remains in compliance with the Material's applicable license terms and the City's obligations under section B. Remedies below.

B. **Remedies.** If such a claim is made or appears likely to be made, the City agrees to permit Consultant, in Consultant's discretion, either to i) enable the City to continue to use the Material, ii) modify it, or iii) replace it with one that is at least functionally equivalent. If

Consultant determines that none of these alternatives is reasonably available, then on Consultant's written request, the City agrees to promptly return the Material to Consultant and discontinue its use. Consultant will then give the City a credit equal to the amount the City paid Consultant for the creation of the Materials.

**C. Claims for Which IBM is Not Responsible.** Consultant has no obligation regarding any claim based on any of the following:

- anything provided by the City or a third party on the City's behalf that is incorporated into a Material or Consultant's compliance with any designs, specifications, or instructions provided by the City or a third party on the City's behalf;
- modification of a Material by the City or a third party on the City's behalf;
- the combination, operation, or use of a Material with any product, hardware device, program, data, apparatus, method, or process that Consultant did not provide as a system, if the infringement would not have occurred were it not for such combination, operation or use; or
- the distribution, operation or use of a Material outside the City's Enterprise.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims.

## **19. DEFENSE AND INDEMNIFICATION:**

A. Consultant hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all third party liabilities, claims, judgments, suits or demands for damages to persons or real or tangible personal property arising out of, resulting from, or relating to the work performed under this Agreement for which IBM is legally liable ("Claims") by paying all costs, damages, and attorney's fees that a court finally awards against the City or that are included in a settlement approved in advance by Consultant, provided that the City:

- promptly notifies Consultant in writing of the Claim; and
- allows Consultant to control, and cooperates with Consultant in, the defense and any related settlement negotiations.

B. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Consultant or its subcontractors with respect to such damages to persons or real or tangible personal property for which IBM is legally liable.

C. Consultant's duty to defend and indemnify City shall arise at the time when such written notice of the Claim is first provided to City. Consultant's duty to defend and indemnify City shall arise even if City is the only party sued by claimant.

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

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

This Section 19 states IBM's entire obligation and Customer's exclusive remedy regarding any third party Claims for damages to persons or real or tangible personal property for which IBM is legally liable.

## **20. 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.

## **21. LIMITATION OF LIABILITY:**

A. **Items for Which IBM May be Liable.** Circumstances may arise where, because of a default on Consultant's part or other liability, the City is entitled to recover damages from Consultant. Regardless of the basis on which the City is entitled to claim damages from Consultant (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Consultant's entire liability for all claims in the aggregate arising from or related to this Agreement will not exceed the amount of any actual direct damages up to three times the applicable Maximum Contract Liability. For purposes of clarification, damages available under this paragraph 21.A. which arise from or relate to Implementation or Additional Services as described in Exhibit A and paragraph 2.B will not exceed actual direct damages up to three times the Implementation Maximum Contract Liability. For purposes of further clarification, damages available under this paragraph 21.A. which arise from or relate to Maximo and TRIRIGA Software Hosting Services as described in Exhibit A-1 will not exceed actual direct damages up to three times the Hosting Maximum Contract Liability.

This limit also applies to any of Consultant's subcontractors and program developers. It is the maximum for which Consultant and its subcontractors and program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

- payments referred to in section 18. Intellectual Property Protection above; and
- damages for bodily injury (including death) and damage to real property and tangible personal property for which Consultant is legally liable.

B. **Items for Which IBM is Not Liable.** Except as expressly required by law without the possibility of contractual waiver, under no circumstances is Consultant, its subcontractors, or program developers liable for any of the following even if informed of their possibility:

- loss of, or damage to, data;
- special, incidental, exemplary, or indirect damages or for any economic consequential damages; or

- lost profits, business, revenue, goodwill, or anticipated savings.

**22. COMPLIANCE WITH PATENT, TRADEMARK, AND COPYRIGHT LAWS:**

A. The Consultant agrees that all work performed under this Agreement shall comply with all applicable patent, trademark, copyright and software licensing laws, rules, regulations and codes of the United States. The Consultant will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission and all releases and other necessary documents. The City's sole remedy with regard to this provision is the intellectual property indemnification in section 18 above.

**B. RESERVED.**

**23. RESERVED.**

**24. ADVERTISING AND PUBLIC DISCLOSURES:**

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

**25. COLORADO OPEN RECORDS ACT:**

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

**26. DATA CONFIDENTIALITY:**

A. The parties agree that any exchange of confidential information under this Agreement shall be handled under the terms of the Agreement for Exchange of Confidential Information (AECI), attached in Exhibit D, which is hereby incorporated herein.

## **27. EXAMINATION OF RECORDS:**

A. The Consultant 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 for the respective Statement of Work in Exhibits A and A-1, have access to and the right to examine any directly pertinent books, documents, papers and records of the Consultant involving this Agreement.

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

C. The parties agree that access by the City or any third party, shall not be granted to Consultant's confidential financial information including, but not limited to cost or pricing methodologies, overheads, profit margins, internal audit results, Consultant's personnel data or those of its subcontractors. The City or any third-party shall have such access up to one time in a twelve month period. Such audit activity shall be conducted during normal business hours in a manner that is not disruptive to the Consultant's normal business activities. The City or any third-party shall bear all costs associated with all such records access and audit activity.

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

The City will furnish to the Consultant available information concerning DIA and any such other matters that may be necessary or useful in connection with the work to be performed by the Consultant under this Contract.

## **29. TERMINATION:**

### **A. Termination for Convenience.**

- For the Implementation Statement of Work in Exhibit A, the City has the right to terminate this Agreement without cause on thirty (30) days written notice to the Consultant.
- For the Hosting Statement of Work in Exhibit A-1, the City has the right to terminate this Agreement without cause on thirty (90) days written notice to the Consultant after the first year.

**B. Termination for Cause.** Either party may terminate this contract in whole or in part for the other party's failure (Breaching Party) to materially perform any of the services, duties, terms, or conditions contained in this contract after giving the Breaching Party written notice of the stated failure and a reasonable opportunity to comply. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days or as mutually agreed by the parties. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period. However, if it is not practical to remedy the breach within the specified number of days, the period for cure will be extended by a reasonable period, so long as the Breaching Party takes and continues to take reasonable steps toward remedying the breach. If the demanded performance is not completed within the specified period, as extended, the termination is effective at the end of the specified period.

**C.** If the Consultant is discharged before all the services contemplated hereunder have been completed, or if the Consultant's services are for any reason terminated, stopped or discontinued because of the inability of the Consultant to provide service under this Agreement, the Consultant shall be paid only for those services satisfactorily performed and actual expenses incurred, up through the date specified on the notice of termination.

**D.** If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Consultant is using by whatever method it deems expedient, and the Consultant 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 the ownership of these Materials shall be as defined in the applicable Statement of Work.

**E.** Upon termination of this Agreement, the Consultant shall be entitled to reimbursement for the reasonable cost of the Work to the date specified on the notice of termination, including multiplier, and reasonable costs of orderly termination, provided request for such reimbursement is made no later than six (6) months from the effective date of termination. The Consultant shall not be entitled to loss of anticipated profits or any other consequential damages as a result of any such termination for convenience, and in no event shall the total sums paid exceed the Maximum Contract Liability specified in section 3 above.

### **30. RIGHTS AND REMEDIES NOT WAIVED:**

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

### **31. 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.

**32. NOTICES:**

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

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

And by City to:                    TBD

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.

Notices (physical, e-mail or facsimile) may also be provided as specified in an applicable transaction document, such as an applicable Statement of Work. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a “user ID”) contained in an electronic document is sufficient to verify the sender’s identity and the document’s authenticity.

**33. NO THIRD PARTY BENEFICIARIES:**

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the City and the Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the Consultant that any person other than the City or the Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between the City and the Consultant. Each party is free to enter into

similar agreements with others to develop, acquire, or provide competitive products and services.

**34. ASSIGNMENT AND RESALE:**

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. Consultant is also permitted to assign its rights to payments without obtaining the City's consent. It is not considered an assignment for Consultant to divest a portion of its business in a manner that similarly affects all of its customers.

The City agrees not to resell any Service without IBM's prior written consent. Any attempt to do so is void.

**35. CONFLICT OF INTEREST:**

The Consultant agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees will not knowingly engage in any transaction, activity or conduct which would result in a conflict of interest. The Consultant represents that to the best of the undersigned's knowledge and belief, it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interest of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement for convenience if such a conflict exists, after it has given the Consultant written notice which describes such conflict. The Consultant shall have thirty days after the notice is received, or as mutually agreed, in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

**36. 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. 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.

B. All disputes between the City and Consultant regarding this Agreement shall be resolved as per section 56 Dispute Resolution Procedure below, and if such process does not result in resolution of the dispute(s) by administrative hearing pursuant to the procedure established by D.R.M.C. § 5-17.



### **37. COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS:**

All of the work performed under this Agreement by the Consultant shall comply with the 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 and any other laws, rules, and regulations referenced in this Agreement that are applicable to the Consultant in its role under this Agreement as the provider of information technology products and services. The Charter and Revised Municipal Code for the City and County of Denver can be found at:

<http://www.denvergov.org/clerkandrecorder/ClerkandRecorder/RecordsRecording/MunicipalCode/tabid/438629/Default.aspx>

The Denver International Airport Rules and Regulations can be found at:

<http://business.flydenver.com/info/research/rules/index.asp>

### **38. FEDERAL PROVISIONS:**

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing 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.

### **39. AIRPORT SECURITY:**

A. It is a material requirement of this Contract that the Consultant shall comply with all rules, regulations, written policies and authorized directives from the City and/or the Transportation Security Administration with respect to Airport security. The Consultant shall conduct all of its activities at the Airport in compliance with the policies and procedures of the Airport security program, which is administered by the Security Section of the Airport Operations Division, Department of Aviation ("Airport Security"), and a copy of such policies and procedures will be provided to Consultant in writing prior to the commencement of Services under this Agreement which can be viewed at <http://business.flydenver.com/info/research/rules/index.asp>. Violation by the Consultant or any of its employees, subcontractors or vendors of any rule, regulation or authorized directive from the City or the Transportation Security Administration with respect to Airport Security shall be grounds for immediate termination by the City of this Contract for cause.

B. The Consultant 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 the Consultant's operations under this Contract. The Consultant shall obtain the proper access authorizations for all of its employees, subcontractors and vendors who will enter the Airport to perform work or make deliveries, and shall be responsible for each such person's compliance in the performance of the Services with all Airport rules and regulations, including without limitation those pertaining to security. Any person who violates such rules may be subject to revocation of his/her access authorization. The failure of the Consultant or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

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

D. The Consultant shall return to the City at the expiration or termination of this 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 the Consultant fails to do so, the Consultant shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of such costs from any amounts due and payable to the Consultant under this Contract.

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

The Consultant and Consultant's agents shall cooperate and comply with the provisions of the City and County of Denver Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Consultant and Consultant's agents from City facilities or participating in City operations. The parties agree that Consultant's personnel shall not be subject to drug or alcohol testing.

#### **41. CITY SMOKING POLICY:**

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

**42. 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.

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

This Agreement consists of Sections 1 through 57 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: IBM Statement of Work – Implementation
- Exhibit A-1: IBM Statement of Work – Hosting
- Exhibit B: Cloud Computing Services Agreement Addendum
- Exhibit C: Certificate of Insurance
- Exhibit D: Agreement for Exchange of Confidential Information (AECI)

In the event of an irreconcilable conflict between a provision of Sections 1 through 57 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
- Exhibits A and A-1
- Sections 1 through 57 hereof
- Exhibit B
- Exhibit C
- Exhibit D

**44. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:**

This Agreement, including its applicable appendices and exhibits is the complete integration of all understandings between the parties, and replaces all prior oral or written communications, representations, understandings, warranties, promises, covenants, and commitments between the City and the Consultant. In entering into this Agreement, including its applicable appendices and exhibits, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from the City (such as a purchase order) are void. 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.

**45. INUREMENT:**

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

**46. 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.

**47. 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.

**48. COUNTERPARTS OF THIS AGREEMENT:**

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

**49. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an

applicable Statement of Work. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a “user ID”) contained in an electronic document is sufficient to verify the sender’s identity and the document’s authenticity. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and Consultant. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**50. 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.

**51. DEFINITIONS:**

**Enterprise** – any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term “Enterprise” applies only to the portion of the Enterprise located in the United States. With regards to the City, Enterprise shall mean the City and County of Denver.

**Materials** – literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that Consultant may deliver to the City as part of a Service. The term “Materials” does not include programs, machine code, or other items available under their own license terms or agreements.

**Service** – performance of a task, assistance, support, or access to resources (such as an information database) that Consultant makes available to the City.

**52. MATERIALS OWNERSHIP AND LICENSE:**

The Statements of Work in Exhibits A and A-1 will specify Materials to be delivered to the City. IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Materials. Consultant grants the City an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within the City’s Enterprise only) copies of Materials.

Consultant or its suppliers retains ownership of the copyright in any of Consultant’s or its suppliers’ works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the

extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to the City, if any, or otherwise as Materials.

Each party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

### **53. CITY RESOURCES:**

If the City is making available to Consultant any facilities, software, hardware or other resources in connection with Consultant's performance of Services, the City agrees to obtain any licenses or approvals related to these resources that may be necessary for Consultant to perform the Services and develop Materials. Consultant will be relieved of its obligations that are adversely affected by the City's failure to promptly obtain such licenses or approvals. The City agrees to reimburse Consultant for any reasonable costs and other amounts that Consultant may incur from the City's failure to obtain these licenses or approvals.

Unless otherwise agreed in a Statement of Work, the City is responsible for i) any data and the content of any database the City makes available to Consultant in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data.

Consultant's responsibilities regarding such data or database, including any confidentiality and security obligations, are governed by the applicable Statement of Work to the particular Services (which prevail over the terms of any separate confidentiality agreements) and subject to the Limitation of Liability and other terms in this Agreement.

### **54. WARRANTY FOR CONSULTANT SERVICES:**

Consultant warrants that it performs each Consultant Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement or a Statement of Work. The City agrees to provide timely written notice of any failure to comply with this warranty so that Consultant can take corrective action.

**Extent of Warranty.** THIS WARRANTY IS THE CITY'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

**Items Not Covered by Warranty.** Consultant does not warrant uninterrupted or error-free operation of any Service or that Consultant will correct all defects. Unless otherwise specified in a Statement of Work, Consultant provides Materials and non-Consultant Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-Consultant suppliers may provide their own

warranties to the City.

## **55. DISPUTE RESOLUTION:**

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

## **56. GENERAL PRINCIPLES:**

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between the City and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to the City under this Agreement may be terminated if the City fails to fulfill its applicable payment obligations.
- e. The City authorizes the Consultant and its subsidiaries (and their successors and assigns, contractors and Consultant business partners) to store and use the City's business contact information wherever they do business, in connection with Consultant products and Services or in furtherance of Consultant's business relationship with the City.
- f. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is Consultant responsible for any third party claims against the City except as described in Section 18 (Intellectual Property Protection) and Section 19 (Defense and Indemnification) above or as permitted by the Limitation of

Liability section above for bodily injury (including death) or damage to real or tangible personal property for which Consultant is legally liable to that third party.

