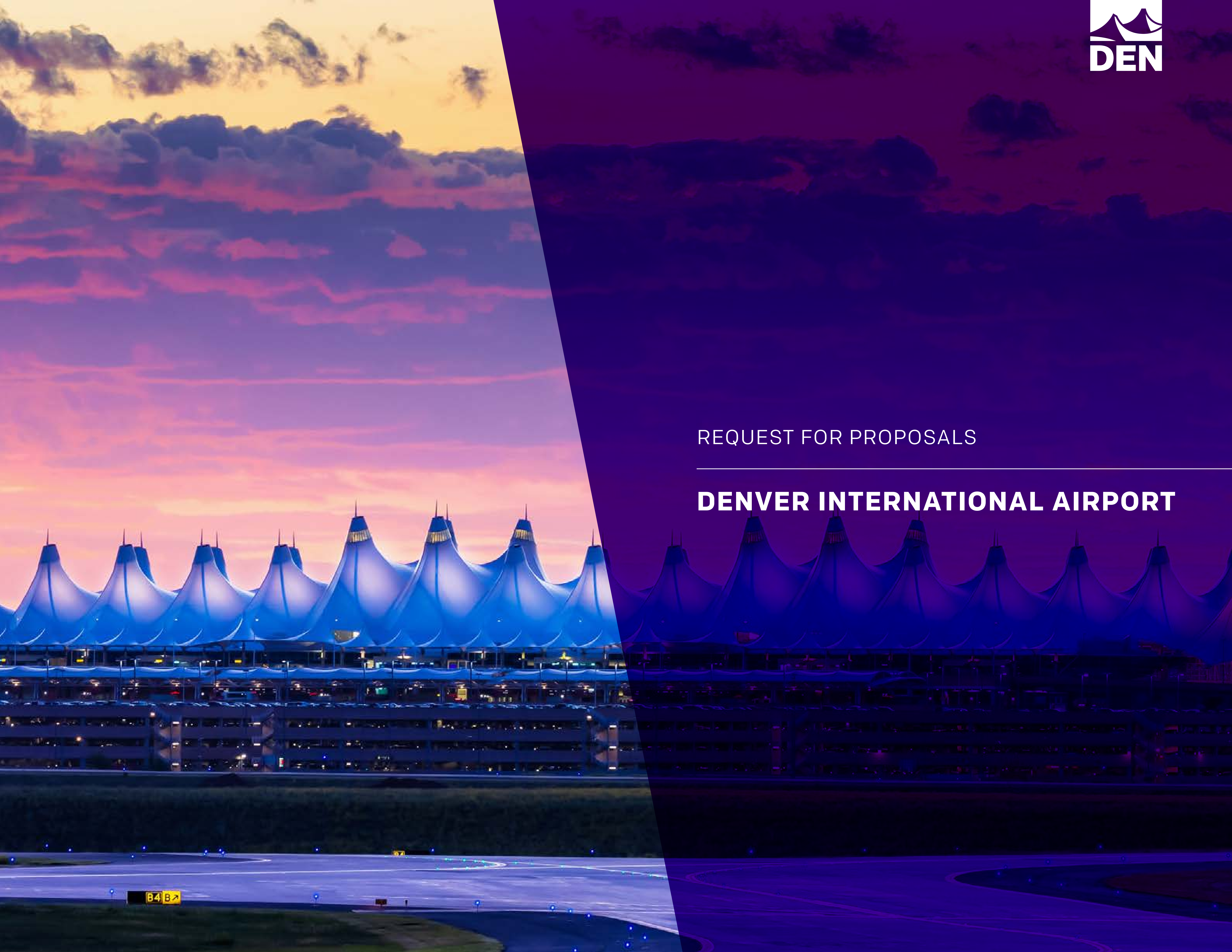

DEN

REQUEST FOR PROPOSALS

DENVER INTERNATIONAL AIRPORT

PART A

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Welcome

Denver International Airport (DEN) is pleased to announce exciting new business opportunities in our award-winning and expanding concessions program. We are releasing a Request for Proposal (RFP) for Airport Wide Automated Teller Machines (ATMs) and Banking Services.

When the airport opened in 1995, it was designed to serve 50 million passengers. Due to its strong domestic network and center-of-the-continent location, DEN is now ranked as the 3rd-busiest airport in the U.S. and the 6th-busiest in the world. We continue to set new passenger records and with such strong growth, we expect to reach 100 million annual passengers as early as 2028.

To meet the requirements of serving 100 million annual passengers, DEN has introduced a Vision 100 strategy that outlines four pillars necessary for this milestone, including Empowering our People, Growing our Infrastructure, Maintaining What we Have, and Expanding our Global Connections. We have also identified guiding principles that describe how we will work to achieve Vision 100. We invite our partners to adopt these principles as well:

- **Sustainability & Resiliency:** Our goal is to become the greenest airport in the world while ensuring that our actions and decisions foster a healthy and resilient organization.
- **Equity, Diversity, Inclusion & Accessibility:** We are better when everyone is at the table and when we respect and listen to all viewpoints.
- **Operational Excellence:** We maintain a focus on ensuring efficient and effective operations while collaborating with our partners to identify and address challenges and review our experiences, implementing improvements based on learnings.
- **Enhancing the Customer Experience:** This is our core business. We will work closely with our stakeholders to meet and exceed the needs and desires of our travelers.

Would you like to join us on this exciting journey to realize Vision 100? We encourage innovation, equity, partnership, and a commitment to providing our customers with an elevated experience.

We look forward to reviewing your proposals!
Sincerely,

Phillip A. Washington
Chief Executive Officer
Denver International Airport

01
ABOUT DEN

DEN

Denver is in the midst of an incredible period of growth and success, and we invite you to join us on this exciting journey.

Above-average population growth has been driven by people relocating from other states, attracted by the region's diverse economy and access to amenities which support a strong quality of life. This translates into a deep pool of talent, driving innovation and expansion.

Demographics: The metropolitan Denver region represents nearly 70% of Colorado's total population. The overall U.S. population is expected to increase by 12% by 2050, but Colorado and metro Denver are forecasted to grow between 27%-29%, respectively. More than double the U.S. rate.

An Upward Trajectory

2023 ECONOMIC INDICATORS

14+ MILLION

Colorado Skier Visits

Most skier visits in Colorado's history

#1 WORKFORCE

4th best state for business

Colorado Economy

4th best state for business, ranked #1 for workforce, Grade A+

67.9 MILLION

#5

Colorado Labor Force Participation Rate

Colorado's labor force ranks #5 in the U.S. for labor force participation; well above U.S. average of 62.5 million

POPULATION

5.9 MILLION

Colorado Population

4.1 MILLION

Metropolitan Denver Population

69% of Colorado's population lives in the Metro Denver region

TOURISM

90 MILLION VISITS

Colorado Tourism

Colorado saw a record high of $27.7 billion in travel spending in 2023, a 14% increase from 2019

36.3 MILLION VISITS

5280

Denver Tourism

Denver saw a record high of $9.4 billion in tourism revenue in 2023, a 10% increase from 2019

EDUCATIONAL ATTAINMENT

42.7%

Colorado Education

2nd in the nation with a bachelor's degree or higher. Ranks 2nd only to Massachusetts.

47.6%

Metropolitan Denver Education

Nearly half of metro Denver residents attained a bachelor's degree or higher. Ranks 4th among 25 largest U.S. Metropolitan Statistical Areas (behind San Francisco, Washington D.C. and Boston).

Source: U.S. Census Bureau, Longwoods International, Colorado Ski Country USA, U.S. Census Bureau; American Community Survey, CNBC, Colorado Department of Labor & Employment; U.S. Department of Labor

DEN at a Glance

Denver International Airport (DEN) is an airport with an enviable position almost in the center of the country; there are no other large hub airports within a 500-mile drive. Occupying a vast site of some 34,000 acres 20 miles east of the city, the airport has more capacity than it will ever need in our lifetime, with six runways and the ability to build six more. A frequent commuter rail service, opened in 2016, connects the airport directly with downtown Denver's iconic Union Station in just 37 minutes.

The airport is owned by the City and County of Denver, and is operated by the Denver Department of Aviation. As one of the nation's busiest airports, DEN is also the region's most powerful economic engine, generating more than $47.2 billion annually for the region.

NONSTOP DESTINATIONS

MORE THAN
231
nonstop destinations reached from DEN

46
U.S. states served nonstop

29
Essential Air Service nonstop destinations

MORE THAN
190
destinations are in the U.S., making DEN a major domestic hub for air transportation

NONSTOP FLIGHTS TO ALL
12
of Colorado's commercial service airports; DEN also offers bus service (Landline by United) to Northern Colorado Regional

36
nonstop international destinations and 18 countries served nonstop

27
commercial passenger carriers

12
U.S.-flag carriers and 14 foreign-flag carriers

Source: Innovata Schedules via Cirium as published the week of July 6, 2025
Note: Some destinations served seasonally; some destinations served less than daily; data is subject to change

DEN at a Glance

TOTAL PASSENGRS ENPLANED AND DEPLANED, PASSENGERS IN TRANSIT COUNTED ONCE

2024	2023	2019	AIRPORT	2024	% CHANGE VS 2023	% CHANGE VS 2019
1	1	1	ATLANTA, USA (ATL)	108,067,768	3.3	-2.2
2	2	4	DUBAI, UAE (DXB)	92,331,506	6.1	6.9
3	3	10	DALLAS/FORT WORTH, USA (DFW)	87,817,864	7.4	17.0
4	5	5	TOKYO, JAPAN (HND)	85,900,617	9.1	0.5
5	4	7	LONDON, UK (LHR)	83,884,572	5.9	3.7
6	6	16	DENVER, USA (DEN)	82,358,744	5.8	19.3
7	7	28	ISTANBUL, TURKEY (IST)	80,073,252	5.3	53.4
8	9	6	CHICAGO, USA (ORD)	80,043,050	8.3	-5.4
9	10	17	NEW DELHI, INDIA (DEL)	77,820,834	7.8	13.6
10	21	8	SHANGHAI, CHINA (PVG)	76,787,039	41.0	0.8

DEN PASSENGER TRAFFIC YTD NOVEMBER 2024

TOTAL PASSENGERS
82.3M
+5.8% vs. 2023
+19.3% vs. 2019
All-time record

DOMESTIC PASSENGERS
77.7M
+5.3% vs. 2023
+18.0% vs. 2019
All-time record

INTERNATIONAL PASSENGERS
4.6M
+15.0% vs. 2023
+46.2% vs. 2019
All-time record

O&D PASSENGERS
45.6M
55.4% of total passengers

CONNECTING PASSENGERS
36.7M
44.6% of total passengers


Denverite
Jan. 22, 2025
Denver International Airport breaks records again
The airport saw 82 million passengers last year

Source: Denver International Airport statistics; Airports Council International
Note: Numbers are rounded

DEN at a Glance

DENVER INTERNATIONAL AIRPORT (DEN)
ENPLANED PASSENGER FORECAST BY CONCOURSE

Enplaned: A passenger who is boarding an aircraft at DEN.

SCENARIO	CONCOURSE	2025	2026	2027	2028	2029
BASE CASE	A	10,864,363	11,549,159	11,947,920	12,296,092	12,584,932
	B	16,920,990	17,374,906	17,795,703	18,281,505	18,687,325
	C	14,277,052	14,373,371	14,747,241	15,149,173	15,486,194
	Total	**42,062,406**	**43,297,436**	**44,490,864**	**45,726,770**	**46,758,451**

SCENARIO	CONCOURSE	2025	2026	2027	2028	2029
HIGH CASE	A	10,979,279	11,805,660	12,315,604	12,828,137	13,247,233
	B	17,079,309	17,714,632	18,320,352	19,006,260	19,617,801
	C	14,411,759	14,650,636	15,177,987	15,743,225	16,250,859
	Total	**42,470,347**	**44,170,928**	**45,813,944**	**47,577,623**	**49,115,894**

SCENARIO	CONCOURSE	2025	2026	2027	2028	2029
LOW CASE	A	10,469,518	10,097,867	10,232,664	10,516,650	10,666,916
	B	16,618,398	16,890,698	17,127,086	17,509,366	17,723,253
	C	14,011,019	13,957,301	14,180,761	14,496,191	14,673,788
	Total	**41,098,934**	**40,945,866**	**41,540,511**	**42,522,207**	**32,397,041**

Source: GRA Forecast dated March 3, 2025
Note: January 2025 are actuals; all other months are forecasts
Disclaimer of Accuracy and Reliability: This forecast data provides a forward-looking approximation of future passenger traffic at DEN based on internal estimates derived from a variety of information sources. You understand and agree that it is provided as a courtesy and for the sole purpose of aiding your internal financial and operational planning. By opening and using this predictive data, which may change or become inaccurate without notice, you assume any and all risks associated with its use. For these reasons, you further understand and agree that the City and County of Denver, Department of Aviation and Denver International Airport (the "City") do not make any express or implied warranties or representations as to the quality, completeness, accuracy, or usefulness of this data.

DEN

Airline Partners and Destinations

Our prime location in the heart of the U.S. serves as the perfect hub for our major airline partners. We proudly host 27 carriers, whose extensive networks span across 190+ domestic destinations and 36 international cities in 19 countries, a network that continues to grow with ever increasing demand.

DEN 2025 SCHEDULED PASSENGER CARRIERS

Some carriers operate seasonally

U.S. Carriers

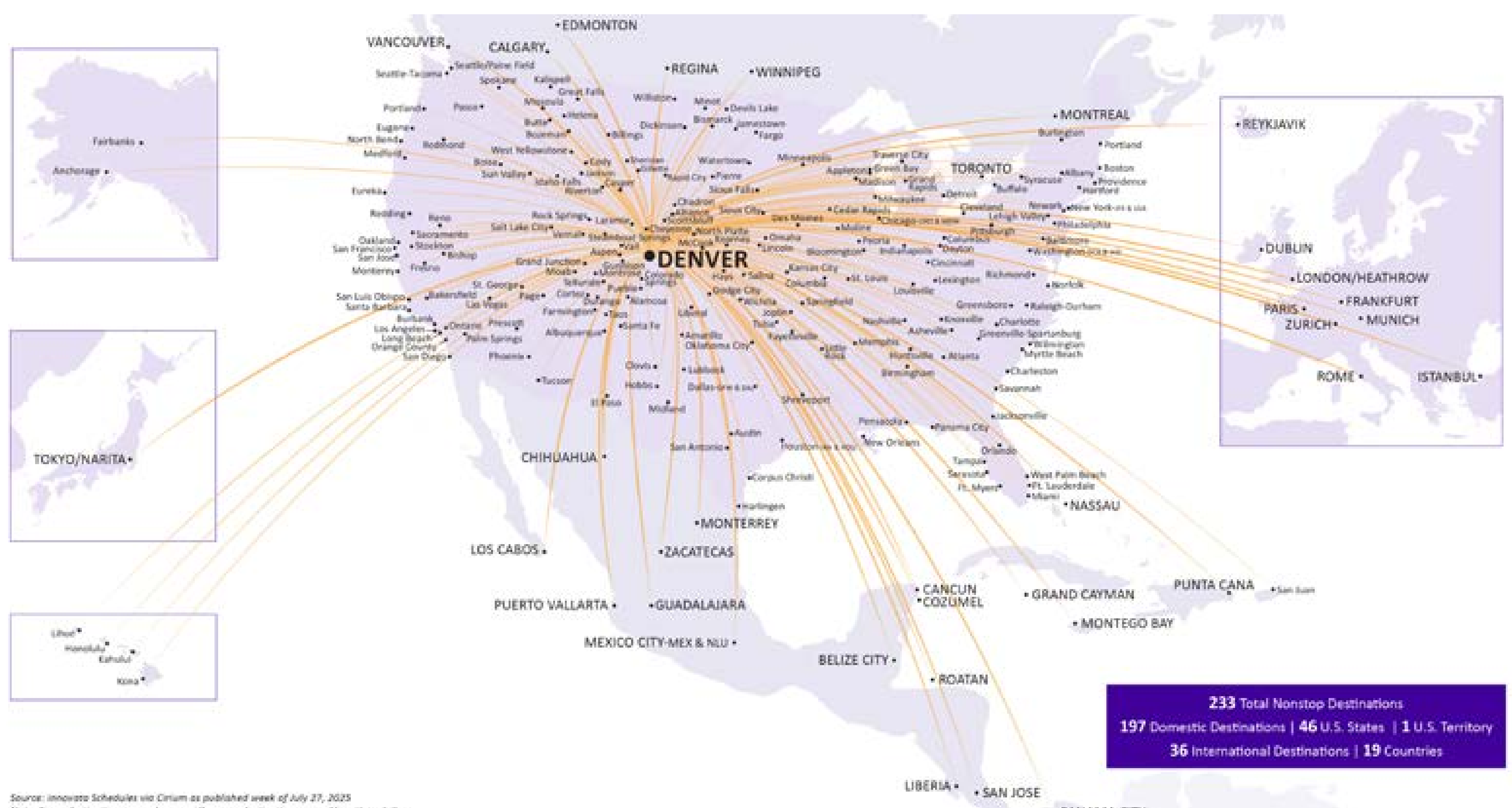
Alaska, Allegiant, American Airlines, Breeze (Seasonal service, June – August), Contour, Delta, Denver Air Connection, Frontier, jetBlue, Southern Airways Express, Southwest, Sun Country Airlines, United

International Carriers

Aer Lingus (Seasonal service, March – October), Aeromexico, Air Canada (Seasonal service, April – October), Air France, British Airways, Cayman Airways, Copa Airlines, Edelweiss (Seasonal service, May – September), Icelandair, Lufthansa, Turkish Airlines, Viva, Volaris, WestJet (Seasonal service, April – October)

Source: Innovata Schedules via Cirium as published week of Feb. 17, 2025

DEN 2025 NONSTOP ROUTE NETWORK



Key Carriers

UNITED IN 2025

» DEN ranked as United Airlines' largest hub in terms of capacity and 2nd-largest hub in terms of flights