- g. The City is responsible for selecting the Services that meet its needs and for the results obtained from the use of the Services, including the City's decision to implement any recommendation concerning the City's business practices and operations.
- h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. As reasonably required by Consultant to fulfill its obligations under this Agreement, the City agrees to provide Consultant with sufficient and safe access (including remote access) to the City's facilities, systems, information, personnel, and resources, all at no charge to Consultant. Consultant is not responsible for any delay in performing or failure to perform caused by the City's delay in providing such access or performing other City responsibilities under this Agreement.

## **57. DISPUTE RESOLUTION PROCEDURE:**

The following procedure will be followed if resolution is required to a conflict arising during the performance of this Agreement.

1. When a conflict arises between the City and Consultant, the project team member(s) will first strive to work out the problem internally.
2. **Level 1:** If the project team cannot resolve the conflict within two (2) working days, the City Project Manager and Consultant Project Manager will meet to resolve the issue.
3. **Level 2:** If the conflict is not resolved within three (3) working days after being escalated to Level 1, the City Executive Sponsor will meet with the Consultant Project Executive to resolve the issue.
4. **Level 3:** If the conflict is resolved by either Level 1 or Level 2 intervention, the resolution will be addressed in accordance with the Project Change Control Procedure set forth in the applicable Statement of Work.
5. If the conflict remains unresolved after **Level 3** intervention, then except for the termination of the applicable Statement of Work, either party may resort to its other available remedies or terminate the applicable Statement of Work. If the conflict is addressed by termination, the City agrees to pay Consultant for a) all Services Consultant provides and any products and Materials IBM delivers through termination, and b) all expenses Consultant incurs through termination.
6. During any conflict resolution, Consultant agrees to provide Services relating to items not in dispute, to the extent practicable pending resolution of the conflict. The City agrees to pay invoices per the applicable Statement of Work and the Agreement relating to items not in dispute.



**[SIGNATURE PAGE FOLLOWS]**

**Contract Control Number:**

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:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: PLANE-201310389-00

Contractor Name: INTERNATIONAL BUSINESS MACHINES CORPORATION

By: Randy L Larsen

Name: Randy L Larsen  
(please print)

Title: Sales Unit Manager  
(please print)

DATE: APRIL 7, 2014

ATTEST: [if required]

Brent Hinkston  
CLIENT SERVICES EXECUTIVE

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

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

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



## APPENDIX NO. 1

### STANDARD FEDERAL ASSURANCES

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

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

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

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

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

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

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

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

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

## APPENDIX NO. 3

### **NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES**

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

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



**IBM Global Services  
Maximo 7.5 Implementation**

**Prepared by IBM for  
Denver International Airport  
Denver, Colorado**

**April 4, 2014**

The information in this Statement of Work may not be disclosed outside of Denver International Airport (DIA) and may not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate the Statement of Work, provided that if a contract is awarded to IBM as a result of or in connection with the submission of this Statement of Work, DIA will have the right to duplicate, use or disclose the information to the extent provided by the contract. This restriction does not limit the right of DIA to use information contained in this Statement of Work if it is obtained from another source without restriction. IBM retains ownership of this Statement of Work.

This Statement of Work is valid for 30 days from the date above.

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## 1. Overview and Approach

IBM is pleased to present this proposal to Denver International Airport (“DIA” or “Client”) for Maximo 7.5 Implementation services. IBM understands DIA’s key business objective is to “re-implement” a clean, customization-free Maximo environment to enable their business transformation. Further, IBM understands that DIA intends to be an active participant in the Maximo 7.5 implementation project and leverage IBM’s expertise and experiences in a cost effective teaming relationship.

### 2.1 IBM’s Approach

IBM will perform this project, as further described in this Statement of Work, in accordance with our time proven software package implementation methodology, GS Unified Method Framework. The Unified Method Framework leverages IBM’s intellectual capital obtained from previous successfully implemented projects. Its comprehensive approach to the implementation of complex integrated systems also addresses the process transformation, change management and risk management elements of performance that are critical to the objectives of a successful software implementation. It has a specific ‘track’ or path that is geared towards Asset Management (AM) projects, providing a balanced, iterative approach, which overlaps between phases to provide the opportunity for ‘real time’ responses to changing business conditions. Each phase builds upon those that preceded it, further refining both the design and the release strategies before development commences.

IBM’s Unified Method Framework implementation methodology comprises multiple phases, leveraging IBM’s intellectual capital, accelerators, guidance, and key concepts. The phases are as follows:

- The Prepare/Blueprint/Design Phase focuses on establishing the business strategy to achieve early successes while assessing the current environment for impacts to people, business processes and technologies. It assists the organization to leverage the solution to achieve the most advantageous design of business processes, organization and technology to support the innate functionality of the application in the most efficient way
- The Configure Phase develops, integrates and tests a final configuration in accordance with the defined and approved specifications resulting from the Design Phase. This phase addresses detailed system integration, development of documentation and the provision of training requirements for solution rollout to a production environment
- The Test and Confirm Phase verifies that all the preparation has been performed. The system/applications are tested and ready for cutover and deployment
- The Deployment Phase prepares the business, application, IT infrastructure and end user organization for the ‘go live’ production cutover. This includes ‘go live’ training of the end users for daily operations, as well as deploying a configured, customized, and tested operational system in compliance with the defined implementation approach
- The Stabilize Phase provides post-implementation support and application refinement for the seamless integration of the application into DIA’s business environment. This methodology provides a configurable and scalable nature, while offering a low risk implementation approach, thus allowing IBM to successfully meet DIA’s performance requirements

IBM will use its Project Management Office methodology to manage the project. Elements of the methodology include:

**Project management process:** Focusing on defining and planning work so that the sponsoring organization understands and accepts the defined scope of the project will achieve the required business objectives and that the risk factors are fully recognized.

**Project organization and responsibilities:** Defining responsibilities and reaching agreement among the key players who will have to work in concert to achieve a successful outcome – especially the business that is sponsoring the project and who will be responsible for operating or using the resultant products or services.

**Project phases:** Providing for the work to be broken down into a series of phases that give management the opportunity to reassess and mitigate risks at key points throughout the project.

**Project management system:** Establishing a management system that will apply the appropriate degree of control over activities and manage to the defined parameters of the work scope.

IBM's methodology provides guidance for the planning and controls that must be in place to provide consistency across project activities within the DIA asset management project. To support the challenge of managing multiple concurrent sub-projects, this methodology includes the following disciplines for project planning and control:

- Project planning is focused in the consistent organization of a project including structured work definitions, performance measurements of financials, schedule and deliverables, and an unwavering approach to management of changes in project scope
- Schedule management and reporting focuses on management of interdependencies of sub-projects and the consistent measurement and reporting of progress against the plan throughout the management of the project. Schedule management will also incorporate and manage schedule changes at the enterprise level that result from changes in project scope
- Deliverable management enables consistency in project deliverable Materials, and management of the deliverable Material approval process
- Risk management describes an invariable approach to the definition, assessment and strategies for the mitigation of risks. Subcontractor/supplier management (if applicable) provides for a consistent approach to working with subcontractors and suppliers to achieve stated project objectives
- Administrative management addresses creation and maintenance of issue/risk and action logs, document control, a library of approved documentation and standardized status reporting requirements for delivery to DIA.

## 2.2 A Tailored Approach for DIA

IBM has tailored its standard methodology / approach to DIA's stated objectives and DIA's specific requirements. Our goal is to support DIA with subject matter experts and technical development resources in certain aspects of the upgrade, and to provide leadership in other areas. Specific responsibilities are defined further in this document.

## 2.3 Quality Control

Conformance with DIA and project quality standards will result in a decrease in system lifecycle costs. Accordingly, IBM activities will be designed so that the project-related deliverables and services conform to applicable IBM project quality standards. Non-conformance with quality standards will be logged, managed, and corrected prior to system and user acceptance testing. IBM quality control activities will be conducted throughout the project lifecycle and include:

- Prepare, design and configure stages: During preparation and design stages, IBM project management will review the defined requirements and determine that requirements are appropriately allocated to design components. During the system configuration stage, we will

determine the compliance of configured components with design specifications. In addition, IBM will conduct code reviews and evaluate naming conventions, user interface design, communications methods, data interfaces, database schemas, system architectures, and other designed and developed system components

- Deploy and stabilize stages: In support of system testing activities, IBM will review activities so that the tests are performed in accordance with the approved test plan. IBM quality control activities will include review of system requirements, design documentation, requirements traceability matrices, test scripts, test environment, test specifications, and test results. Additionally, IBM will review to determine that corrective measures and resolutions proposed in test problem reports are implemented and regression testing is performed as required.

## 2. IBM Statement of Work

This Statement of Work (SOW) describes the work to be undertaken by IBM (Services) under the terms and conditions of the agreement specified in the signature block of this SOW (Agreement) and the terms and conditions contained herein. Described within this SOW is the project, which consists of the deliverable Materials to be provided by IBM, and the IBM responsibilities and related DIA responsibilities to be provided in accordance with the terms of this SOW.

Changes to this Statement of Work will be processed in accordance with the procedure described in Appendix B-1 Project Change Control Procedure. The investigation and the implementation of changes may result in modifications to the Estimated Schedule, Charges, and other terms of this Statement of Work and the Agreement that are agreed to in writing by the parties.

The following are incorporated in and made part of this Statement of Work:

Appendix A – Deliverable Materials Guidelines

Appendix B – Project Procedures

Appendix C – Reports, Interfaces, Conversions, Enhancements (RICE) Objects

To the extent, there is any contradiction, inconsistency or ambiguity between the terms of this Statement of Work and the Agreement, this Statement of Work will govern.

### 2.4 Project Scope

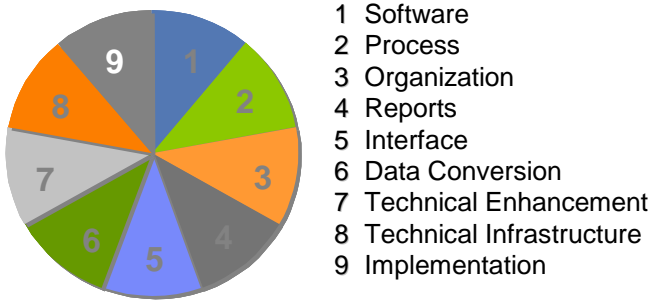
This Statement of Work describes the scope of the project. IBM will assist DIA in completing a new implementation of Maximo 7.5 as a “re-implementation” of their existing legacy Maximo 6.x system for their enterprise solution. In this project, IBM will support DIA with subject matter experts and technical development resources in certain aspects of the upgrade, and provide leadership in other areas. The following table describes the high-level responsibilities of both DIA and IBM.

Activity	DIA	IBM Global Business Services (GBS)
Integration	Lead	N/A
Infrastructure	Support	N/A
Maximo Technical Development and Configuration	Support	Lead
Functional Design	Lead	Support
Training	Lead	Support
Reports	Support	Lead
Data Migration	Support	Lead
Testing	Lead	Support

One of the critical components in achieving DIA's goals will be to clearly define and control the scope of the phases and of the overall Project. Therefore, IBM has included IBM's interpretation of the Project scope in this section. IBM defines the project scope using our "Nine Levers of Scope" model, which segregates scope into the nine discrete components identified below. These levers define at a macro level the assumptions used for planning and estimating the Project.

Deviations to scope that arise during the Project will be managed through the procedure(s) described in the Appendix B-1.

**The Nine Levers of Project Scope**



**2.4.1 Software Scope**

The "Software Scope" lever defines the software that will be part of the IBM scope of this Statement of Work. This lever includes the following:

Software Component	Purpose
IBM Maximo Asset Management	Provides Asset Management functionality to manage the complete lifecycle of critical assets including planning, procurement, deployment, tracking, maintenance and retirement.
IBM Maximo for Transportation	Provides organizations with features to help improve the productivity of critical transportation assets. Maximo for Transportation is a complete solution for managing all transportation asset types. Its features address fleets of cars, trucks, and buses; locomotives and rail vehicles; and aircraft and vessels.

**2.5 Maximo Application Scope**

The application scope for this is defined by DIA's existing Maximo production system. Those capabilities currently in use at DIA will be replicated in the new Maximo 7.5 system without further design change or enhancement. The new solution will be built to take advantage of the native capabilities of Maximo 7.5 where practical.

The table below represents out of the box Maximo applications. DIA specific applications are noted with a checkmark. These applications will be included in the design phase review.

EXHIBIT A

Administration		Resources	
Organizations	√	People	√
Classifications	√	Person Groups	√
Bulletin Board	√	Crafts	√
Communication Templates	√	Labor	√
Calendars	√	Qualifications	√
Sets	√	Migration Collections	√
Work View	√	<b>Safety</b>	
Start Centers	√	Safety Hazards	√
<b>Assets</b>		Safety Precautions	√
Assets	√	Lock Out/Tag Out	
Locations	√	Safety Plans	√
Meters	√	<b>Security</b>	
Meter Groups	√	Security Groups	√
Condition Monitoring	√	Users	√
Failure Codes	√	<b>Service Management</b>	
Asset Templates	√	Service Requests	√
<b>Configuration</b>		- Create Service Requests	√
Domains	√	- View Service Requests	√
Database Configuration	√	Ticket Templates	-
Application Designer	√	- View Requisitions	
Cron Task Setup	√	- View Templates	
Workflow	√	- View Drafts	
- Workflow Designer	√	Activities and Tasks	√
- Roles	√	Service Level Agreements	√
- Workflow Administration	√	Service Groups	√
- Actions	√	<b>Work Orders</b>	
E-Mail Listener Configuration	√	Work Order Tracking	√
Maximo Escalations	√	Labor Reporting	√
Automation Scripts	√	Quick Reporting	√
<b>Contracts</b>		Assignment Manager	√
Purchase Contracts	√	Service Requests	√
Lease/Rental Contracts		<b>Integration</b>	
Labor Rate Contracts	√	Invocation Channels	√
Master Contracts	√	Object Structures	√
Warranty Contracts	√	Web Services Library	√
Terms & Conditions		Publish Channels	√
<b>Financial</b>		External Systems	√
Chart of Accounts	√	Enterprise Services	√
Currency Codes		Launch in Context	√
Exchange Rates		Message Reprocessing	√
<b>Materials Management</b>		Integration Modules	√

EXHIBIT A

Item Master	√	Logical Management Operations	√
Service Items	√	End Points	√
Tools	√	Message Tracking	√
Stocked Tools	√	<b>Options</b>	
Inventory	√	Maximo Transmission & Distribution	
Issues & Transfers	√	Maximo Field Control	
Condition Codes	√	Maximo Project	
Storerooms	√	Maximo Change and Corrective Action Manager	
Inventory Usage	√		
Shipment Receiving	√	Maximo Linear Asset Manager	
<b>Planning</b>		Maximo Mobile Work Manager	
Job Plans	√	Maximo Mobile Inventory Manager	
Safety Plans	√	Maximo Transportation	√
Routes	√	Maximo Mobile Asset Manager	
<b>Preventive Maintenance</b>		Maximo Calibration	
Preventive Maintenance (PM)	√	Maximo Spatial Asset Management	
Master PM	√	Maximo Adapter for MS Project	
<b>Purchasing</b>		Maximo Adapter for Primavera	
Purchase Requisitions	√	Maximo Enterprise Adapter for Oracle	
Purchase Orders	√	Maximo Compliance Assistance Documentation	
Receiving	√	Maximo for Service Providers	
Invoices	√	Maximo Asset Configuration Mgr.	
Request for Quotations		Maximo Scheduler	
Companies	√	Maximo Everyplace	
Company Master		Maximo Archiving with Optim Data Growth Solution	
Terms & Conditions	√	Maximo Archiving Adapter	
<b>Reporting</b>			
KPI Manager	√		
Report Administration	√		
Report Viewer	√		

**2.6 Business Process Scope**

The Business Process Scope lever defines the business processes that are in scope for the Project. Where appropriate, the business processes are supported by the inherent “leading practice” capabilities of the Maximo application suite. DIA is leading the business process / functional design aspects of the upgrade, and is responsible for managing scope in this area. IBM’s understanding is the key process areas to be addressed are related to standard Maximo out-of-the-box processes.