» United ranked as DEN's largest carrier, with 56% market share

» United served more than 195 nonstop destinations from DEN during the year

» United provided an average of 421 daily flight departures from DEN

SOUTHWEST IN 2025

» DEN ranked as the largest operation in Southwest Airlines' network

» Southwest ranked as DEN's second-largest carrier, with 27% market share

» Southwest served 92 nonstop destinations from DEN during the year

» Southwest provided an average of 231 daily flight departures from DEN

FRONTIER IN 2025

» DEN ranked as the largest operation in Frontier's network

» Frontier ranked as DEN's 3rd-largest carrier, with 7% market share

» Frontier served more than 69 nonstop destinations from DEN during the year

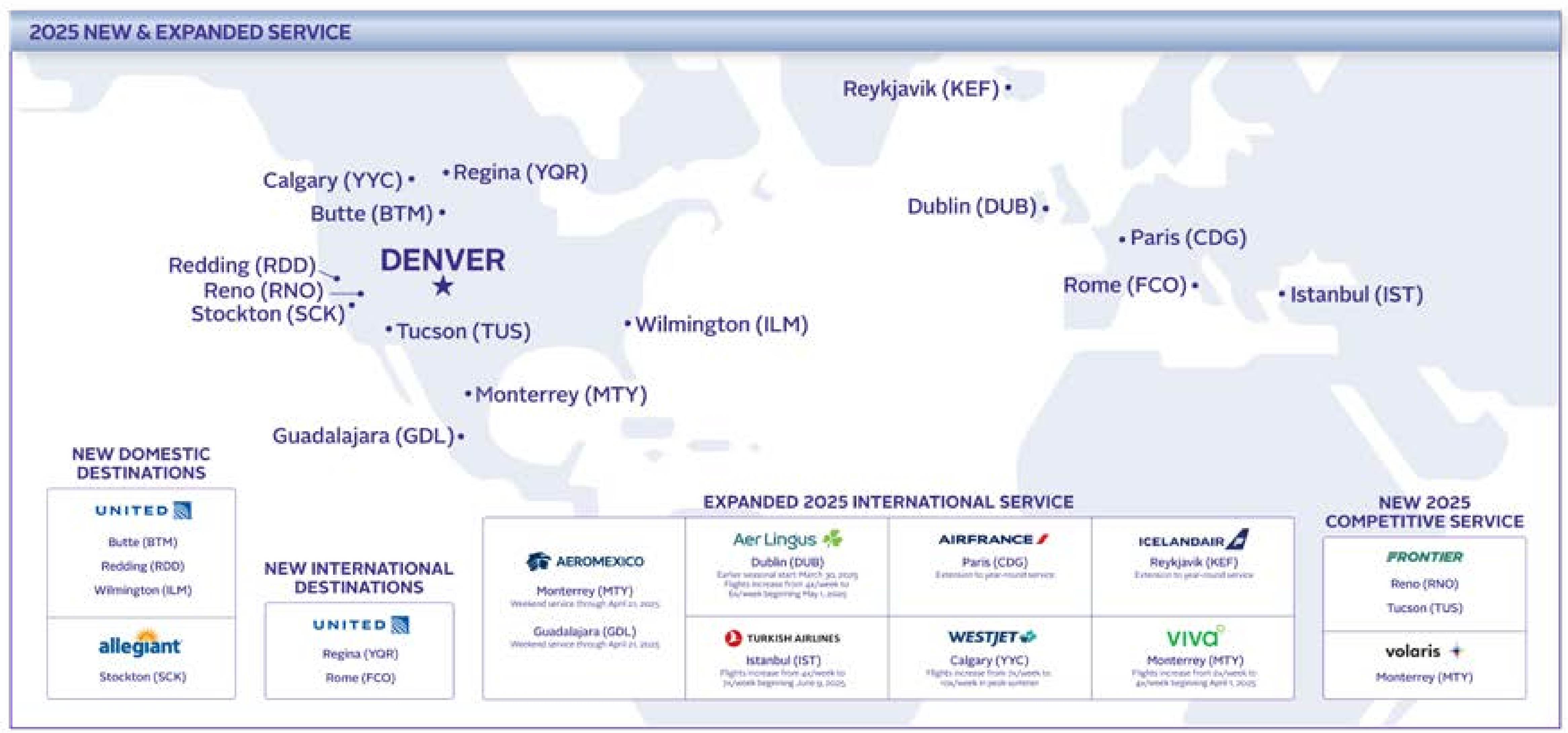
» Frontier provided an average of 59 daily flight departures from DEN

Source: Innovata Schedules via Cirium as published the week of July 6, 2025
Note: Some destinations served seasonally; some destinations served less than daily; data is subject to change

Air Service Network

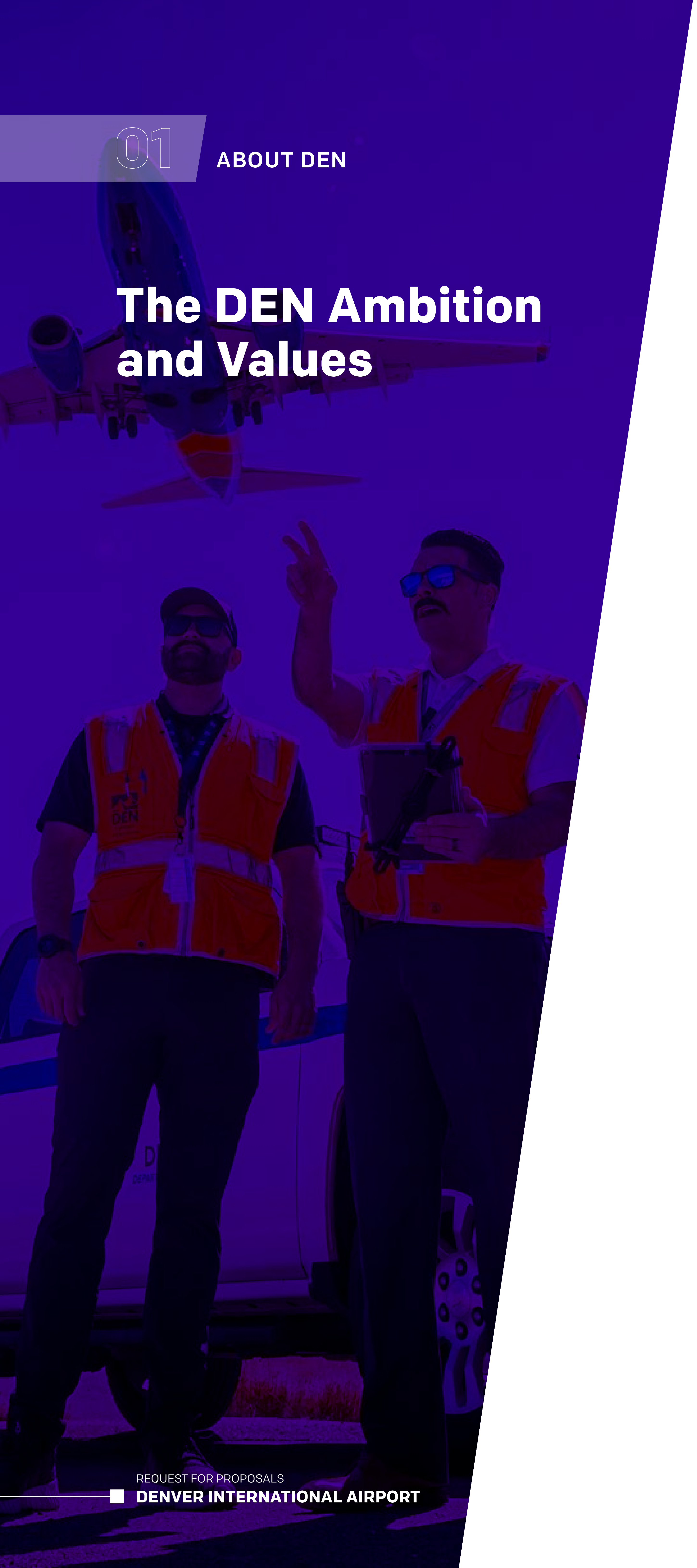
DEN 2025 AIR SERVICE NETWORK
INTERNATIONAL DESTINATION SERVED NONSTOP, WITH CARRIERS

DEN 2025 AIR SERVICE EXPANSION



Source: Innovata Schedules via Cirium
Note: Represents scheduled service in 2025 (as published week of Jan. 6, 2025)

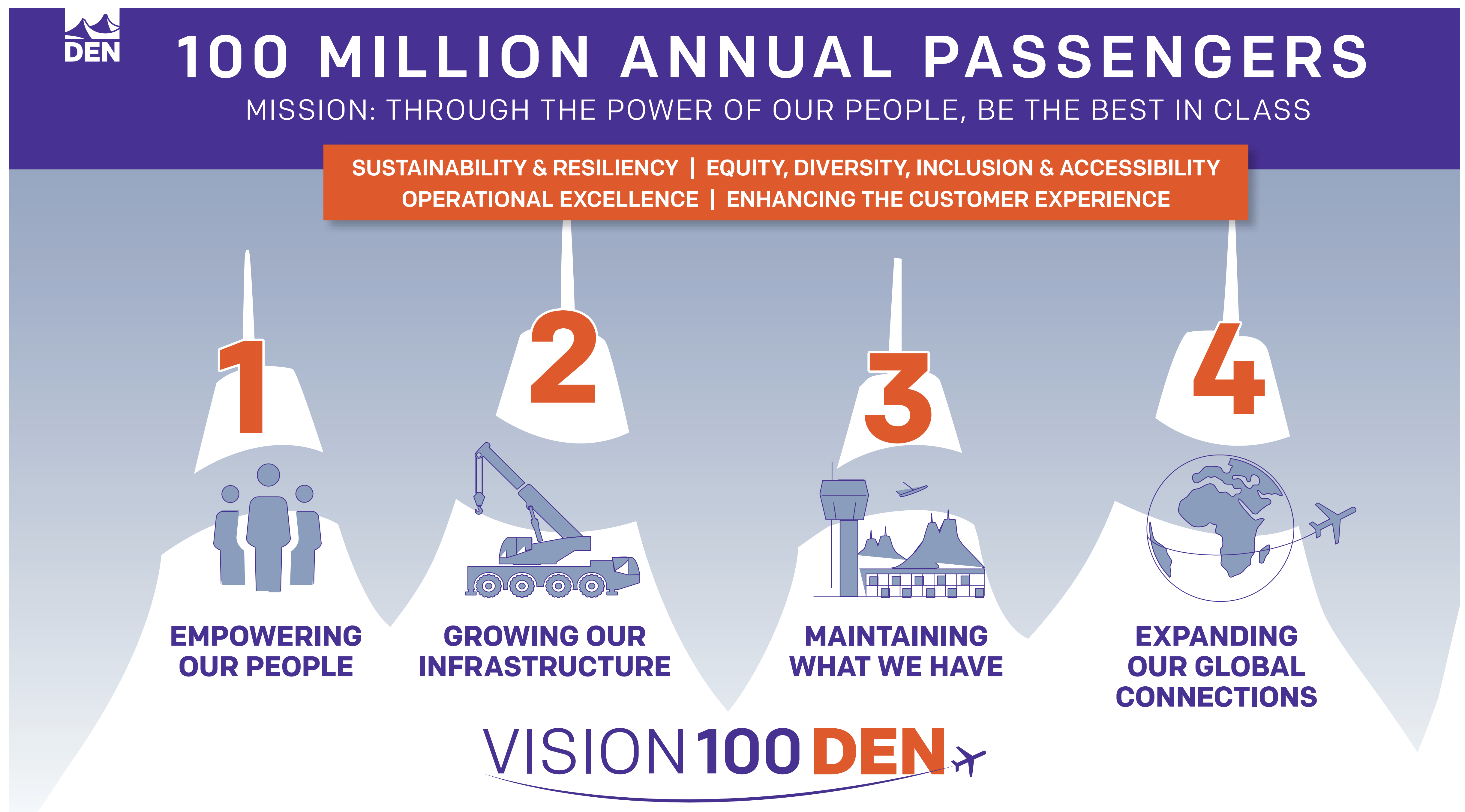
The DEN Ambition and Values



Vision 100 is phase one of our strategic plan. We are preparing to welcome 100 million passengers in the next several years. DEN continues to plan for the future, currently examining various exciting capacity planning options expected to enable 120 million-plus annual passengers by 2045.

But the benefits of the airport extend well beyond these two economic factors. In fact, DEN's competitive advantages, such as our ability to grow incrementally while keeping costs low for airlines, has resulted in more flights, more passengers and more connectivity, all of which leads to more business, educational and cultural opportunities for our community.

Our roadmap for continuing to deliver on this success is Vision 100.



DEN's 2023 Environmental, Social and Governance Report reflects our ongoing commitment to be transparent by providing an overview of our strategic priorities, insights into our ESG efforts and summary of our performance on topics relevant to our operations, as well as, partner and stakeholder interests. For more on DEN's ESG Commitment go to: [Environmental, Social and Governance Report | Denver International Airport]

The DEN Concessions Program

Our unprecedented growth is also reflected in our concessions program. We continue to review, reset and reinvent and set new gross revenue performance records as a result. We have set a higher standard with our ongoing development, delivering an elevated experience to our customers. We are extremely proud of the quality of the new food and beverage and retail offerings we are bringing to the concessions program. It is now time to bring that same level of ambition and innovation to the Great Hall.

CONCESSIONS: 2024

200+	250k SF	$650 MILLION	$15.79
Shopping and dining options	Concession space	Gross sales in 2024	Spend Per Enplaning Passenger for 2024

Enhancing the Customer Experience

DEN's Customer Experience, Communications, and Marketing teams develop and deliver an annual program of activations and executions which bring the DEN brand to life.

The experience we deliver is linked to commercial performance. The environment we create for our passengers and the standard of service we provide at every stage in the journey influences their mindset and their behavior. By taking care to curate and deliver a tailored commercial program that anticipates passenger needs and exceeds their expectations, we can both give them a pleasant travel experience and generate enhanced commercial income.

LIVING LIFE, TRAVELING WELL

What it means
Taking a wider view of passengers' needs – thinking beyond just serving their in-airport needs (e.g., meals, Wi-Fi, etc.) to how we can meet more of their travel journey and life needs (e.g., business services, health and wellness, etc.). "Wow! I didn't know you could do that at the airport!"

What it doesn't mean
A hyper fast-paced environment focused on a single side of the travel spectrum or single type of experience (e.g., creating only a retreat-like or ultra-lux experience) that causes passengers to feel that they are subject to a specific type of airport environment

ACCESSIBLE URBANISM

What it means
Thoughtfully highlighting local favorites and strengths that also appeal to a globally savvy passenger and providing passengers access to the benefits of being in a city so they get more out of their experience

What it doesn't mean
A focus on the quantity of options and promising passengers that they can get everything done while at the airport

ENJOYABLY PRODUCTIVE

What it means
Streamlined operations and well-designed environment and spaces that give passengers the power to move efficiently through the airport and provide easier access to amenities

What it doesn't mean
A focus on hyper-efficiency and catering to the need for productivity only in the context of the business traveler

NATURALLY DYNAMIC

What it means
Creatively providing passengers with access to the outside and Colorado's natural setting, bringing the outdoors to the inside of the airport, and finding opportunities to display the dynamism of the region

What it doesn't mean
Making the design aesthetic and airport environment all about the Rocky Mountains

MODERN WEST SPIRIT

What it means
Capturing the spirit and optimistic energy of Colorado in the way we interact with our passengers, deliver services and amenities, and innovate to create a better passenger experience

What it doesn't mean
Emulating stereotypes or cheesy interpretations of the West and of Colorado

Customer Initiatives

1. Performers on the Plaza
2. DEN Canine Airport Therapy Squad (CATS)
3. New gate expansion area
4. Park on the Plaza
5. Passengers greeting in the Great Hall