Any business process improvements are to be decided and managed by DIA. IBM will provide subject matter expertise to assist in defining business process and functional requirements.

**2.7 Organization and Training Scope**

The “Organization Scope” lever defines the Project’s impact on the organization and end-users, and outlines the change management activities necessary for a successful implementation. DIA will perform

the following activities that, based on our experience, play a crucial role in defining the success of the Project, realizing benefits, and driving organizational and end-user acceptance of the new system and processes.

- Stakeholder Management: Manages and measures understanding, expectations, and commitment of stakeholders through the life of the Project
- Communication: Increases awareness and knowledge of the Project and its impact through communication channels
- Skills & Knowledge Transfer: Establishes the appropriate skills and knowledge to the organization, as well as provides support tools for on-going learning and performance

DIA is leading the training program for this project, and is responsible for managing scope in this area.

IBM will provide assistance in developing the training program through preparing DIA trainers in train-the-trainer sessions.

## **2.8 Reports Scope**

The Reports Scope lever defines the reports and queries that are in scope for this implementation. The scope of this Statement of Work is limited to Maximo 7.5 out-of-the-box reports using the BIRT reporting tool. No new reports will be developed. The actual scope of the reports to be configured/modified is still to be determined by DIA. The IBM effort will be bound by estimated hours, as indicated in Section 2.20.

## **2.9 Interface Scope**

The Interface Scope lever defines the interfaces needed to support the business processes as defined in the Solution. The scope of this Statement of Work is limited to re-creating DIA's existing Maximo interfaces using the Maximo Integration Framework (MIF). DIA is to own development of all interface elements to Maximo 7.5.

## **2.10 Data Conversion Scope**

The Data Conversion scope defines the conversion strategy and identifies those conversions required to transition to the target environment. In DIA's case, data conversion will consist of data from an existing Maximo 6.x database to Maximo 7.5. Data from other DIA systems will not be converted / migrated to the new Maximo 7.5 database.

The IBM proposed approach contained within this statement of work is to develop the data migration plan, data migration scripts and migrate all static and transactional data from the DIA legacy Maximo 6.x environment to the newly implemented Maximo 7.5 environment.

The data migration approach will utilize the GBS Maximo Data Accelerator (MDA) tool. The MDA leverages IBM's InfoSphere DataStage product. This software will need to be officially acquired and licensed by DIA for the duration of the project.

## **2.11 Technical Enhancement Scope**

The Technical Enhancement Scope lever defines configurations to the core application software packages included in the scope of the Project. IBM is leading technical configuration development for this project, and is responsible for managing scope in this area. As DIA is leading the Business Process Transformation activities, the new Maximo 7.5 implementation solution will be built to take advantage of the native capabilities of Maximo 7.5 where practical, but be configured to meet the DIA Business Process Transformation objectives.

IBM will provide resources to prepare design documentation and develop configurations.

## **2.12 Technical Infrastructure Scope**

The Technical Infrastructure Scope lever defines the hardware, software, and networks required to support the Maximo implementation for DIA. IBM Global Business Services (GBS) will not be responsible for the Maximo 7.5 technical infrastructure. DIA will be entering into a separate hosting agreement with IBM Software Group (SWG) to host the Maximo 7.5 environments. All technical infrastructure activities will, however, need to be aligned with the Maximo 7.5 implementation project.

### 2.13 Implementation Scope

The Implementation Scope lever defines the approach for implementation of the Solution. IBM will advise DIA regarding implementation strategy and approach, and will assist in assessing related technical considerations.

### 2.14 Scope Exclusions

- These services provided by IBM GBS do not include any hardware, hosting, system management processes or system management solutions.
- The decommissioning of any systems replaced by this solution is not in scope.
- Development of a data warehouse, data archiving and/or backup and recovery strategy is not in scope for this SOW.
- Mobile strategy development and implementation is not in scope for this SOW.

### 2.15 Key Assumptions

This Statement of Work and IBM's estimates are based on the following key assumptions. Deviations that arise during the proposed project will be managed through the procedure described in Appendix B-1 Project Change Control Procedure, and may result in adjustments to the Project Scope, Estimated Schedule, Charges and other terms. These adjustments may include charges on a time and materials basis using IBM's standard rates in effect at such time for any resulting additional work or waiting time. If an assumption deviation is not resolved through Appendix B-1 Project Change Control Procedure within 5 (five) days then the issue will be resolved in accordance with Appendix B-3 Escalation Procedure.

- a. IBM may be using preexisting and IBM proprietary tools during this engagement to perform the IBM responsibilities. These tools and associated documentation are not provided to the customer under the terms of this Statement of Work and the Agreement, and remain the property of IBM;
- b. Work under this Statement of Work will be performed at DIA facilities in Denver, Colorado, except for any project related activity that IBM determines would be best performed on IBM premises in order to complete its obligations and responsibilities under this Statement of Work. Such activity will be billable to DIA;
- c. IBM will provide the Services under this Statement of Work during normal business hours, 8:00 AM to 6:00 PM local time, Monday through Friday, except national holidays. If necessary, DIA will provide after-hours access to DIA facilities to IBM personnel. Out-of-town personnel may work hours other than those defined as normal business hours to accommodate their travel schedules;
- d. DIA has a valid software entitlement for Maximo and will maintain this entitlement for the duration of the project. This will be required to submit PMRs and receive support for Maximo issues from IBM.
- e. Custom applications, interfaces, programs, and reports developed using Maximo software or other commercially available software is not supported by the Maximo Technical Support hot line. In addition, IBM cannot guarantee that customizations will work with future releases of Maximo products. Assistance is available from IBM, on a time and expenses basis, to help maintain these products and assist with upgrades to future releases.
- f. If DIA scheduled tasks are not completed as scheduled, the material affect to the project time and cost will be the collective time delay of all the IBM resources in addition to the subsequent propagated scheduling delays caused by initial delay. The collective cost and updated project plan will be provided to DIA and DIA will be responsible for this cost impact.
- g. DIA will prepare for Maximo design workshops by evaluating potential changes to the Maximo solution prior to the start of the workshops.
- h. Maximo design decisions are not fully known. Estimates are based on minimum to moderate replacement by Maximo 7.5 core functionality.
  - Estimates reflect ensuing impacts on Report development
  - Estimates reflect ensuing impacts on Data Migration development



## EXHIBIT A

- i. Infrastructure performance load testing will be led by DIA, with IBM Hosting Services providing support for performance tuning between test cycles.
- j. The Maximo server infrastructure and environments will be managed and hosted by IBM through a separate hosting contract
- k. IBM will focus primarily on the technical related activities of the Maximo 7.5 implementation project (for example, these would include Functional Design Documentation, Technical Design Documentation, Data, Maximo Configurations, etc.).
- l. DIA will lead the business requirements, process analysis, use cases and standardization activities. We would expect DIA to involve IBM in the business process analyses work in a subject matter and an advisory capacity, specifically with respect to how Maximo could enable the business process.
- m. Integration design work to be completed by DIA.
- n. DIA develops and facilitates all Maximo 7.5 training – IBM consulted only at strategic opportunities during training development and training deployment strategy development through train-the-trainer deliverable.
- o. No new reports requirements are anticipated beyond editing/changing out-of-the-box Maximo 7.5 core BIRT reports. Estimating 15 reports to modify.
- p. IBM will develop data migration strategy and ETL tools. Expectation from DIA is to migrate all static and transactional data from the legacy Maximo 6.x environment.
- q. DIA will own User Acceptance Testing (UAT) process. IBM will support defect resolution, triage and trouble-shooting throughout the UAT process.
- r. DIA will own Change Management and the associative interfaces to the business. IBM will provide best practice Change Management advisory support in strategy and direction.
- s. Mobile strategy development and implementation not priced in Maximo 7.5 implementation project.
- t. Post-go-live support is provisioned for two weeks.
- u. The estimate for the Configure, Test, Train, Deploy phases will need to be validated through the Blueprint / Design Phase as requirements are not fully defined and there are limited scope details. IBM proposed solution is typical in scope to other deals and is based on standard models, tools, baselines, ratios, Terms and Conditions.
- v. DIA will be responsible for aspects related to human resources of DIA employees.
- w. DIA will make the appropriate personnel available to participate in interviews and workshops.

### 2.16 IBM Responsibilities

Under this Statement of Work, IBM will undertake the following activities:

#### 2.16.1 Ongoing Project Management

IBM will provide ongoing project management for the IBM responsibilities in this Statement of Work. The purpose of this activity is to provide technical direction and control of IBM project personnel and to provide a framework for project planning, communications, reporting, procedural and contractual activity. This activity is composed of the following tasks:

- a. Review the Statement of Work and the contractual responsibilities of both parties with the DIA Project Manager;
- b. Maintain project communications through the DIA Project Manager;
- c. Coordinate the establishment of the project environment;
- d. Establish documentation and procedural standards for deliverable Materials;
- e. Prepare and maintain the IBM Project Plan which lists the activities, tasks, assignments, milestones and estimates for performance of this Statement of Work;

- f. Review project tasks, schedules, and resources and make changes or additions, as appropriate. Measure and evaluate progress against the IBM Project Plan with the DIA Project Manager;
- g. Review the IBM standard invoice format and billing procedure to be used on the project, with the DIA Project Manager;
- h. Work with the DIA Project Manager to address and resolve deviations from the IBM Project Plan;
- i. Conduct regularly scheduled project status meetings;
- j. Prepare and submit Weekly Status Reports to the DIA Project Manager;
- k. Administer the Project Change Control Procedure with the DIA Project Manager;
- l. Coordinate and manage the technical activities of IBM project personnel

**Completion Criteria:** This activity will be complete when IBM has satisfied the completion criteria for all remaining activities in Section 2.16 IBM Responsibilities.

**Deliverable Materials:** None

### 2.16.2 Conduct Project Kickoff Meeting

The objective of this activity is to prepare for and conduct the project kickoff meeting.

This activity is composed of the following tasks:

- a. Prepare materials for the project kick-off meeting;
- b. Determine participant roles;
- c. Schedule meeting;
- d. Conduct the project kick-off meeting

**Completion Criteria:** This activity will be complete when IBM has documented the results of the project kick-off meeting.

**Deliverable Materials:** None

### 2.16.3 Develop Project Plan

The objective of this activity is to jointly develop and manage the Maximo 7.5 upgrade project plan with the DIA Project Manager. DIA is responsible for the project plan development. IBM will assist.

This activity is composed of the following tasks:

- a. Develop/refine the Maximo upgrade project plan;
- b. Review the draft project plan with the DIA Project Manager;
- c. Modify draft project plan based on DIA feedback;
- d. Maintain project plan with DIA Project Manager

**Completion Criteria:** This activity is an ongoing activity and will be complete when IBM has satisfied the completion criteria for all remaining activities in Section 2.16 IBM Responsibilities. IBM will commit one week (40 hours) of project manager time to this activity.

**Deliverable Materials:** None

### 2.16.4 Develop Issue Log

The objective of this activity is to jointly develop an issue log with the DIA Project Manager. This activity is composed of the following tasks:

- a. Document the issues in the issue log;
- b. Update the issues log, as necessary

**Completion Criteria:** This activity will be complete when the initial Issue Log has been created.

**Deliverable Materials:** None

### 2.16.5 Develop Action Log

The objective of this activity is to jointly develop an action log with the DIA Project Manager.

This activity is composed of the following tasks:

- a. Document the project action items in the action log;
- b. Update the action log, as necessary

**Completion Criteria:** This activity will be complete when the initial Action Log has been created.

**Deliverable Materials:** None

### 2.16.6 Weekly Project Status Meeting

The objectives of this activity are to jointly setup and conduct a weekly status meeting with DIA.

This activity is composed of the following tasks:

- a. Conduct weekly project status meeting;
- b. Prepare weekly project status reports

**Completion Criteria:** This activity is an ongoing activity and will be complete when IBM has satisfied the completion criteria for all remaining activities in Section 2.16 IBM Responsibilities.

**Deliverable Materials:** None

## Phase One – Prepare / Blueprint / Design Phase

The objective of the Prepare element is to finalize the project team members, help validate a common understanding of the Services objectives, project roles and responsibilities, and determine DIA readiness to implement these Services. The Blueprint / Design element is to match the process definition, organization definition and information requirements with standard Maximo product capabilities. This also includes demonstrating Maximo 7.5 capabilities and discussing the impact of specific system settings on IBM Maximo for both Core and Enterprise. Results of this phase may identify changes to project scope. Any decreases in scope or increase in scope will be handled in accordance with Appendix B-1 Project Change Control Procedure.

The following activities and deliverable Materials are included in the Prepare Phase:

### 2.16.7 Prepare for Workshops

The objective of this activity is to Prepare for the Design workshops to be developed for Phase Two:

- a. Prepare materials and agenda for workshops;
- b. Determine participants; DIA will confirm their availability
- c. Schedule workshop(s).

**Completion Criteria:** This activity will be complete when the Workshop Schedule has been developed or when IBM has met the Completion Criteria documented in section 2.19, whichever occurs first. The IBM effort will be bound by estimated hours, as indicated in Section 2.20.

**Deliverable Materials:** None

### 2.16.8 Maximo Functional Requirements Specifications

DIA will be facilitating the business process change activities, and IBM will support this activity through active SME participation and documentation efforts. IBM will expend up to two months (8 weeks of one full time equivalent) with the client to support the Maximo functional analysis and preparation of the functional scope documentation as outcome from the workshops. The objective is to develop future-state foundational and enterprise processes utilizing a series of targeted interviews and design workshops, which will review the Business Transformation processes, assess critical needs and develop all of the to-be processes including the business processes within Maximo.

This activity is composed of the following tasks:

- a. Review and assess the business processes as set forth by the DIA Business Transformation effort against Maximo 7.5 core functionality (inclusive of the applicable software Add-On's);
- b. Document gaps;
- c. Document current key performance indicators (KPI's);
- d. Review map of business processes to Maximo 7.5;
- e. Conduct the following foundational Design workshops:
  - Organizations. Site and General Setup
  - Assets Module
  - Inventory
    - Items
    - Inventory
    - Issues / Transfers
  - Purchasing
    - Purchase Requisitions
    - Purchase Orders
    - Receiving
    - Invoicing
  - Service Management and Work Order Module
  - PM / Job Plans / Safety
  - Resources
  - Administration Applications
  - Start Centers / Security
  - Workflow / Maximo Escalations
  - Reports
  - Data
  - Integration
  - Service Provider Add-On (inclusive of all extended object functionality specific to SP)
- f. Document the Functional Requirements.

**Completion Criteria:** This activity will be complete when the Functional Requirements Document has been delivered to and accepted by the DIA Project Manager or when IBM has met the Completion Criteria documented in Section 2.19, whichever occurs first. The IBM effort will be bound by estimated hours, as indicated in Section 2.20.