5


4


3


1

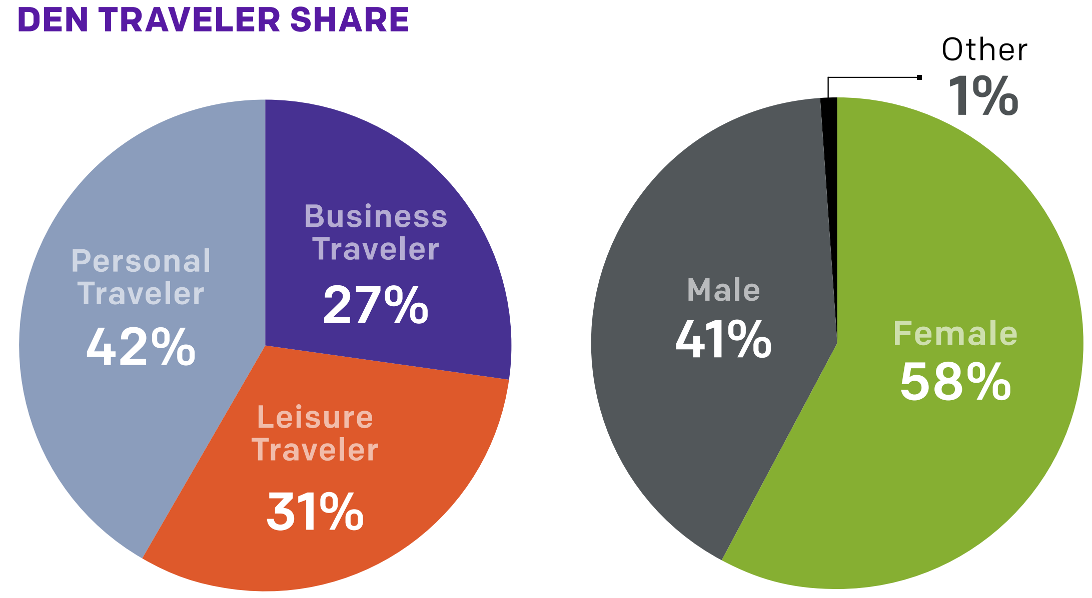

2

02

ABOUT THE OPPORTUNITY

Exploring our Exceptional Travelers

DEN TRAVELER SHARE



	BUSINESS TRAVELER	LEISURE TRAVELER
Average Age	44	55

AVERAGE ANNUAL HOUSEHOLD INCOME

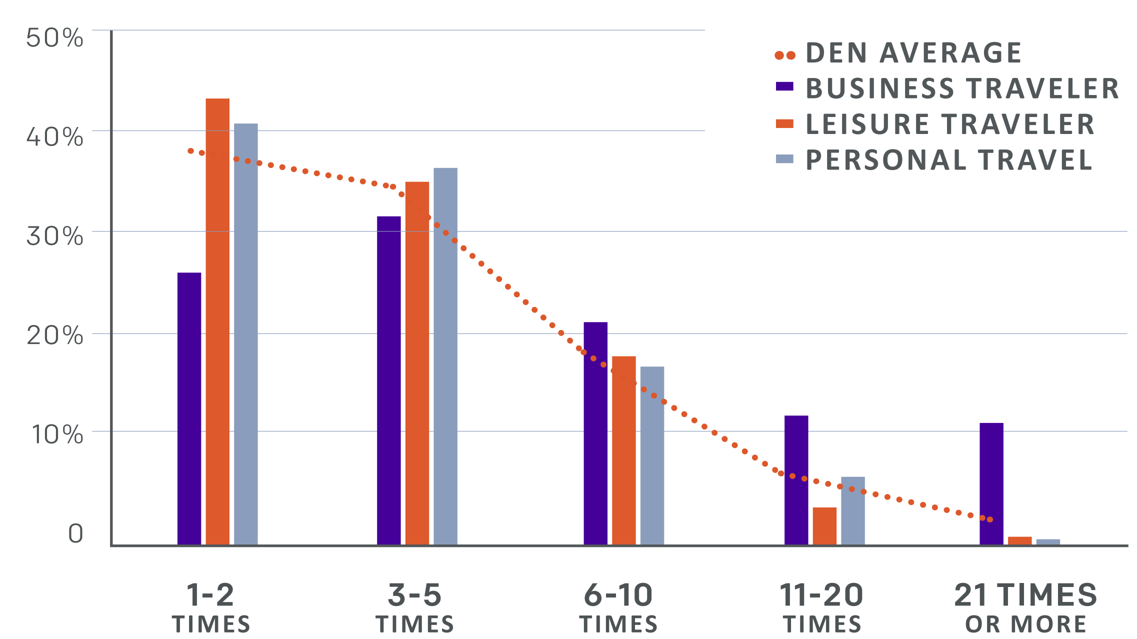
	BUSINESS TRAVELER	LEISURE TRAVELER
$49,999 and UNDER	14%	21%
$50,000-$69,999	13%	16%
$70,000-$99,999	24%	22%
$100,000-$124,999	14%	13%
$125,000-$149,999	11%	9%
$150,000-OVER	24%	19%

DID YOU PURCHASE F&B?

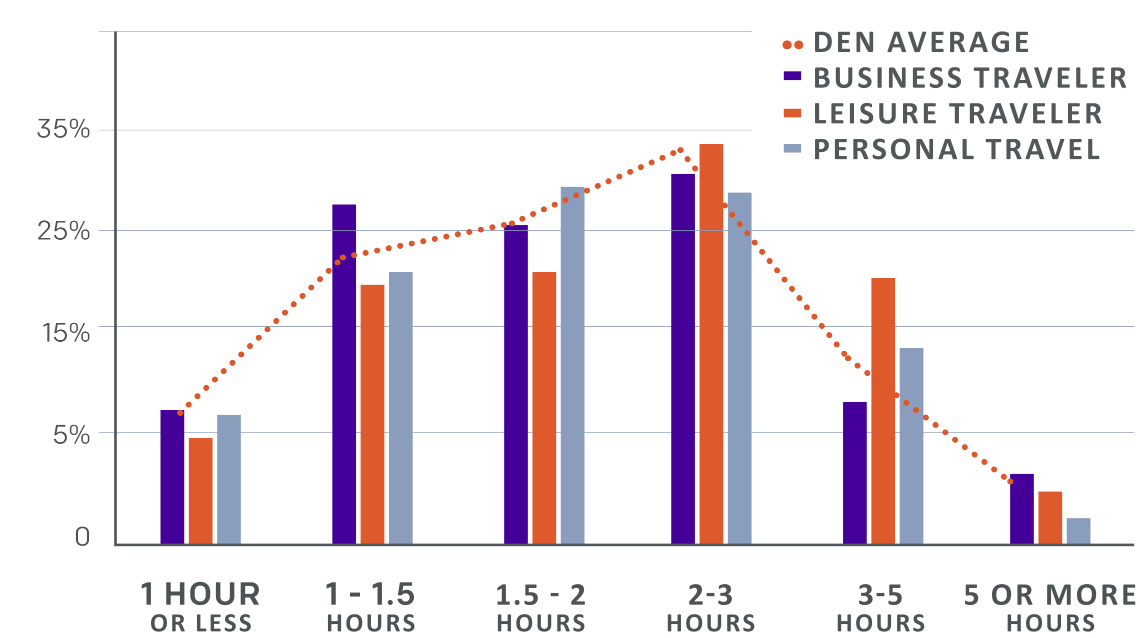
	BUSINESS TRAVELER	LEISURE TRAVELER
Yes	47%	48%
No	53%	52%

TRAVEL FREQUENCY

Q4 2024



TIME BEFORE AND AFTER SECURITY

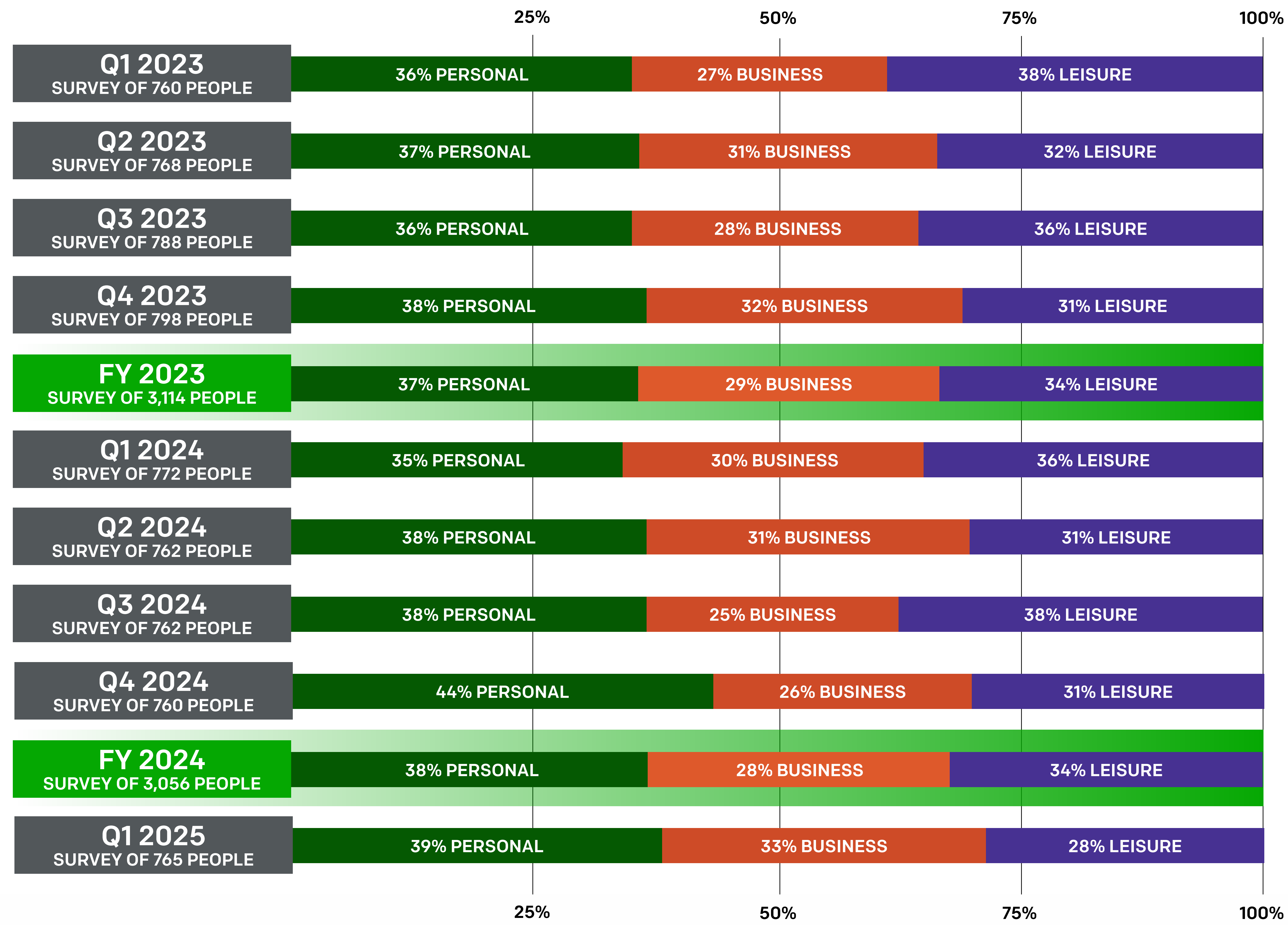


The above demographics are sourced from 2024 ASQ survey results

Exploring our Exceptional Travelers

DEN PURPOSE OF TRAVEL

Q: What is/was your MAIN purpose of travel for this air trip?