**Deliverable Materials:** Functional Requirements Document

### 2.16.9 Maximo Application Design Specifications

IBM will complete the design, configuration, database, and security specifications, and DIA will support this activity through active SME participation. IBM will spend up to 2 months (8 weeks of one full time equivalent) with the client to support the preparation of materials for workshops and to assist with the workshops.

This activity is composed of the following tasks:

- a. IBM will develop and document application design specifications based on DIA requirements by performing the following:
  - Develop application design specifications;
  - Document application design specifications;
  - Review with DIA the application design specifications; and
  - Modify application design specifications;
  - Obtain DIA's approval.
- b. IBM will develop and document database design specifications based on DIA requirements by performing the following:
  - Develop database configuration specifications;
  - Document database configuration specifications;
  - Review with DIA the database configuration specifications; and
  - Modify database configuration specifications;
  - Obtain DIA's approval.
- c. IBM will develop and document workflow design specifications based on DIA requirements by performing the following:
  - Develop Maximo workflow specifications;
  - Document Maximo workflow specifications;
  - Review with DIA the Maximo workflow specifications; and
  - Modify Maximo workflow specifications;
  - Obtain DIA's approval.
- d. IBM will work with DIA to develop and document MIF Adapter based interface specifications based on DIA requirements by performing the following:
  - Develop Maximo interface specifications;
  - Document Maximo interface specifications;
  - Review with DIA the Maximo interface specifications; and
  - Modify Maximo interface specifications;
  - Obtain DIA's approval.
- e. IBM will develop and document user profiles and security specifications based on DIA requirements by performing the following:
  - Develop Maximo user profiles and security specifications;
  - Document Maximo user profiles and security specifications;
  - Review with DIA the Maximo user profiles and security specifications; and
  - Modify Maximo user profiles and security specifications;
  - Obtain DIA's approval.
- f. IBM will develop and document report specifications based on DIA requirements by performing the following:

- Develop report design specifications based upon Maximo 7.5 data structure;
- Document report design specifications;
- Review with DIA the report design specifications; and
- Modify report design specifications;
- Obtain DIA's approval.

**Completion Criteria:** This activity will be complete when the applicable Maximo Application Technical Design Specifications for the in-scope RICE objects have been delivered to and accepted by the DIA Project Manager or when IBM has met the Completion Criteria documented in Section 2.19, whichever occurs first. The IBM effort will be bound by estimated hours, as indicated in Section 2.20.

**Deliverable Materials:** Maximo Application Technical Design Specifications

### 2.16.10 Create Data Migration Plan and Scripts

The objective of this activity is to create a Data Migration Plan and document the procedures for migrating DIA data from the legacy Maximo 6.x system into the Maximo 7.5 environment. IBM will be responsible for the development of the Data Migration Plan and will work with DIA to assure the data collection process is formatted to Maximo application architecture and Maximo application standards. DIA expectation is to migrate all existing static and transactional data from the DIA legacy Maximo 6.x environment.

This activity is composed of the following tasks:

- a. Create and document the standards for data migration into the Maximo 7.5 application;
- b. Document the procedures for migrating existing data into Maximo 7.5; and
- c. Create the Data Migration Plan

**Completion Criteria:** This activity will be complete when the Data Migration Plan has been delivered to the DIA Project Manager. The IBM effort will be bound by estimated hours, as indicated in Section 2.20.

**Deliverable Materials:** Data Migration Plan

## Phase Two - Configure Phase

The objective of the Configure Phase is to develop, integrate, and test the final Maximo application configuration. IBM will conduct a series of workshops with DIA during which the final configuration of the Maximo solution will be accomplished through the review of the Maximo application architecture and application standards.

### 2.16.11 Train The Trainer

The objective of this activity is to train the DIA core team on how to train the users of the Maximo 7.5 solution. IBM will be responsible for conducting the train-the-trainer session and updating the Training Materials. The maximum number of staff to be trained is 12 for one train the trainer session.

This activity is composed of the following tasks:

- a. Conduct train-the-trainer session(s);

**Completion Criteria:** This activity will be complete when the train the trainer session has been completed. IBM will commit up to 80 hours for the Training resource as indicated in Section 2.20

**Deliverable Materials:** None

### 2.16.12 Configure Application

The objective of this activity is to configure the Maximo 7.5 application.

This activity is composed of the following tasks:

- a. Configure the Maximo application per the functional specifications;
- b. Configure extended applications, per the functional specifications direction from DIA;
- c. Design workflows, per the functional specifications. Estimate is based on completing three low complexity workflows as defined in Appendix C.

**Completion Criteria:** This activity will be complete when configuration is complete or when IBM expends the hours allocated to this activity as indicated in Section 2.20.

**Deliverable Materials:** None

### 2.16.13 Configure / Modify BIRT Reports

The objective of this activity is to configure/modify the Maximo 7.5 BIRT reports as selected by the DIA project team from the Maximo 7.5 out-of-the-box BIRT reports.

This activity is composed of the following tasks:

- a. Configure/modify up to 15 BIRT reports (10 low complexity and 5 medium complexity, as indicated in Appendix C) from the Maximo 7.5 out-of-the-box BIRT reports per the functional specifications;
- b. Deliver example print-outs of configured BIRT reports for review by DIA;
- c. Edit/update configured BIRT reports;
- d. Obtain DIA approval.

**Completion Criteria:** This activity will be complete when the designated BIRT reports have been configured and approved by DIA or when IBM effort expends the estimated hours, as indicated in Section 2.20.

**Deliverable Materials:** None

### 2.16.14 Data Migration

The objective of this activity is to load the in-scope DIA data (all static and transactional Maximo 6.x data) into the development system. IBM and DIA will adhere to the agreed to Project plan.

This activity is composed of the following tasks:

- a. Data Mapping Development;
- b. Data Map Review;
- c. Data Migration Development;
- d. Provide Maximo Data Loader Training;
- e. Load data into Oracle for Cleanup;
- f. Analyze Data;
- g. Update Data Load Assessment Document;
- h. Provide Data Load Template - DDL;
- i. Review Data Load Templates;
- j. Develop Conversion Scripts;
- k. Develop Scripts for Final Data Loading;
- l. Update Data Map Document;
- m. Conduct a mock data migration;
- n. Conduct a second mock data migration;
- o. Adjust and validate scripts or data map documents as required;
- p. Load Data – two additional environments.

**Completion Criteria:** This activity will be complete when IBM has conducted the second mock migration for the in-scope data listed in Appendix E, loaded the results of that mock migration into non production environments, and the Updated Data Migration document has been delivered to and accepted by the DIA Project Manager; or when IBM has met the Completion Criteria documented in Section 2.19, whichever occurs first. The IBM effort will be bound by estimated hours, as indicated in Section 2.20.

**Deliverable Materials:** Updated Data Migration Plan

### **Phase Three - Test and Confirm**

The objective of this phase is to configure the Maximo test environment and to perform integration, system and acceptance testing.

#### **2.16.15 Develop Test Plans**

The objective of this activity is to convert/modify existing and develop new user acceptance test plans and perform integration, system and acceptance testing. DIA is leading test planning and execution, and IBM is responsible for UAT Test Script development.

This activity is composed of the following tasks:

- a. Support DIA in UAT Process Development;
- b. UAT Test Script Development.

**Completion Criteria:** This activity will be complete when IBM has supported DIA in modification and creation of the new user acceptance test plans. The IBM effort will be bound by estimated hours, as indicated in Section 2.20.

**Deliverable Materials:** None

#### **2.16.16 Perform Interface Testing**

The objective of this activity is to perform interface testing, document interface test results and address the defects detected during testing. DIA owns interface development, but IBM will support DIA in interface testing and defect resolution. IBM will not be responsible to fix interface technical issues.

This activity is composed of the following tasks:

- a. Execute unit tests;
- b. Document interface test results;
- c. Document defects noted as a result of testing; and
- d. Help to resolve defects noted as a result of testing

**Completion Criteria:** This activity will be complete when DIA and IBM have completed and documented the results of the interface testing. The IBM effort will be bound by estimated hours, as indicated in Section 2.20.

**Deliverable Materials:** None

#### **2.16.17 Assist in Performance of User Acceptance Testing**

The objective of this activity is to assist DIA in the development of and performance of user acceptance testing. DIA is responsible for User Acceptance Testing and IBM will support this activity.

This activity is composed of the following tasks:

- a. Prepare for and train DIA users for user acceptance testing;



- b. Assist DIA in developing test data and performing data load;
- c. Assist DIA in resolving issues and retest

**Completion Criteria:** This activity will be complete when IBM has documented the results of the user acceptance testing. The IBM effort will be bound by estimated hours, as indicated in Section 2.20.

**Deliverable Materials:** None

## Phase Four - Deploy Phase

The objective of this phase is to deploy the Maximo solution into DIA's production environment.

### 2.16.18 Develop Maximo Solution Deployment Plan

The objective this activity is to develop the Deployment Plan for roll out and go live of the system.

This activity is composed of the following tasks:

- a. Document the Maximo solution deployment plan;
- b. Review the Maximo solution deployment plan with DIA Project Manager;
- c. Modify the Maximo solution deployment plan based on review if needed.

**Completion Criteria:** This activity will be complete when the Maximo Solution Deployment Plan has been delivered to and accepted by the DIA Project Manager or when IBM has met the Completion Criteria documented in Section 2.19, whichever occurs first.

**Deliverable Materials:** Maximo Solution Deployment Plan

### 2.16.19 Load DIA Data Into Production Environment

The objective of this activity is to load the DIA data into one Production environment one time only specific to the DIA account migration go-live. The data load process shall be as determined by the Data Migration Plan and Scripts.

This activity is composed of the following tasks:

- a. Execute developed data extraction scripts on a copy of the DIA legacy Maximo Production environment.
- b. Execute developed data migration scripts to load the respective account data, as determined by the Data Migration Plan and Scripts.

**Completion Criteria:** This activity will be complete when IBM has completed the data migration effort for the determined account migration. The IBM effort will be bound by estimated hours, as indicated in Section 2.20.

**Deliverable Materials:** None

## Phase Five - Stabilize Phase

The objective of this activity is to provide Maximo support to DIA staff. Support will start immediately after the upgrade Go-Live of Maximo 7.5.

### 2.16.20 Provide Post-Implementation Support

The objective of this activity is to provide technical support during a specified time period after go-live. IBM will provide up to two weeks of post-implementation support.

Post-implementation support will be categorized and facilitated in the following methods:

- Maximo Software Issues – Where an issue has been determined to be a core Maximo software issue, DIA will utilize the IBM Software PMR process to facilitate resolution.
- Maximo Implementation Project Configuration Issues – Where an issue has been determined to be a result of Maximo configurations, data migration or report configurations from the project, the IBM post-implementation support team will provide up to two weeks to work on determined issues.

This activity is composed of the following task:

- a. Provide post-upgrade support as requested by DIA

**Completion Criteria:** This activity will be complete when IBM has provided up to 88 hours over 2 calendar weeks for this activity.

**Deliverable Materials:** None

### 2.16.21 Project Close Out

The objective of this activity is to close out all project activities.

This activity is composed of the following tasks:

- a. Conduct project wrap up meeting;
- b. Document lessons learned

**Completion Criteria:** This activity will be complete when IBM has documented the lessons learned.

**Deliverable Materials:** None

## 2.17 DIA Responsibilities

The successful completion of the proposed scope of work depends on the full commitment and participation of DIA management and personnel. The responsibilities listed in this section are in addition to those responsibilities specified in the Agreement, and are to be provided at no charge to IBM. DIA is required to perform its obligations in the Agreement and this Statement of Work without exception. IBM's performance is predicated upon the following responsibilities being managed and fulfilled by DIA, as scheduled in the IBM Project Plan. Delays in performance of these responsibilities may result in additional cost and/or delay of the completion of the project, and will be handled in accordance with Appendix B-1 Project Change Control Procedure.

### 2.17.1 DIA Project Manager

Prior to the start of this project, DIA will designate a person called the DIA Project Manager who will be the focal point for IBM communications relative to this project and will have the authority to act on behalf of DIA in all matters regarding this project. The DIA Project Manager's responsibilities include the following:

- a. Manage the DIA personnel and responsibilities for this project;
- b. Serve as the interface between IBM and all DIA departments participating in the project;
- c. Administer the Project Change Control Procedure with the IBM Project Manager;
- d. Participate in project status meetings;
- e. Obtain and provide information, data, and decisions within 3 working days of IBM's request unless DIA and IBM agree in writing to a different response time. Review deliverable Materials submitted by IBM in accordance with Appendix B-2 Deliverable Materials Acceptance Procedure;
- f. Review, revise and resolve deviations to the IBM Project Plan with the IBM Project Manager, as required;
- g. Help resolve project issues and DIA's deviations from the estimated schedule, and escalate issues within DIA's organization, as necessary;

- h. Review with the IBM Project Manager any DIA invoice or billing requirements. Such requirements that deviate from IBM's standard invoice format or billing procedures may have an effect on price and will be managed through the Project Change Control Procedure in Appendix B-1.

### **2.17.2 Other DIA Responsibilities**

DIA responsibilities include the following:

- a. Ensure that DIA's staff is available to provide such assistance as IBM reasonably requires. This will include:
  - manager(s) of the support operation;
  - lead support analyst(s);
  - personnel having knowledge and experience in translating business information requirements into an IT solution, specific expertise in data collection, and assessment and solution design; and
  - subject matter experts (SME) when required

DIA will ensure that its staff has the appropriate skills and experience. If any DIA staff fails to perform as required, DIA will make suitable additional or alternative staff available.

- b. Ensure that IBM is given reasonable access to DIA senior management, as well as any members of its staff to enable IBM to provide the Services;
- c. Provide all information and materials reasonably required to enable IBM to provide the Services. DIA agrees that all information disclosed or to be disclosed to IBM is and will be true, accurate and not misleading in any material respect. IBM will not be liable for any loss, damage or deficiencies in the Services arising from inaccurate, incomplete, or otherwise defective information and materials supplied by DIA;
- d. DIA will be responsible for the review and evaluation of the IBM recommendations as well as all final decisions and implementations relating to, or resulting from, the IBM recommendations contained in the deliverable Materials.
- e. DIA will complete all interface design and development unless subsequently contracted under a separate Statement of Work to IBM by DIA.

### **2.17.3 Prepare Phase DIA Responsibilities**

The DIA responsibilities in this phase include the following:

- a. Provide appropriate facilities for the workshops, including an SVGA-compatible projector, a network connection, and any other required equipment;
- b. DIA will provide a valid export or backup of the Maximo database to be migrated using the method specified by IBM, and will ensure that the source database is not corrupt, invalid or missing any data;
- c. DIA will be responsible for any data errors encountered during the migration process that may be unrecoverable or that cause the level of IBM effort to migrate the database to increase;
- d. DIA will develop a training plan to guide development of training materials and Train-the-Trainer activities.

### **2.17.4 Design Phase DIA Responsibilities**

The DIA responsibilities in this phase include the following:

- a. DIA will be managing and facilitating all Maximo interface design;

### **2.17.5 Configure Phase DIA Responsibilities**

The DIA responsibilities in this phase include the following:

- a. DIA will be solely responsible for selecting the services and technologies that DIA determines meet its needs during the installation, including, without limitation, any processes, services and technologies needed for access or egress control, and authentication;
- b. DIA will validate the predefined data fields, carry out changes if required and provide IBM with finalized information requirements;
- c. DIA will provide the necessary training on basic product usage and administration to its IT support staff.
- d. DIA will provide report designs and guidance to IBM resources for report development. Report specifications will be developed to standards provided by IBM.