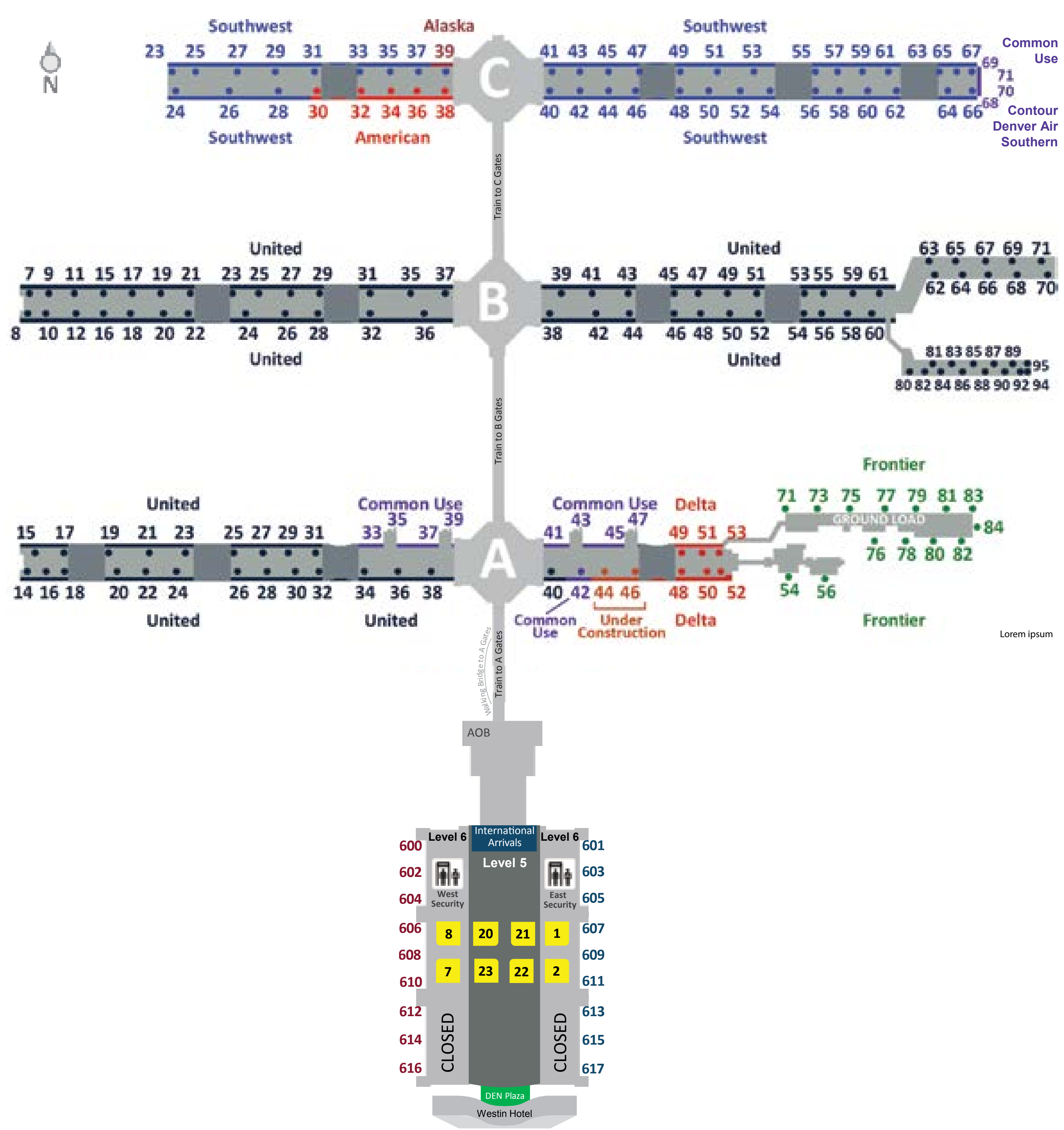
Source: Airports Council International

Transforming the DEN Experience

In order to properly accommodate DEN's forecasted growth, and to ensure we can continue to consistently deliver the DEN customer experience to every passenger, DEN is undergoing an ambitious and exciting redevelopment program. The program aims to truly optimize all the existing infrastructure to ensure we are delivering a great experience to our passengers, and operational efficiencies for our airlines and tenants.

DEN currently comprises a main terminal building, locally referred to as the Great Hall, which is the single central processor for departing and arriving passengers. Located 'landside', the Great Hall provides access to and from all ground transportation, ticketing and check-in, security, and, for international travelers, immigration.

The main terminal is connected by our underground Automated Guideway Transit System train to three parallel concourses, A, B, and C, accommodating all gates.



Concourse A

Commercial Overview

Concourse A is **the most diverse concourse** at DEN, with over 20 airlines and the majority of DEN's international traffic.

With 2024 traffic of almost 22 million passengers, Concourse A is almost as busy as all of Chicago's Midway Airport or Austin-Bergstrom International Airport.

Due to the mix of airlines and destinations served on Concourse A, the commercial strategy in this concourse highlights the need for a broad selection of diverse concepts.

As well as being serviced by the underground train, the concourse is also connected directly via a pedestrian bridge to the Great Hall, where all passengers are processed.

The Gate Expansion Program added 12 gates to the western end of Concourse A in 2022.

Airlines serving Concourse A include: Aer Lingus, Aero Mexico, Air Canada, Air France, Allegiant, Breeze, British Airways, Cayman Airways, Copa Airlines, Delta, Edelweiss, Frontier, Icelandair, JetBlue, Lufthansa, Sun Country, Turkish Airlines, United, Viva, Volaris and WestJet.

TOTAL PASSENGERS

CY 2024

	CY 2023	CY 2024
Destination	6,655,927	7,664,654
Originating	6,829,092	7,424,095
Transfer	5,573,598	6,798,841
Total	19,058,617	21,887,590

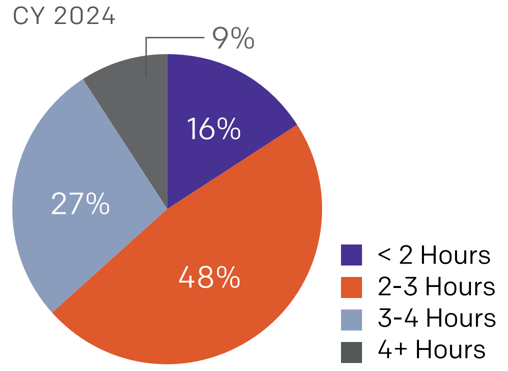
FIRST ARRIVAL/LAST DEPARTURE

CY 2024

	FIRST	LAST
Departure	5:00 a.m.	12:50 a.m.
Arrival	12:01 a.m.	11:59 a.m.

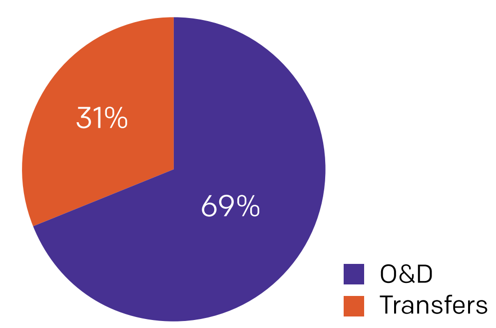
FLIGHT DURATION IN HOURS

CY 2024



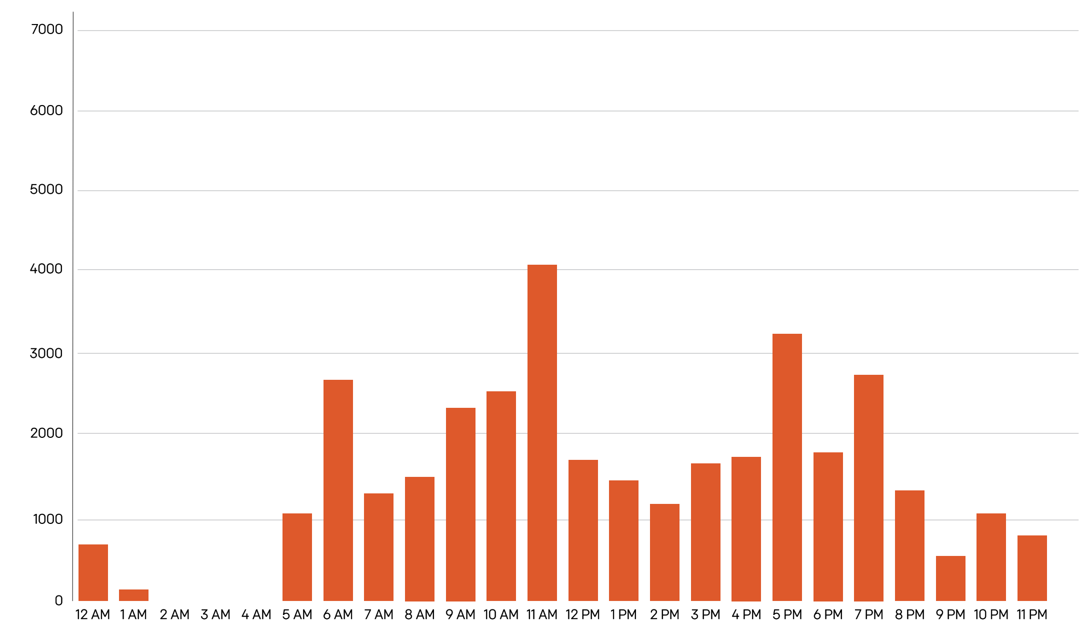
% OD/TRANSFER

CY 2024



DEPARTING SEATS BY HOUR

YEAR ENDING JANUARY 2025



ORIGINATING DOMESTIC AND INTERNATIONAL PASSENGERS

CY 2023 CY 2024

Source: Denver International Airport statistics (Propworks & Aerobahn) and Innovata Schedules via Cirium

DEN

Concourse B

Commercial Overview

United Airlines' commitment to grow at DEN means ever-increasing passenger numbers on Concourse B. **A total of 11 new gates were added** on Concourse B, which now contributes to their DEN hub strategy. Concourse B is exclusively used by United, which also operates flights on Concourse A.

At more than 31 million total passengers in 2024, Concourse B is busier than the entire Detroit Metropolitan Airport, or twice as busy as the Raleigh-Durham International Airport.

Concourse B has a mix of both O&D (41%) and connecting passengers (59%).

While there are numerous banks throughout the day, from early morning to late evening, with large peaks in passenger volumes at various points, there is constant demand for concessions. More than two-thirds of passengers are present in the concourse for more than 60 minutes; a quarter of all passengers are there for more than two hours. Our Concourse B profile indicates a strong opportunity to provide a variety of different types of F&B offerings to meet the needs of passengers on short connections and those with longer dwell times. It also indicates that a broad specialty retail offer is sustainable.

TOTAL PASSENGERS

CY 2024

	CY 2023	CY 2024
Destination	6,897,328	6,343,586
Originating	6,817,104	6,502,495
Transfer	16,989,544	18,607,837
Total	30,703,978	31,453,918

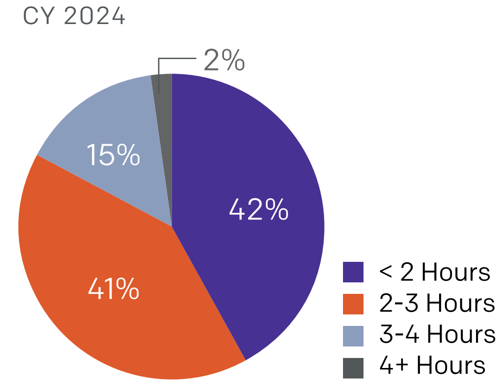
FIRST ARRIVAL/LAST DEPARTURE

CY 2024

	FIRST	LAST
Departure	5:00 a.m.	11:59 p.m.
Arrival	6:14 a.m.	12:35 a.m.

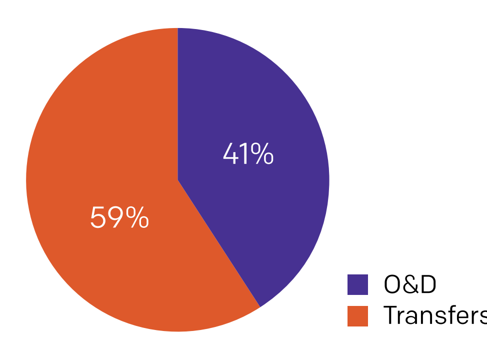
FLIGHT DURATION IN HOURS

CY 2024



% OD/TRANSFER

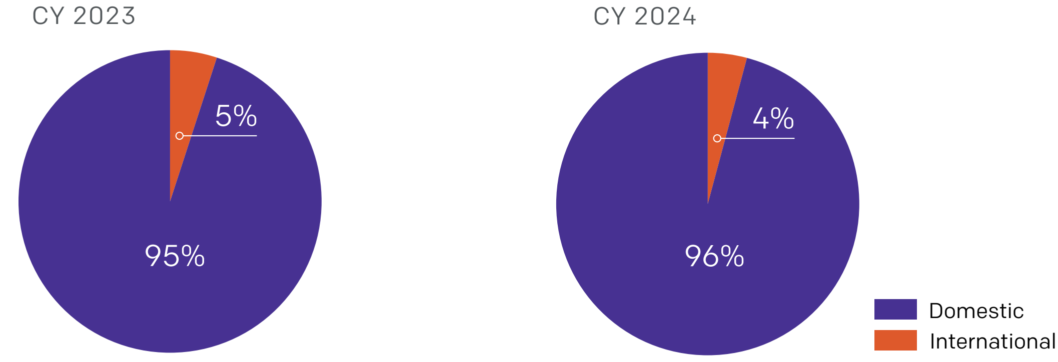
CY 2024



ORIGINATING DOMESTIC AND INTERNATIONAL PASSENGERS

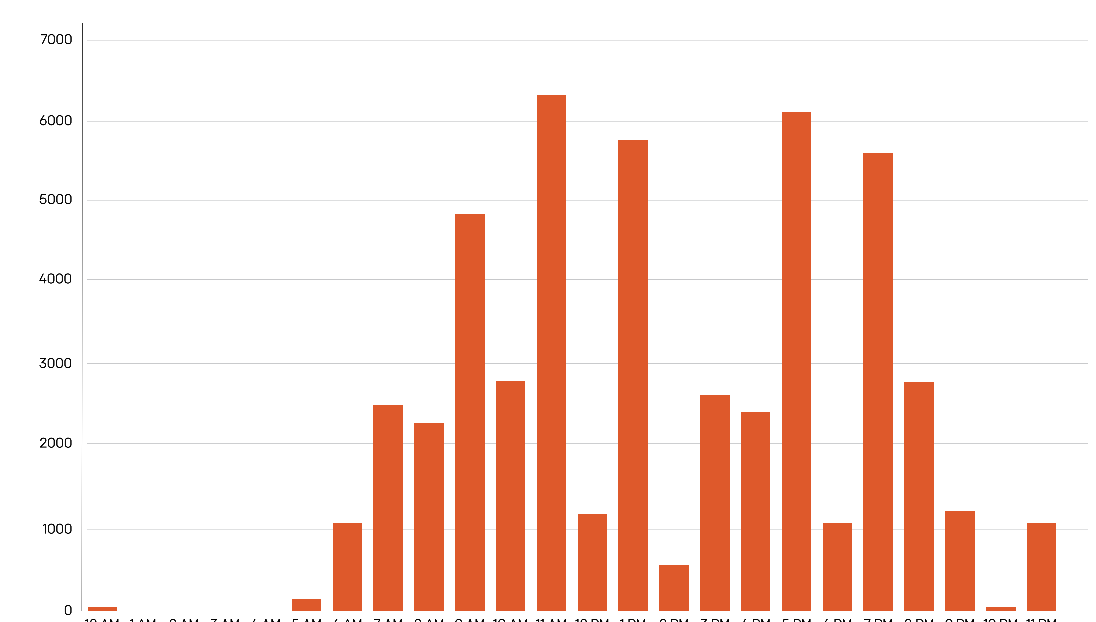
CY 2023

CY 2024



DEPARTING SEATS BY HOUR

YEAR ENDING JANUARY 2025



Note: All information subject to change, information provided is representative of the current state but likely will change over time.
Sources: Denver International Airport Traffic Statistics and Aerobahn Statistics and Published Innovata Schedules via Cirium.

Concourse C

Commercial Overview

Southwest Airlines' Denver operation is the largest in their entire network and exclusively operates from Concourse C. Alaska Airlines and American Airlines also use Concourse C.

Connecting passengers are a substantial 39% of total passengers.

At more than 29 million annual passengers in 2024, Concourse C is busier than Philadelphia International Airport or Salt Lake City International Airport.

To cater to the growth on Concourse C, 16 new gates were added to the east and opened in May 2022.

71% of Concourse C's flights are two hours or longer. There is no substantial food available on Southwest Airlines, which provides significant opportunity to sell F&B on this concourse. Due to the volume of passengers and their consistent presence in the concourse, there is also a strong retail opportunity.

This concourse is consistently busier through the day from early morning to later in the evening than other concourses.

TOTAL PASSENGERS

CY 2024

	CY 2023	CY 2024
Destination	8,673,694	8,801,322
Originating	8,613,173	8,877,744
Transfer	10,787,998	11,338,170
Total	28,074,865	29,017,236

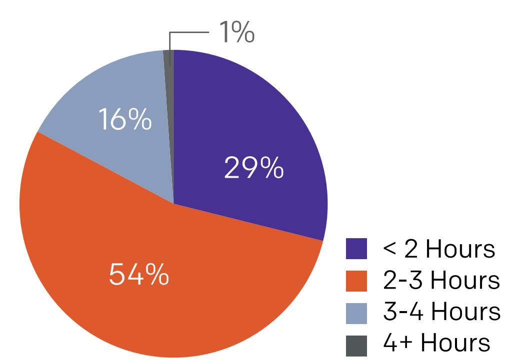
FIRST ARRIVAL/LAST DEPARTURE

CY 2024

	FIRST	LAST
Departure	5:00 a.m.	12:50 a.m.
Arrival	6:30 a.m.	12:45 a.m.