### **2.17.6 Test and Confirm Phase DIA Responsibilities**

The DIA responsibilities in this phase include the following:

- a. DIA will provide IBM with high level access to the source Maximo database when necessary to run IBM Maximo database export or migration scripts and will ensure the following database level access:  
Oracle: SYSTEM
- b. DIA will prepare test cases to be run during the user acceptance test;
- c. DIA will manage the User Acceptance Testing process as developed for its organizations.

### **2.17.7 Deploy Phase DIA Responsibilities**

The DIA responsibilities in this phase include the following:

- a. DIA will train the end user population that will be working with the solution;
- b. DIA will deploy the Maximo product from the test environment to its production environment.

### **2.17.8 Stabilize Phase DIA Responsibilities**

The DIA responsibilities in this phase include the following:

- a. DIA will operate the Maximo product in its production environment.

## **Schedule and Milestones**

### **2.18 Estimated Schedule**

The Services in this Statement of Work are estimated to be performed in a period of up to 8 months from the agreed upon estimated start date as stated Signature Acceptance section.

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	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8
<b>Prepare / Blueprint / Design</b>								
Project Planning / Staffing Finalizations / Team Coordinations								
Project Kick-Off								
Project Mobilization & Workshop Preparations								
Business Process Workshops (Draft Functional Requirements)								
Maximo Design Workshops / Technical Design Specifications (App. Screens, dB Config.)								
Maximo 7.5 Infrastructure Workshops								
Maximo Technical Design Specification Documentation								
Reports Functional & Technical Workshops								
Data Workshops - Legacy Data Review, Data Migration Process Development								
Maximo Technical Design Specification Review, Update & Approval								
Technical Design Documentation (Integrations, Data, Reports)								
Technical Design Documentation Review & Approval (Integrations, Data, Reports)								
Blueprint Design Complete								
<b>Configure / Build</b>								
Maximo Setup, Security, UI Configurations								
Maximo 7.5 Configure / Build Initiate								
Integrations Configurations								
Data Migration Scripts Development & Data Migration Framework								
Core Maximo Reports Configurations & Development								
Data Migration - Mock Load 1								
Data Migration - Mock Load 2								
<b>Testing / Training</b>								
UAT Process & UAT Script Development								
Performance Load Testing Script Development								
Unit Testing								
Training Development								
Performance Load Testing								
DR Test Window								
User-Acceptance Testing (UAT)								
DR Test Window								
Training								
<b>Deploy</b>								
Data Migration - Final Cutover								
Go-Live								

**2.19 Completion Criteria**

IBM will have fulfilled its obligations under this Statement of Work when any one of the following first occurs:

- IBM satisfies the Completion Criteria set forth in Section 2.16 IBM Responsibilities and delivers the items described in the Appendix A Deliverable Materials; or
- IBM provides the number of hours of Services specified in Section 2.20 Charges or in any subsequent change authorization; or
- DIA or IBM terminates the Services in accordance with the provisions of this Statement of Work and the Agreement

**2.20 Charges**

The table below sets forth the estimated Charges under this Statement of Work. IBM may not exceed the estimated hours or the total estimated Charges set in the tables below for performing the Services under this Statement of Work without DIA’s prior written approval through the Change Control Procedures. Notwithstanding anything in the Statement of Work to the contrary:

1. IBM will invoice DIA monthly for actual Services hours worked (whether above or below the estimated hours), applicable taxes travel and living expenses and other reasonable expenses incurred in connection with the Services with the following exception:
2. Payment is due upon receipt of invoice, payable within 30 days. DIA agrees to pay by electronic funds transfer or other means acceptable to IBM to an account specified by IBM. In the event of late payment, IBM reserves the right to suspend the provision of Services and to charge interest on amounts overdue.

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The IBM estimate is based on the hourly rates and number of hours in the table below:

	Role Description	Location	Total Resources	Estimated Hours (per resource)	Total Estimated Hours	Hourly Rate	Estimated Price
PMO	Project Partner	US	1	72	72	\$ 242.74	\$ 17,477.28
	Project Manager	US	1	660	660	\$ 242.74	\$ 160,208.40
	Data Security & Privacy	US	1	76	76	\$ 225.02	\$ 17,101.52
Business Process	Functional Business Process - Lead (Asset, Work Management)	US	1	1,276	1,276	\$ 217.46	\$ 277,478.96
Technology Enablement	Technical Lead - Integration Design	US	1	-	-	\$ -	\$ -
	Infrastructure Engineer - Lead	US	1	-	-	\$ -	\$ -
	Infrastructure Management	US	1	-	-	\$ -	\$ -
	Maximo Technical Configuration - Lead	US	1	1,056	1,056	\$ 215.76	\$ 227,842.56
	Maximo Technical Configuration, Testing & Reports	US	1	836	836	\$ 69.54	\$ 58,135.44
	Maximo UAT Test Script Development, Testing	US	2	352	704	\$ 69.54	\$ 48,956.16
	Maximo Training - Train-the-Trainer	US	1	80	80	\$ 217.46	\$ 17,396.80
	Reports - BIRT Reports Developer	US	2	396	792	\$ 69.54	\$ 55,075.68
	Data Migration Lead - Migration Script Development, Data Migration	US	1	924	924	\$ 269.68	\$ 249,184.32
	Data Migration - Migration Script Development, Data Migration	US	1	308	308	\$ 69.54	\$ 21,418.32
			<b>16</b>		<b>6,784</b>		<b>\$ 1,150,275.44</b>

The Services in this agreement will be conducted on a Time and Materials basis. The estimated charges for Services under this Statement of Work are \$1,150,275.44 and are exclusive of any travel and living expenses and any applicable taxes. Expenses are estimated at 15% of charges. Expenses will be billed to DIA at the actual amount incurred inclusive of taxes, fees and other surcharges. The rates quoted in this Statement of Work are valid for services up to the expected total estimated hours shown in the table below.

Purchase orders will be provided to IBM for charges as described in Section 2.20: Charges, and are due prior to the performance of the Services. In the event that purchase orders are not received in a timely manner, IBM may 1) suspend the provision of Services and 2) terminate this Statement of Work for convenience.

For IBM personnel approved by DIA that ultimately remain on the assignment for more than one year, or who perform services in countries other than where they are permanently assigned, or in other certain limited situations, there may be an increased tax burden pursuant to home and work jurisdiction tax laws. DIA will be responsible for, and will pay, the increased expenses related to federal, state and local tax assistance provided by IBM to the affected IBM personnel, as well as any increased tax and compliance costs incurred by IBM personnel. Application of the appropriate tax rules will be determined by IBM. Should DIA be required under any law or regulation of any governmental entity or authority, domestic or foreign, to withhold or deduct any portion of the payments due to IBM, then the sum payable to IBM shall be increased by the amount necessary to yield to IBM an amount equal to the sum it would have received had no withholdings or deductions been made.

IBM represents that to the best of its knowledge, all prices set forth in this Statement of Work and all prices in addition, which IBM may charge under the terms of the Statement of Work, do not and will not violate any existing federal, state or municipal law or regulations concerning price discrimination and/or price fixing.

DIA agrees to pay by electronic funds transfer or other means acceptable to IBM to an account specified by IBM. In the event of late payment, IBM reserves the right to suspend the provision of Services and to charge interest on amounts overdue. DIA will be billed for actual hours worked, regardless of any prior estimate provided. Should DIA decide to terminate this agreement prior to the completion of the project deliverable, DIA agrees to pay for all work incurred up to the point of termination and reasonable transition cost along with applicable taxes, travel and living expenses.

**Additional Terms and Conditions**

## **2.21 Data File Content and Security**

DIA is responsible for the actual content of any data file, selection and implementation of controls on its access and use, backup, recovery, integrity, and security of the stored data.

## **2.22 Termination**

Either party may terminate this Statement of Work by giving the other party not less than 30 days written notice. Upon termination, DIA will pay IBM for 1) all Services IBM provides and any Products and Materials IBM delivers through termination, 2) all expenses IBM incurs through termination, and 3) any charges IBM incurs in terminating the Services. The Services charge will be subject to any adjustment charges specified in Section 2.20 Charges.

## **2.23 Wireless Technology Systems**

Wireless technology systems offer new functionality and added convenience, but they also introduce unique security exposures, including, without limitation, risks that “hackers” with wireless devices may gain access to such systems and other systems connected to such systems or intercept data transmitted by such systems;

Numerous techniques are available that may mitigate some of the unique security risks associated with wireless technology systems, including, without limitation, proper configuration control and change management procedures, access point administration controls, the use of strong cryptography, and an effective audit program;

DIA is solely responsible for selecting those wireless security features and processes that you determine meet your needs and for implementing, administering and maintaining such features and processes.

## Signature Acceptance

This Statement of Work and the referenced Agreement identified below, are the complete agreement between DIA and IBM regarding Services, and replace any prior oral or written communications between us. Accordingly, in entering into this Statement of Work, neither party is relying upon any representation that is not specified in this Statement of Work including without limitation, any representations concerning 1) estimated completion dates, hours, or charges to provide any Service; 2) the experiences of other customers; or 3) results or savings DIA may achieve.

Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically. By such acceptance each party agrees that no modifications have been made to this Statement of Work.

Once accepted, please return a copy of this document to the IBM address shown below. Any reproduction of this Statement of Work made by reliable means (for example, photocopy, electronic scan or facsimile) is considered an original and all Services ordered under this Statement of Work are subject to it.

Agreed to:		Agreed to:
<b>Denver International Airport</b>		<b>International Business Machines Corporation</b>
		Armonk, NY 10504
By:		By:
Authorized signature		Authorized signature
Name (type or print):		Name (type or print):
Date:		Date:
Customer number:		Referenced Agreement Name: DIA-IBM Maximo Implementation and Hosting Contract
		Referenced Agreement number: PLANE-201310389-00
Customer address:		Statement of Work number:
		IBM Office Address:
Project Name: Maximo 7.5 Implementation Project		
Estimated Start Date:		
Estimated End Date:		



## Appendix A: Deliverable Materials Guidelines

IBM will deliver one copy of each of the following Materials. The content of each deliverable Material is described below.

For purposes of clarity, the Maximo Data Accelerator template and modifications, enhancements and derivatives thereto created by IBM are not licensed to DIA under this Statement of Work, provided, however, that IBM hereby agrees to use such Maximo Data Accelerator template(s) and modification(s) in the performance of the Services for the benefit of DIA.

### a. Functional Requirements Document

1. The purpose of the Document is to describe in detail the functions, transactions, screens, reports etc. that have been selected to support the execution of the work steps of the future-state business process. The analysis will highlight the gaps where work steps are not fully supported. They will include proposals on what might the change (the process or the package), and the implications of such a change.
2. This document, estimated to be up to 20-50 pages in length, will consist of the following, as appropriate:
3. Name: The business process or package module being analyzed.
4. Summary results: A scale or narrative conclusion as to the suitability of the package to the intended business process purpose. Detailed results: A series of points, questions, or capabilities that were tested against the package, and the results of these tests. The results should be detailed enough to be self-explanatory. The results should articulate any issues, which will result from the implementation of the package, such as the need for new skills, a change in the process flow, or a change to the package.
5. IBM will deliver one (1) copy of this document in softcopy format.

### b. Maximo Application Technical Design Specifications

1. The purpose Maximo Application Technical Design Specification is to define technical specifications for the configuration of Maximo (including workflow, cloned applications, UI configuration, data base configuration, security specification, interface specifications, and reports)
2. This document, estimated to be up to 75 pages in length, will consist of the following, as appropriate:
3. An overview of the requirement;
4. Descriptions of the approach and technique used to meet the requirement;
5. Descriptions of the modules to be configured;
6. IBM will deliver one (1) copy of this document in softcopy format.

### c. Data Migration Plan

1. The purpose of the Data Migration Plan is to document the plan for migrating data from the "as-is" to the "to-be" production status.
2. This document, estimated to be up to 25 pages in length, will consist of standards for data migration into the Maximo application and procedures for migrating existing data into Maximo.
3. IBM will deliver one (1) copy of this document in softcopy format.

**d. Maximo Solution Deployment Plan**

1. The purpose of this activity is to develop the Deployment Plan for roll out and go live of the system.
2. This activity is composed of the following tasks:
  - 2.1. Document the Maximo solution deployment plan;
  - 2.2. Review the Maximo solution deployment plan with DIA Project Manager;
  - 2.3. Modify the Maximo solution deployment plan based on review if needed.

## Appendix B: Project Procedures

### 1. Project Change Control Procedure

- a. The following process will be followed if a change to this Statement of Work is required:
  - i. A Project Change Request (PCR) will be the vehicle for communicating change. The PCR must describe the change, the rationale for the change and the effect the change will have on the project.
  - ii. The designated Project Manager of the requesting party will review the proposed change and determine whether to submit the request to the other party
  - iii. Both Project Managers will review the proposed change and recommend it for further investigation or reject it. IBM will specify any charges for such investigation. A PCR must be signed by authorized representatives from both parties to authorize investigation of the recommended changes. IBM will invoice DIA for any such charges. The investigation will determine the effect that the implementation of the PCR will have on price, schedule and other terms and conditions of this Statement of Work and the Agreement
  - iv. A written change authorization and/or PCR must be signed by authorized representatives from both parties to authorize implementation of the investigated changes. Until a change is agreed in writing, both parties will continue to act in accordance with the latest agreed version of the Statement of Work.

### 2. Deliverable Materials Acceptance Procedure

- a. Each deliverable Material as defined in Appendix A - Deliverable Materials Guidelines will be reviewed and accepted in accordance with the following procedure:
  - i. One (1) printed draft of the deliverable Material will be submitted to the DIA Project Manager. It is the DIA Project Manager's responsibility to make and distribute additional copies to any other reviewers
  - ii. Within five (5) business days of receipt, the DIA Project Manager will either accept the deliverable Material or provide the IBM Project Manager a written list of requested revisions. If IBM receives no response from the DIA Project Manager within five (5) business days, then the deliverable Material will be deemed accepted
  - iii. The IBM Project Manager will consider DIA's timely request for revisions, if any, within the context of IBM's obligations as stated in Appendix A - Deliverable Materials Guidelines
  - iv. Those DIA revisions agreed to by IBM will be made and the deliverable Material will be resubmitted to the DIA Project Manager, at which time the deliverable Material will be deemed accepted
  - v. Those DIA revisions not agreed to by IBM will be managed in accordance with Appendix B-1 Project Change Control Procedure
  - vi. Any conflict arising from this deliverable Materials Acceptance Procedure will be addressed as specified in the Escalation Procedure set forth in Appendix B-3.

### 3. Escalation Procedure

- a. The following procedure will be followed if resolution is required to a conflict arising during the performance of this Statement of Work.
  - i. When a conflict arises between DIA and IBM, the project team member(s) will first strive to work out the problem internally
  - ii. Level 1: If the project team cannot resolve the conflict within two (2) working days, the DIA Project Manager and IBM Project Manager will meet to resolve the issue

EXHIBIT A

- iii. Level 2: If the conflict is not resolved within three (3) working days after being escalated to Level 1, the DIA Executive Sponsor will meet with the IBM Project Executive to resolve the issue
- iv. If the conflict is resolved by either Level 1 or Level 2 intervention, the resolution will be addressed in accordance with the Project Change Control Procedure set forth in Appendix B-1
- v. If the conflict remains unresolved after Level 2 intervention, then except for the termination of this Statement of Work, either party resort to its other available remedies or terminate this Statement of Work. If the conflict is addressed by termination, DIA agrees to pay IBM for a) all Services IBM provides and any Products and Materials IBM delivers through termination, and b) all expenses IBM incurs through termination
- vi. During any conflict resolution, IBM agrees to provide Services relating to items not in dispute, to the extent practicable pending resolution of the conflict. DIA agrees to pay invoices per this Statement of Work and the Agreement.

## Appendix C: Reports, Interfaces, Conversions, Enhancements (RICE) Objects

IBM has developed its basis for estimate based on a “RICE” decomposition of DIA’s requirements, and the relative complexity of each RICE element using a “low”, “medium”, “high”, “very high” complexity scale. Changes to these assumptions may have a material effect on scope, timeline, risk, and price.

“RICE” Element Indicator	Description
R	Report
I	Interface
C	Conversion
E	Enhancement – Customization
Manual C	Conversion-Manual
Mod R	Report-Modification
WF	Work Flow
KPI	Key Performance Indicator
T	Tailoring-Advanced
A	Application-New
S	Security
EX	Extract
Admin	Administration

RICE Element	Element Qualifier	Complexity			
		Low	Medium	High	Very high
(R) Report Mod R	<i>Report Layout (Input Parameters)</i>	3	>3 <= 5	> 5 <10	>10
	<i>No of columns</i>	<=10	>10 <=15	>15 <20	>20
(Report Modification)	<i>No of sections in the report</i>	1	>1 <=3	>3 <5	>5<10
	<i>No of tables involved</i>	1	>2 <3	>3 <5	>5<10
KPI (Key Performance Indicator)	<i>Additional Tables Required</i>	No tables	1	>1 <4	>4<6
	<i>Field Calculation Logic</i>	No Logic	<=2	>2 < 4	>4<6
	<i>Is updating the database required</i>	No Updates	No Updates	No Updates	No Updates
	<i>List or Detail Report</i>	Simple List	Detail reports/ reports involving grouping functionality	Reports involving hyperlinking (report bursting), grouping	Reports involving hyperlinking (report bursting), grouping
	<i>Graphical or Textual Report</i>	Either graphical or textual	involves both graphs and text and no analysis	Involves both graphs/ text and analysis for months/weeks/years	Involves both graphs/ text and analysis for months/weeks/years
(I) Interface	<i>Number of database tables accessed for</i>	<=2	>2 <= 5	>5 <=10	>10 <=25

EXHIBIT A

querying

Type of External Application	Simple Standalone applications	Medium Size ERPs	Large ERPs	Very Large ERPs
No of In/Out Transactions	<=2	>2 <= 4	>4 <= 10	>10 <= 25
End point configuration( interface table, web services, Xmls, CSV) for data Synchronization	XMLs or Interface table or CSV	XMLs and Interface table and CSV	Either Web services or all combination	Either Web services or all combination
If Interface deployed as web services number of queries	<=5	>5 <=10	>10 <= 15	>15 <= 30
Processing Rules definition (Specifying the sub-record or MBO to which the rule applies and Defining Conditions and Evaluations)	<=2	>2 <= 4	>4 <= 10	>10 <= 25
Defining Interface controls	<=2	>2 <= 4	>4 <=10	>10 <= 25
Customization with User exit Class( Integration point processing, Interface Processing Class, User Exit Pre/Post processing, XSL mapping, Handler Exist, Interface table User Exit, Integration Object and MBO Processing rules	Custom coding on <=2 Integration Point or Mbos Interface tables Or Integration Objects	Custom coding on >2<=4 Integration Point or MBOs Interface tables Or Integration Objects	Custom coding on >4 < =6 Integration Point or Mbos Interface tables Or Integration Objects or all together	Custom coding on >6 < =10 Integration Point or Mbos Interface tables Or Integration Objects or all together
Number of Related MBOs per Integration object (Related Object)	<=3	>3 <= 5	>5 <=7	>7 <=10
Number of Unrelated MBOs per Integration Object (Merged Object)	<=2	>2 <=4	>4 <= 6	>6 <= 10
Custom cron task creation	0	1	>1 <= 2	>2 <= 5
(C) Conversion Manual C (Manual Conversion)				
Screens/Tab configurations	Simple business logic and < 2 Screens	Business logic and > 2 < 5 and Screens	Complex business logic and >5 < 7 Screens	Complex business logic and >7 < 15 Screens
Creation / Modification controls in App Designer	<10	>11 < 20	>20 < 30	>30 < 50
Creation / Modification columns in DBConfig	<5	>6 < 10	>10 <20	>20 <50
Creation / Modification Indexes in DBConfig	< 2	> 3 < 5	> 5 <7	> 7 < 10
Create/Modify CronTask Java Customization	0	1	> 1 <2	> 3 <5
Creation / Modification No of Bean / Base Classes	1	> 2 <4	>3 < 5	>5 < 7
Creation / Modification the Field Level Classes	2	> 3 <5	>5 < 7	>7 < 12

EXHIBIT A

	<i>Library Lookups &amp; system xml Changes</i>	< 3	> 3 < 5	>5 < 7	>7 < 10
	<i>Creation / Modification of Relationship</i>	< 2	3	>3 >5	>5 >10
	<i>Creation of Communication Templates / Roles</i>	1	>1 < 3	>3 >5	>5 >10
	<i>Creation Escalations (No. of Reference Points)</i>	< 2	> 2 < 4	> 4 < 6	> 6 < 12
	<i>Signature options /ToolBar Changes</i>	< 3	> 3 < 5	> 5 <7	> 7 <15
E (Enhancement)	<i>Field Level Validations (Business logic, number of MBO's accessed)</i>	<i>Simple business logic and &lt; 2 MBO's queried</i>	<i>Business logic and &gt; 2 &lt; 5 and MBO's queried</i>	<i>Complex business logic and &gt;5 &lt; 7 MBO's queried</i>	<i>Complex business logic and &gt;7 &lt; 15 MBO's queried</i>
T (Tailoring)	<i>Creation / Modification controls in App Designer</i>	<10	>11 < 20	>20 < 30	>30 < 50
A (Application – New)	<i>Creation / Modification columns in DBConfig</i>	<5	>6 < 10	>10 <20	>20 <50
	<i>Creation / Modification Indexes in DBConfig</i>	< 2	> 3 < 5	> 5 <7	> 7 < 10
	<i>Create/Modify CronTask Java Customization</i>	0	1	> 1 <2	> 3 <5
	<i>Creation / Modification No of Bean / Base Classes</i>	1	> 2 <4	>3 < 5	>5 < 7
	<i>Creation / Modification the Field Level Classes</i>	2	> 3 <5	>5 < 7	>7 < 12
	<i>Library Lookups &amp; system xml Changes</i>	< 3	> 3 < 5	>5 < 7	>7 < 10
	<i>Creation / Modification of Relationship</i>	< 2	3	>3 >5	>5 >10
	<i>Creation of Communication Templates / Roles</i>	1	>1 < 3	>3 >5	>5 >10
	<i>Creation Escalations (No. of Reference Points)</i>	< 2	> 2 < 4	> 4 < 6	> 6 < 12
	<i>Signature options /ToolBar Changes</i>	< 3	> 3 < 5	> 5 <7	> 7 <15
	<i>New Custom Application</i>	0	1	2	>2 < 4
WF (Work Flow)	<i>No of nodes</i>	<10	>10 <=20	>20 <=50	>50 <=70
	<i>No of Subprocess</i>	0	> 1 < 2	>2 <5	>5 <10
	<i>No of Roles</i>	5	>5 <=10	>10 <20	>20 <30
	<i>No of Actions</i>	5	>5 <=10	>10 <20	>20 <30
	<i>No of Related objects</i>	0	> 1 < 2	>2 <5	>5 <8
	<i>No of Notifications</i>	2	>3 <5	>5 <8	>8 <15
	<i>No of Custom Classes</i>	0	1	<3	>3 <5

EXHIBIT A

<i>Task Escalations</i>	4	>5 <=10	>10 <15	>15 <20
<i>No of new Relationships</i>	0	2	5	<=10
<i>workflow Toolbar button</i>	0	1	1	1



**Exhibit A-1**



**Statement of Work LCAN-9BEN7Y  
for  
IBM Maximo and TRIRIGA Software Hosting Services**

**Prepared for**

**Denver International Airport**

**April 4, 2014**

The information in this Statement of Work may not be disclosed outside of Denver International Airport and may not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate the Statement of Work, provided that, if a contract is awarded to IBM as a result of or in connection with the submission of this Statement of Work, Denver International Airport will have the right to duplicate, use or disclose the information to the extent provided by the contract. This restriction does not limit the right of Denver International Airport to use information contained in this Statement of Work if it is obtained from another source without restriction. IBM retains ownership of this Statement of Work.

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This Statement of Work ("SOW") is between the Customer (also called "you" and "your") and the IBM legal entity referenced below ("IBM") and will be governed by the terms and conditions of the agreement identified in the signature block of this SOW (the "Agreement").

## 1. Definitions

The following definitions apply to this SOW:

**Authorized Registered User** – a User that has full access to all functions of the Program in accordance with the associated license agreement for the Program.

**Authorized Requestor User** – a User that has access to only the self-service functions of the Program in accordance with the associated license agreement for the Program.

**Content** – your electronic information, owned by you and created, uploaded and transferred by a User while accessing the Services.

**Development Environment** – a virtual server provided for Customer to control design of the Program. This virtual server is isolated from the Hosting Environment and is accessed through the Internet via a web link provided by IBM.

**Development Environment User** - a User that has access to the Development Environment.

**Hosting Environment** – the IBM-provided hardware, software, and networking components at an IBM- designated location on which the Program will be installed and which you will access via the Internet.

The Hosting Environment includes the production environment and a test environment.

**Internet** – the public worldwide network of TCP/IP-based networks.

**Limited Use Authorized Registered User** – a User that has limited access to functions of the Program in accordance with the associated license agreement for the Program.

**Program** – the IBM Maximo software program licensed to you by IBM under a separate license agreement.

**User** – the individuals authorized by you to access and use the Services. A User includes "Authorized Registered User;" "Authorized Requester User;" "Limited Use Authorized Registered User" and "Development Environment User."

## 2. Scope of Work

IBM will provide the following which will collectively be referred to herein as, the "Services": 1) the Hosting Environment and the technical support to manage the Hosting Environment that will enable you to access the Program, via the Internet, and use the Program in accordance with the provisions of its associated license agreement; and 2) the support to install any patches and fixes you are entitled to receive under the software subscription and support agreement that pertains to the Program.

This SOW is for the Services only. As a prerequisite, you must obtain a license to the Program under the applicable license agreement as well as maintenance for the Program under the applicable software subscription and support agreement. You are not receiving a grant of license to the Program or maintenance services under this SOW. You represent that you have previously obtained a separate license agreement and a separate subscription and support agreement for the Program from IBM or an IBM authorized third party under which you presently have valid rights to use the Program and to obtain subscription and support, and that such valid rights will continue for the Term of this SOW.

The responsibilities of both parties are listed below. Any changes to this SOW will be processed in accordance with the project change control procedure described herein. To the extent there is any contradiction, inconsistency or ambiguity between the terms of this SOW and the Agreement, this SOW will govern.

## 3. Project Management Responsibilities

### 3.1 IBM Project Management

IBM will identify a project manager who will:

- a. review the SOW, and any associated documents, with your project manager as defined in the section below entitled "Your Project Manager;"
- b. coordinate and manage the technical activities of IBM's personnel;
- c. establish and maintain communications through your project manager.

- d. review and administer the project change control procedure with your project manager;
- e. manage, measure, track and evaluate progress under this SOW and resolve any issues with your project manager; and
- f. conduct regularly scheduled meetings with your project team to review status.

### 3.2 **Your Project Manager**

Prior to the start of this SOW, you will designate a person called your project manager who will be the focal point for IBM communications relative to the Services and will have the authority to act on behalf of you in all matters regarding this SOW. Your project manager's responsibilities include:

- a. manage your personnel and responsibilities under this SOW;
- b. serve as the interface between IBM and all your organizations participating in the Services;
- c. administer the project change control procedure with the IBM project manager;
- d. participate in any status meetings;
- e. obtain and provide information, data, and decisions within three working days of IBM's request unless you and IBM agree in writing to a different response time;
- f. help resolve any issues and escalate issues within your organization, as necessary; and
- g. review with the IBM project manager any of your invoice or billing requirements. Such requirements that deviate from IBM's standard invoice format or billing procedures may have an effect on price, and will be managed through the project change control procedure.

## 4. **Services**

### 4.1 **BM Responsibilities**

IBM will provide the Services as described in this SOW.

IBM will:

- a. provide, manage and maintain the Hosting Environment at an IBM or IBM-controlled facility (including facilities subcontracted by IBM);
- b. install the Program within the Hosting Environment and activate using the Program entitlements you are authorized to receive in accordance with the associated license agreement for the Program;
- c. configure the Program within the Hosting Environment for the number of Users, as specified in the "Charges" section of this SOW, to access and use the Program;
- d. provide you with URL addresses for the Hosting Environment in order for you to access the Program via the Internet;
- e. provide industry standard Secure Socket Layer (SSL) encryption (128 bit or higher) for Content;
- f. provide File Transfer Protocol (FTP) access to the Hosting Environment;
- g. provide 24x7 monitoring of the Hosting Environment and the Program;
- h. perform Hosting Environment system administration activities including but not limited to database updates, application deployments, application troubleshooting, and network optimization. These activities will be scheduled through the IBM Project Manager;
- i. provide and perform incident, problem and change management for the Hosting Environment in accordance with IBM's then-current processes and procedures;
- j. perform daily incremental backups and weekly full backups;
- k. rotate backup tapes weekly to an off-site location as determined by IBM and retain such backup tapes for a three month period;
- l. provide access to the IBM Maximo and TRIRIGA service desk: <http://servicedesk.mro.com> for up to three (3) of your personnel;
- m. apply any fixes, upgrades or enhancements to the Program agreed to between you and IBM that you are entitled to receive under the then-current separate subscription and support agreement;
- n. deploy changes, created by you, between the Development Environment (if applicable) and the test and production portions of the Hosting Environment in accordance with the then-current change management processes; and

- o. provide a copy of the Content to you within 30 days from the expiration or termination of this SOW. IBM will delete all remaining Content from the Hosting Environment within 45 days from the expiration or termination of this SOW.
- p. provide, manage and maintain the Development Environment at an IBM or IBM-controlled facility (including facilities subcontracted by IBM);
- q. install the Program within the Development Environment and activate in accordance with the Program entitlements you are authorized to receive with the associated license agreement for the Program;
- r. configure the Program for the number of Development Users, as specified in the "Charges" section of this SOW, to access and use the Program;
- s. configure report design tools for use by you;
- t. provide a web link for Internet access to the Development Environment;
- u. provide FTP access to the Development Environment;
- v. perform hardware and operating system administration activities including but not limited to database updates, application deployments, application troubleshooting, and network optimization. These activities will be scheduled through the IBM Project Manager;
- w. provide and perform incident, problem and change management for the Development Environment in accordance with IBM's then-current processes and procedures; and
- x. provide 24x7 monitoring of the Development Environment.

#### 4.2 Your Responsibilities

The completion of the effort depends on the full commitment and participation of your management and personnel.

The responsibilities listed in this section are in addition to those responsibilities specified in the Agreement, and are to be provided at no charge to IBM. IBM's performance is predicated upon the following responsibilities being fulfilled by you. Delays in performance of these responsibilities may result in additional cost and/or delay of the completion of the Services, and will be handled in accordance with the project change control procedure below.

You will:

- a. be responsible for the Internet connection (type and speed) between your Users and the Hosting Environment. The typical bandwidth requirement is approximately 6.2 Kilobytes/second (Kbps) per concurrent User;
- b. access the Program using a standard web browser as specified in the Program documentation;
- c. provide IBM with valid license keys to the Program for the Term of this SOW;
- d. maintain the correct number of valid Program license rights and entitlements and the software subscription and support during the Term of this SOW;
- e. follow the incident, problem and change management processes and procedures as provided by IBM; and
- f. be responsible for ensuring the security and confidentiality of all User IDs, including establishing, distributing, and monitoring unique User identification names and passwords for access to and use of the Services;
- g. be responsible for all development activities within the Development Environment; and
- h. perform system administration activities within the Development Environment including but not limited to application deployment, application server starting/stopping, and database configuration.

#### 4.3 Your Other Responsibilities

You agree to:

- a. ensure that your staff is available to provide such assistance as IBM reasonably requires and that IBM is given reasonable access to your senior management, as well as any members of your staff to enable IBM to provide the Services, if any. You will ensure that your staff has the appropriate skills and experience. If any of your staff fails to perform as required, you will make suitable additional or alternative staff available;

- b. provide all information and materials reasonably required to enable IBM to provide the Services, if any. You agree that all information disclosed or to be disclosed to IBM is and will be true, accurate and not misleading in any material respect. IBM will not be liable for any loss, damage or deficiencies in the Services, if any, arising from inaccurate, incomplete, or otherwise defective information and materials supplied by you;
- c. be responsible for the identification and interpretation of any applicable laws, regulations, and statutes that affect Customer's existing systems, programs, or data to which IBM will have access during the Services. It is Customer's responsibility to ensure the systems, programs, and data meet the requirements of those laws, regulations and statutes;
- d. grant IBM the rights, as necessary, to use, access, modify and process Content being transferred into and out of the Hosting Environment for IBM to perform its responsibilities under this SOW;
- e. obtain any necessary consents and take any other actions required by applicable laws, including but not limited to data privacy laws, prior to disclosing any of its employee information or other personal information or data to IBM. Customer also agrees that with respect to data that is transferred or hosted outside of the United States, Customer is responsible for ensuring that all such data transmitted outside of the United States adheres to the laws and regulations governing such data;
- f. be solely responsible for all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support and all copyright, patent and trademark clearances in all applicable jurisdictions and usage agreements for any and all Content. IBM will be relieved of its obligations to the extent your failure to promptly obtain such licenses or approvals adversely affect IBM's ability to perform its obligations. If a third party asserts a claim against IBM as a result of your failure to promptly obtain these licenses or approvals, you agree to reimburse IBM for any costs and damages that IBM may reasonably incur in connection with such claim;
- g. be solely responsible for any Content file, the selection and implementation of controls on its access and use, and the security of Content during transmission on the Customer's network or the Internet (and for correcting transmission errors and data corruption problems) notwithstanding any other provision herein; and
- h. allow IBM and its subsidiaries to store and use your business contact information (your employees' names, business phone numbers, and business e-mail addresses) anywhere they do business. Such information will be processed and used in connection with our business relationship and may be provided to contractors acting on IBM's behalf, IBM Business Partners, and assignees of IBM and its subsidiaries for uses consistent with our business relationship.

## **5. Availability and Support**

### **5.1 Availability Objective**

The Services allow for access to the Program 24 hours per day, seven days per week. The availability objective for such access to the Program is 99.7% during any given month during the Term of this SOW ("Availability"). Availability is measured at the Hosting Environment on a monthly basis, exclusive of any Outages. An "Outage" is your inability to access the Program or recognition by IBM that you are unable to access the Program.

A scheduled maintenance period is the time each Saturday morning from 2:00 GMT until 5:00 GMT (Friday from 10:00 pm through Saturday at 1:00 am, Eastern Time) at the Hosting Environment location. The Program may be available during scheduled maintenance periods, however performance may be slower than normal and the Program may become unavailable during any such scheduled maintenance periods.

The Availability measurement will begin 30 days after access to the Program is made available to you via the Internet. IBM will monitor the Availability and will investigate any performance deviations or Outages.

To the extent there are any performance deviations or Outages, IBM will use commercially reasonable efforts to restore the Services. IBM will examine root causes, identify problems and attempt to minimize recurrences by making recommendations for actions to be taken by you and IBM.

### **5.2 Exclusions**

Outages under this SOW are:

- a. scheduled maintenance periods;

- b. planned activities, such as database maintenance and fixes, upgrades or enhancements to the Program, as agreed to with you;
- c. any failure of the Program. Failure of the Program is covered under the separate software subscription and support agreement that pertains to the Program; and
- d. any event outside of IBM's control, including but not limited to the following:
  - (1) periods of emergency maintenance activities for hardware or software;
  - (2) your lack of availability or untimely response to respond to incidents that require your participation for resolution;
  - (3) your nonperformance of your obligations under this SOW;
  - (4) failures due to hardware, software, network components, power outages or applications, for which IBM is not responsible;
  - (5) modifications of the IBM-provided software or hardware by you or any third party, unless approved in writing by IBM;
  - (6) other activities you direct, denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of civil disobedience, acts of war, acts against parties (including carriers and your or IBM's other vendors), and other force majeure items.

### 5.3 Program Support

Should you require technical support for the Program, you may contact the IBM Support Center, as set forth in your software subscription and support agreement. IBM will provide you with access to problem report submission and tracking information as well as to a customer support knowledgebase via the IBM Software Support web site.

### 5.4 Services Support

Should you require technical support for the Services, you may contact the IBM Maximo and TRIRIGA Hosting service desk at: <http://servicedesk.mro.com/> or via email at: [hostedservices@ca.ibm.com](mailto:hostedservices@ca.ibm.com).

The IBM Maximo and TRIRIGA Hosting service desk or you can create a service request for a problem with the Services. IBM will work with you to determine the nature of the problem and then assign one of the following "Severity Levels" as defined below to the problem:

- a. Severity Level 1  
Critical situation/system is down: A business critical component is inoperable or a critical interface has failed. Customer is unable to use the Services. Severity Level 1 applies to the production environment only.
- b. Severity Level 2  
Significant impact: A component is severely restricted in its use, causing significant business impact. Customer's use of Services is severely limited.
- c. Severity Level 3  
Moderate impact: A non-critical component is malfunctioning, causing moderate business impact. Customer's use of Services is possible with less significant features.
- d. Severity Level 4  
Minimal impact: A non-critical component is malfunctioning, causing minimal business impact, or a non-technical request is made.

## 6. Project Change Control Procedure

The following process will be followed if a change to this SOW is required.

- a. A Project Change Request ("PCR") will be the vehicle for communicating a change. The PCR must describe the change, the rationale for the change and the effect the change will have on the SOW. The investigation and the implementation of changes may result in modifications to the Term, charges, and other terms of this SOW and the Agreement.
- b. IBM and you may determine that it is necessary to add additional Services or extend the Term. In such event, you may authorize additional amounts or a Term extension by execution of a PCR. If

accepted or initiated by IBM, a letter or an e-mail will act as a PCR to this SOW. All other requested changes will require execution of a PCR as discussed below.

- c. A PCR must be signed by authorized representatives from both parties to authorize implementation of the change. Until a change is agreed to in writing, both parties will continue to act in accordance with the latest agreed version of the SOW.

**7. Term**

The term of this SOW ("Term") will begin on the date of last signature by a party to this SOW (the "Effective Date") and end three (3) years thereafter.

**8. Charges**

The charge for the Services described in this SOW, exclusive of applicable taxes, is \$677,083.33.

<b>IBM Maximo and TRIRIGA Hosting Services</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>
Year 1-Maximo Hosting Authorized Concurrent Users August 1, 2014 - March 31, 2015	115	\$1,250.00	\$143,750.00
Year 1-Maximo Hosting Development Environment Users (up to a maximum of 5 Users) April 1, 2014 – March 31, 2015	1	\$25,000.00	\$25,000.00
Year 1 - Maximo Hosting Test Environment Users (up to a maximum of 5 Users) April 1, 2014 – July 31, 2014	1	\$8,333.33	\$8,333.33
Year 1 - Maximo Hosting Data Load Environment Users (up to a maximum of 5 Users) May 1, 2014 – October 31, 2014	1	\$12,500.00	\$12,500.00
Year 1 - Maximo Hosting Train Environment Users (up to a maximum of 5 Users) October 1, 2014 – December 31, 2014	1	\$6,250.00	\$6,250.00
<b>Year 1 Fees</b>			<b>\$195,833.33</b>
Year 2 - Maximo Hosting Authorized Concurrent Users	115	\$1,875.00	\$215,625.00
Year 2 – Maximo Hosting Development Environment Users (up to a maximum of 5 Users)	1	\$25,000.00	\$25,000.00
<b>Year 2 Fees</b>			<b>\$240,625.00</b>
Year 3 - Maximo Hosting Authorized Concurrent Users	115	\$1,875.00	\$215,625.00
Year 3 – Maximo Hosting Development Environment Users (up to a maximum of 5 Users)	1	\$25,000.00	\$25,000.00
<b>Year 3 Fees</b>			<b>\$240,625.00</b>

You will be invoiced in advance for the charge for the Services at the beginning of each year of the Term under this SOW. You will be invoiced for any optional services upon signature of the PCR authorizing such optional services and charges.

Amounts are due upon receipt of invoice and payable within 30 days. You agree to pay accordingly, including any late payment fee. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.



## 8.1 **Optional Services Charges**

Any optional services required by you will be handled in accordance with the project change control procedure.

### 8.1.1 **Additional Users**

In the event you require an additional number of Users to be enabled to access and use the Program, you will notify IBM in writing and IBM will provide you with a PCR for such additional Users within a reasonable period of time after your request. You will be required to obtain the correct number of Program licenses and entitlements for such Users.

## 9. **Additional Terms and Conditions**

### 9.1 **Continuation of Services**

You will notify IBM in writing at least 60 days prior to expiration of the current Term if you wish to either a) continue the Services without interruption, beyond any current Term; or b) terminate the Services at the end of any current Term.

If you fail to do either of the foregoing, IBM will terminate the Services immediately upon expiration of the current Term.

IBM reserves the right to withdraw the Services at any time, and will provide you notice of such withdrawal three months prior to the end of any current Term of this SOW.

### 9.2 **Termination**

Either party may terminate this SOW for material breach by the other upon written notice containing the specific nature of the material breach. The breaching party will have one month from receipt of notice to cure such breach unless otherwise agreed in writing, except for nonpayment by you which breach must be cured within five days from receipt of notice. If breach has not been timely cured, then the non-breaching party may immediately terminate this SOW upon written notice.

Upon termination of this SOW, other than for uncured material breach by IBM, you agree to pay to IBM:

a) all applicable charges due IBM for the remainder of the current Term; and b) any costs IBM incurs in terminating the Services.

### 9.3 **Compliance with Import and Export Laws**

IBM and Customer will each comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users, and each of us will cooperate with the other by providing all necessary information to the other, as needed for compliance. Each of us shall provide the other with advance written notice prior to providing the other party with access to data requiring an export license.

### 9.4 **Regulated Services**

IBM does not operate as a provider of services regulated by the Federal Communications Commission ("FCC") or state regulatory authorities (called "State Regulators"), and does not intend to provide any services which are regulated by the FCC or State Regulators. If the FCC or any State Regulator imposes regulatory requirements or obligations on any services provided by IBM hereunder, IBM may change the way in which such services are provided to you to avoid the application of such requirements or obligations to IBM (e.g., by acting as your agent for acquiring such services from a third party common carrier).

IBM agrees to provide the Services described in this SOW provided you accept this SOW, without modification, by signing in the space provided below on or before May 12, 2014.

---

Each of us agrees that the complete agreement, which replaces any prior oral or written communications between us regarding this transaction, consists of 1) the Statement of Work, and 2) the Agreement referenced below or any equivalent agreement in effect between us as identified below.

In entering into this SOW, you are not relying upon any representation made by or on behalf of IBM that is not specified in the Agreement or this SOW, including, without limitation, charges to be paid, the experiences of other customers; or the results or savings you may achieve.

An authorized signature on this page by you indicates your acceptance of this Statement of Work.

**Agreed to:**

Denver International Airport

By:

\_\_\_\_\_  
Authorized signature

Title: \_\_\_\_\_

Name (type or print): \_\_\_\_\_

Date: \_\_\_\_\_

Customer City and State:

Denver, Colorado

**Agreed to:**

International Business Machines Corporation

By:

\_\_\_\_\_  
Authorized signature

Title: Quality Assurance Representative

Name (type or print): Marieke Fuller

Date:

Agreement name: DIA-IBM Maximo Implementation and Hosting Contract

Agreement number: PLANE-201310389-00

IBM Fax number: 845-264-6467

IBM E-mail address: isstcont@us.ibm.com

## EXHIBIT B

# HOSTING SERVICES ADDENDUM

Throughout this Agreement, Consultant agrees to comply with statutory or regulatory requirements that are applicable to Consultant in its role as the provider of information technology products and Services under this Agreement.

### 1. **DEFINITIONS**

Whenever used in this Addendum, any schedules, exhibits, or addenda to this Addendum, the following terms shall have the meanings assigned below. Other capitalized terms used in this Addendum are defined in the context in which they are used.

For the purposes of this Exhibit B, “Contractor” shall mean “Consultant”.

1.1 ***“Addendum”*** means this Hosting Services Addendum between City and Contractor, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference.

1.2 ***“Agreement”*** means the agreement between the City and Contractor, Contract Number PLANE 201310389-00, as may from time to time be amended.

1.3 ***“Brand Features”*** means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

1.4 **RESERVED.**

1.5 ***“Data”*** means the same as “Content” as defined in section 1 Definitions in the Hosting Services Statement of Work in Exhibit A-1.

1.6 ***“Data Compromise”*** means any actual unauthorized access to or unauthorized acquisition of computerized Data that compromises the security, confidentiality, or integrity of the Data, or the ability of City to access the Data.

1.7 ***“Documentation”*** means, collectively: (a) all materials published or otherwise made available to City by Contractor that relate to the functional, operational and/or performance capabilities of the Services; (b) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by Contractor that describe the functional, operational and/or performance capabilities of the Services; (c) any Requests for Information and/or Requests for Proposals (or documents of similar effect) issued by

City, and the responses thereto from Contractor, and any document which purports to update or revise any of the foregoing; and (d) the results of any Contractor "Use Cases Presentation", "Proof of Concept" or similar type presentations or tests provided by Contractor to City. The ownership of any documentation that is provided to the City as a deliverable Material of a Statement of Work in Exhibits A and A-1 shall be as defined in section 51 Materials Ownership and License above.

1.8 **"Downtime"** means any period of time of any duration that the Services are not made available by Contractor to City for any reason, including scheduled maintenance or Enhancements.

1.9 **"End User"** means the individuals (including, but not limited to employees, authorized agents, students and volunteers of City; Third Party consultants, auditors and other independent contractors performing services for City; any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to any Services; customers of City provided services; and any external users collaborating with City) authorized by City to access and use the Services provided by Contractor under this Addendum.

1.10 **"End User Data"** includes End User account credentials and information, and all records sent, received, or created by or for End Users, including email content, headers, and attachments, and any Protected Information of any End User or Third Party contained therein or in any logs or other records of Contractor reflecting End User's use of Contractor Services.

1.11 **"Enhancements"** means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Services that Contractor may develop or acquire and incorporate into its standard version of the Services or which the Contractor has elected to make generally available to its customers during the term of this Agreement.

1.12 **"Intellectual Property Rights"** includes without limitation all right, title, and interest in and to all (a) Patents and all filed, pending, or potential applications for Patents, including any reissue, reexamination, division, continuation, or continuation-in-part applications throughout the world now or hereafter filed; (b) trade secret rights and equivalent rights arising under the common law, state law, and federal law; (c) copyrights, other literary property or authors rights, whether or not protected by copyright or as a mask work, under common law, state law, and federal law; and (d) proprietary indicia, trademarks, trade names, symbols, logos, and/or brand names under common law, state law, and federal law.

1.13 **"Protected Information"** is information, including but not limited to, personally-identifiable information, student records, protected health information, or individual financial information (collectively, "Protected Information") that is subject to state or federal laws restricting the use and disclosure of such information, including, but not limited to, the Colorado Constitution; the Colorado Consumer Protection Act (Colo. Rev. Stat. Ann. § 6-1-716); and the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of Part 164).

1.14 **"Project Manager"** means the individual who shall serve as each party's point of contact

with the other party's personnel as provided in this Addendum. The initial Project Managers and their contact information are set forth in the Notices section below and may be changed by a party at any time upon written notice to the other party.

1.15 *Not used.*

1.16 **RESERVED.**

1.17 **"Third Party"** means persons, corporations and entities other than Contractor, City or any of their employees, contractors or agents.

1.18 **"City Data"** includes all records relating to City's use of Contractor Services and administration of End User accounts, including any Protected Information of City personnel that does not otherwise constitute Protected Information of an End User.

## **2. RIGHTS AND LICENSE IN AND TO CITY AND END USER DATA**

2.1 The parties agree that as between them, all rights, including all Intellectual Property Rights, in and to City and End User Data shall remain the exclusive property of City, and Contractor has a limited, nonexclusive license to access and use these Data as provided in this Addendum solely for the purpose of performing its obligations under this Agreement.

2.2 All End User Data and City Data created and/or processed by the Services is and shall remain the property of City and shall in no way become attached to the Services, nor shall Contractor have any rights in or to the Data of City.

2.3 This Addendum does not give a party any rights, implied or otherwise, to the other's Data, content, or intellectual property, except as expressly stated in the Addendum.

2.4 City retains the right to use the Services to access and retrieve City and End User Data stored on Contractor's Services infrastructure at any time at its sole discretion during the term of the Agreement.

## **3. DATA PRIVACY**

3.1 Except as otherwise set forth herein, IBM will limit access and use of City's proprietary Data to IBM employees and contractors as needed to deliver the Services. IBM will not disclose City's proprietary Data, and will return or destroy City's Data upon the expiration or cancellation of the Services, or earlier upon City's request. IBM reserves the right to charge for certain activities performed at City's request or direction (such as delivering Data in a specific format).

3.2 Contractor will provide access to City and End User Data only to those Contractor employees, contractors and subcontractors ("Contractor Staff") who need to access the Data to

fulfill Contractor's obligations under this Addendum. Contractor will confirm that, prior to being granted access to the Data, newly hired Contractor Staff who perform work under this Addendum have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all Data protection provisions of this Addendum; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

#### **4. DATA SECURITY AND INTEGRITY**

4.1 All facilities used to store and process City and End User Data will implement and maintain administrative, physical, technical, and procedural safeguards and best practices that are designed to secure such Data from unauthorized access, destruction, use, modification, or disclosure. Such measures will be no less protective than those used to secure Contractor's own Data of a similar type, and in no event less than reasonable in view of the type and nature of the Data involved.

4.2 Contractor represents that all City Data and End User Data will be encrypted in transmission (including via web interface) and in storage at a level equivalent to or stronger than 128-bit level encryption.

4.3 Contractor shall at all times use industry-standard and up-to-date security tools, technologies and procedures including, but not limited to anti-virus and anti-malware protections and intrusion detection and reporting in providing Services under this Agreement.

4.4 Prior to the Effective Date of this Agreement, Contractor will at its expense conduct or have conducted the following, and thereafter, Contractor will at its expense conduct or have conducted the following at least once per year, and promptly after any actual Data Compromise:

- a) A SSAE 16/SOC 2 audit of Contractor's security policies, procedures and controls;
- b) RESERVED.
- c) RESERVED.
- d) RESERVED.

4.5 Contractor will provide City the reports or other documentation resulting from the above audits, certifications, scans and tests within seven (7) business days of Contractor's receipt of such results.

4.6 Based on the results of the above audits, certifications, scans and tests, Contractor will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures in order to meet its obligations under this Agreement, and provide City with written evidence of remediation.

4.7 City may require, at its expense, that Contractor perform additional audits and tests, the

results of which will be provided to City within seven (7) business days of Contractor's receipt of such results.

4.8 RESERVED.

## **5. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR DATA**

5.1 Except as otherwise expressly prohibited by law, Contractor will:

- a) If required by a court of competent jurisdiction or an administrative body to disclose City and/or End User Data, Contractor will promptly notify City in writing upon receiving notice of such requirement and prior to any such disclosure;
- b) Consult with City regarding its response;
- c) Cooperate with City's reasonable requests in connection with efforts by City to intervene and quash or modify the legal order, demand or request, at the City's cost and expense; and
- d) Upon City's request, provide City with a copy of its response to the extent legally permissible, and except where prohibited by law or court order.

5.2 If City receives a subpoena, warrant, or other legal order, demand or request seeking City or End User Data maintained by Contractor, City will promptly provide a copy to Contractor. Contractor will exert commercially reasonable efforts to supply City with copies of Data required for City to respond within five (5) business days or as mutually agreed after receipt of copy from City, and will cooperate with City's reasonable requests in connection with its response, at the City's cost and expense.

## **6. DATA COMPROMISE RESPONSE**

6.1 Contractor shall report, either orally or in writing, to City any Data Compromise involving City or End User Data not authorized by this Addendum or in writing by City. Contractor shall make the report to City promptly upon discovery of the unauthorized disclosure, but in no event more than ten (10) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Oral reports by Contractor regarding Data Compromises will be reduced to writing, which may be in email form, and supplied to City as soon as reasonably practicable, but in no event more than forty-eight (48) hours after oral report.

6.2 Upon becoming aware of any such Data Compromise, Contractor shall promptly investigate the circumstances, extent and causes of the Data Compromise, and report the results to City and continue to keep City reasonably informed of the progress of its investigation until the issue has been resolved.

6.3 Contractor's report discussed herein shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the City or End User Data used or disclosed, (iii) who made the unauthorized use or

received the unauthorized disclosure (if known), (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what reasonable corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.

6.4 Within a commercially reasonable period after the date Contractor becomes aware of any such Data Compromise, Contractor shall have completed implementation of corrective actions to remedy the Data Compromise, restore City access to the Services as directed by City, and prevent further similar unauthorized use or disclosure.

6.5 Contractor shall cooperate fully with City's investigation of and response to any such Data Compromise incident.

6.6 Except as otherwise required by law, Contractor will not provide notice of the incident directly to the persons whose Data were involved, regulatory agencies, or other entities, without prior written permission from City.

6.7 In the event of an unauthorized disclosure of the City's Protected Information resulting in a Data Compromise by Contractor, Contractor will reimburse the City for all reasonable costs related to the investigation of such breach as well as, at the City's election, the furnishing of notice to any affected City End Users, and/or the offer to such affected individuals of ongoing monitoring services (e.g., credit bureau monitoring) not to exceed one year per incident; provided that a series of directly related incidents that present the same facts and circumstances shall be considered one incident. The principles of contributory negligence will apply when determining the amounts that Contractor is obligated to pay hereunder.

## **7. DATA RETENTION AND DISPOSAL**

7.1 Contractor will retain Data in an End User's account, including attachments, until the End User deletes them or for the time period mutually agreed to by the parties in this Addendum.

7.2 Using appropriate and reliable storage media, Contractor will regularly backup City and End User Data and retain such backup copies for 90 days.

7.3 At the City's election, Contractor will either securely destroy or transmit to City repository any backup copies of City and/or End User Data. Contractor will supply City a certification indicating the records disposed of, the date disposed of, and the method of disposition used.

7.4 RESERVED.

7.5 Contractor will promptly place a "hold" on Data destruction or disposal under its usual records retention policies of records that include City and End User Data, in response to a written request, such as an email, from City indicating that those records may be relevant to litigation that City reasonably anticipates. City will promptly coordinate with Contractor regarding the



preservation and disposition of these records. Contractor shall continue to preserve the records until further notice by City.

**8. DATA TRANSFER UPON TERMINATION OR EXPIRATION**

8.1 Upon termination or expiration of this Addendum, Contractor will confirm that all City and End User Data are securely transferred to City, or a Third Party designated by City, within thirty (30) calendar days. Contractor will migrate the data in DB2 format.

8.2 Contractor will provide City with no less than ninety (90) calendar days notice of impending cessation of its business or that of any Contractor subcontractor and any contingency plans in the event of notice of such cessation. This includes immediate transfer of any Data and providing City written confirmation that all City data has been deleted from the hosting systems.

8.3 Along with the notice described above, as defined in the applicable Statement of Work, Contractor will provide information to and cooperate with the successor and with the City to identify gaps.

8.4 Contractor will provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to City.

8.5 Contractor shall implement its contingency and/or exit plans and take all necessary actions to provide for an effective and efficient transition of service with minimal disruption to City. Contractor will work closely with its successor to enable a successful transition to the new service and/or equipment, with minimal Downtime and effect on City, all such work to be coordinated and performed no less than ninety (90) calendar days in advance of the formal, final transition date.

**9. SERVICE LEVELS**

*Not used in this Addendum. Incorporated into Agreement and Scope of Work.*

**10. INTERRUPTIONS IN SERVICE; SUSPENSION AND TERMINATION OF SERVICE; CHANGES TO SERVICE**

*Not used in this Addendum. Incorporated into Agreement and Scope of Work.*

**11. RESERVED**

**12. COMPLIANCE WITH APPLICABLE LAWS AND CITY POLICIES**

Contractor will comply with all applicable laws in performing Services under this Addendum that are applicable to Contractor in its role as the provider of information technology products and Services under the Agreement. Any Contractor personnel visiting City's facilities will comply with all applicable City policies regarding access to, use of, and conduct within such facilities. City will provide copies of such policies to Contractor upon request.

### **13. WARRANTIES, REPRESENTATIONS AND COVENANTS**

13.1 Services Warranty. The Warranty for Consultant Services is provided in section 54 above.

Contractor's obligations for breach of the Services Warranty shall be limited to using commercially reasonable efforts, at its own expense, to correct or replace that portion of the Services which fails to conform to such warranty, and, if Contractor is unable to correct any material breach in the Services Warranty by the date which is sixty (60) calendar days after City provides notice of such breach, City may, in its sole discretion, either extend the time for Contractor to cure the breach or terminate this Addendum and receive a refund for the portion of the Services that Contractor is not able to correct or replace.

13.2 No Disabling Code. Contractor represents and agrees that to the best of the Contractor's knowledge and belief, the Services do not contain and City will not receive from Contractor any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system or Data (a "Disabling Code").

In the event a Disabling Code is identified, Contractor shall exert commercially reasonable efforts, at no additional cost to City, to: (a) furnish to City a corrected version of the Services without the presence of Disabling Codes; and, (b) as needed, re-implement the Services at no additional cost to City. This representation shall remain in full force and effect as long as this Addendum remains in effect.

13.3 RESERVED.

13.4 Representation of Authority. Each party represents that it has the right to enter into this Addendum. Contractor represents that it has the unrestricted right to provide the Services, and that it has the financial viability to fulfill its obligations under this Addendum. Contractor represents and agrees that the Services shall be free and clear of all liens, claims, encumbrances or demands of Third Parties, provided that with respect to third party Intellectual Property infringement claims, the sole remedy is the Intellectual Property Protection indemnification provision in section 18 above. Contractor represents that it has no knowledge of any pending or threatened litigation, dispute or controversy arising from or related to the Services. This representation shall survive the expiration or termination of this Addendum.

13.5 Third Party Warranties. Unless otherwise specified in a Statement of Work, Consultant provides Materials and non-Consultant Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-Consultant suppliers may provide their own warranties to the City.

13.6 RESERVED.

13.7 RESERVED.

13.8 RESERVED.

13.9 RESERVED.

#### **14. CONFIDENTIALITY**

14.1 Each party acknowledges that certain information that it shall acquire from the other is of a special and unique character and constitutes Confidential Information.

14.2 RESERVED.

14.3 Nothing in this Addendum shall in any way limit the ability of City to comply with any laws or legal process concerning disclosures by public entities. Contractor acknowledges that any responses, materials, correspondence, documents or other information provided to City are subject to applicable state and federal law, including the Colorado Public Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Addendum.

#### **15. PROTECTED INFORMATION**

15.1 During the course of this Addendum, should Contractor come into possession of any Protected Information, unless otherwise required by law, Contractor may not disclose this information to any Third Party under any circumstances.

15.2 Some of City's Data, Protected Information or other data may be subject to governmental regulation or otherwise may require security measures beyond those specified by Contractor for the Services (collectively, "Sensitive Data"). Notwithstanding anything to the contrary in the Agreement, Exhibit A-1 or this Exhibit B, City agrees not to input such Sensitive Data in the Services or to otherwise provide such Sensitive Data in conjunction with the Services unless Contractor has first agreed in writing to provide additional required security measures. City is responsible for all necessary permissions to include the Sensitive Data in the Services and City grants Contractor permission to use, store and process the Sensitive Data in the delivery of the Services.

**EXHIBIT C**  
**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: 201310389 – Maximo Upgrade and Support**

**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. However Waiver of Subrogation does not apply in instances of gross negligence on the part of the City, where gross negligence is defined to mean carelessness that is reckless disregard for the safety of others and/or a failure to use the slightest degree of care.

**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)

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**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:**

**Excess Liability, Non Restricted Area Minimum  
Limits of Liability (In Thousands)**

Umbrella Liability Restricted Area Each Occurrence and aggregate \$9,000

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

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

### **Professional Liability only as applicable Information Technology Contracts**

**Coverage: Professional Liability including Cyber Liability for Errors and Omissions**

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

**Minimum Limits of Liability (In Thousands)** Per Claim \$1,000

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

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

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### 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.
- RESERVED.
- 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. Coverage shall solely be evidenced in a Certificate of Insurance.
- 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.

## Exhibit D – Agreement for Exchange of Confidential Information

The parties agree that any exchange of confidential information shall be handled under the terms and conditions of the Agreement for Exchange of Confidential Information (AECI) between the City and IBM.



City - IBM AECI

The AECI is a bilateral ongoing relationship agreement, allowing either party to disclose confidential information on this and future projects between the City and IBM.