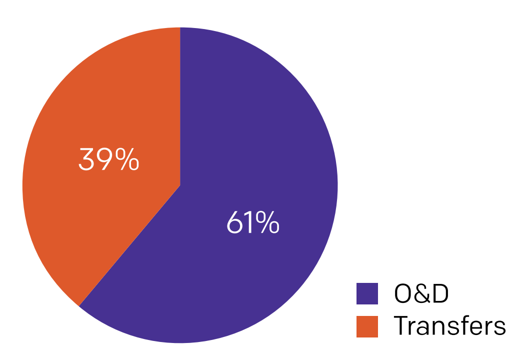
FLIGHT DURATION IN HOURS

CY 2024



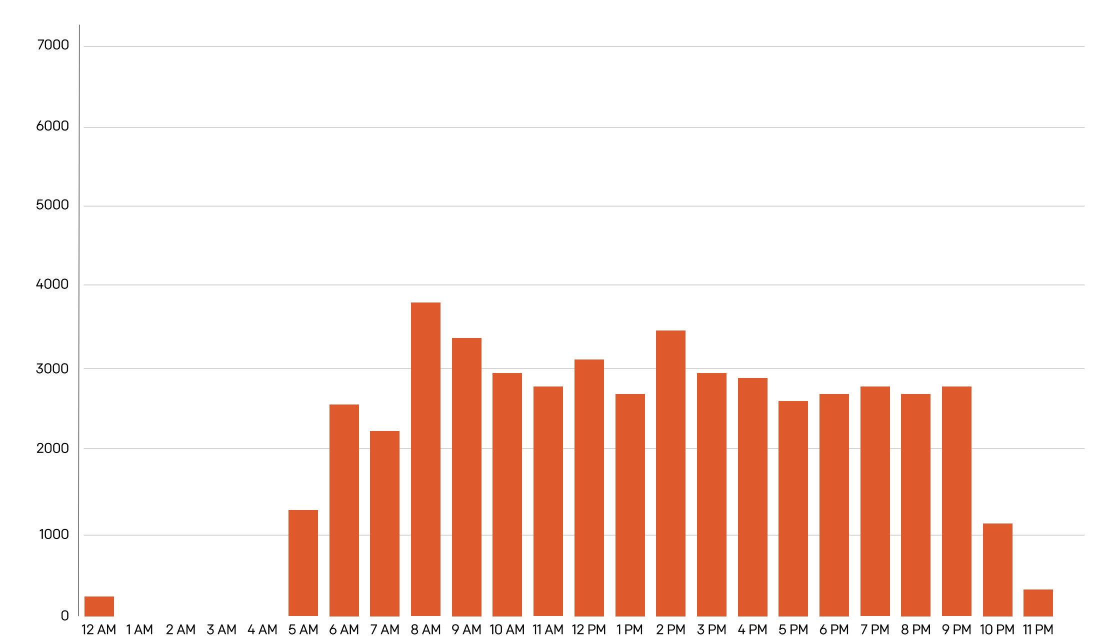
% OD/TRANSFER

CY 2024



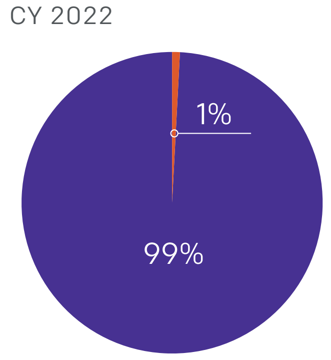
DEPARTING SEATS BY HOUR

YEAR ENDING JANUARY 2025

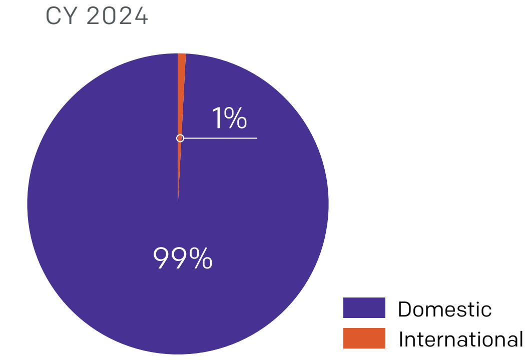


ORIGINATING DOMESTIC AND INTERNATIONAL PASSENGERS

CY 2022



CY 2024



Note: All information subject to change, information provided is representative of the current state but likely will change over time.
Sources: Denver International Airport Traffic Statistics and Aerobahn Statistics and Published Innovata Schedules via Cirium.

Great Hall Overview

The Great Hall Project is one of DEN's capital improvement projects that will help the airport prepare for the future by enhancing security, improving operational efficiency and increasing capacity of the Jeppesen Terminal.

The Great Hall Project consists of three phases. The first two phases were completed within the original $770 million budget and focused on building a new ticketing/check-in space for some of our airlines, as well as one new security checkpoint in the northwest corner of Level 6. The Completion Phase, the third and final phase of the project currently underway, will complete the full build-out of the Jeppesen Terminal, bringing it up-to-speed for future growth and critical infrastructure needs.

The entire Great Hall Program will be completed by the end of 2027 with segments opening along the way.

A GLIMPSE OF THE FUTURE GREAT HALL:

https://www.youtube.com/watch?v=OX1H2kdOQdI

Desired Great Hall Outcomes

- Be welcoming
- Reduce stress and anxiety for travelers
- Be unique and authentic to the culture of Colorado
- Bring the outdoors inside
- Be durable, flexible, functional and adaptable for the future
- Meet the needs of the traveling public and DEN's 41,000+ employees

02 ABOUT THE OPPORTUNITY

Great Hall Overview

Design Narrative

Inspired by the natural beauty and wonder of Colorado's great outdoors and the moments we experience in it. A timeless and iconic place that celebrates the changing of seasons, memorable Colorado Experiences and the people who call this great state home. Only in Colorado....

Action Statement

How do we want people to remember their first HELLO and last GOODBYE?

Great Hall Mod 1

The Global Gateway

The north end of Level 5 will be known as the Global Gateway and will be where international passengers arrive and connect through Denver to easily transfer back through security for a flight to other cities. Eight new security lanes will be added (four on the east and four on the west) to provide a seamless experience for international travelers connecting through DEN and to provide additional capacity for increasing passenger volumes.

Layered Glass, Planes, Depth, Calming, Organic/Geometric

Great Hall Mod 2

Welcome Home Colorado

The center of Level 5 is where domestic travelers arrive and are greeted by their awaiting friends and family. The area will have ample seating and a large flight information board as well as a new centralized information booth to provide support and information for arriving passengers.

Statement signage,
Landmark elements,
Colorado moments

Great Hall Mod 3

The Living Room

The south end of Level 5, known as the Living Room, will be a high-energy space filled with a variety of comfortable seating options and tables as well as numerous dining options. This area includes four security lanes to serve travelers arriving via the RTD A-Line. These are enclosed in a structure that is flanked by a bar that will be an ideal place to sample Colorado craft beers. Above the lanes, there will be a food hall with ample seating and new places to eat and hang out.

Texture, Biophilia, Clean and thoughtfully lit, Visual hierarcy

03

PARTNERING WITH DEN

Our Commitment

Our team is focused on delivering an exceptional experience for both customers and vendors, ensuring the sustained success of Denver International Airport and its stakeholders. We believe that strong partnerships are fundamental to this success, as they play a crucial role in shaping the experience and bringing our ambition to life.

We are seeking a concession partner who recognizes the value of DEN and is prepared to bring innovative concepts that will elevate the customer experience and enhance our food and retail offerings, with shared goals, transparency, and collaboration as the core principles of our partnership.

We are committed to working closely with our partners, exchanging insights and data, and fostering innovation to drive mutual commercial success. To support this, you can look forward to the following level of engagement from DEN:

- Quarterly Town Halls
- Monthly Manager Meetings
- DEN-provided Passenger Forecasts
- Historical Enplanement Information by Concourse
- Gate Utilization Reports
- Regular Air Service Updates

We expect our partners to develop a strong working relationship with their counterparts on the DEN concessions team. By working closely and collaboratively, we believe we can create a best-in-class customer experience at DEN.

PART B

RFP DETAILS

REQUEST FOR PROPOSAL

NO. 202580521

ATM & Banking Services - M3L5W1

PART B RFP DETAILS INTRODUCTION

Airport Office Building (AOB)
Denver International Airport (DEN)
8500 Pena Boulevard, Room 8810
Denver, Colorado 80249-6340

Contract Administrator (CA): Sheila Motley
E-Mail: **Contract.Procurement@flydenver.com**

Request for Proposals No. 202580521 ATM & Banking Services

PROPOSALS MUST BE RECEIVED BY: Monday, November 17th, 2025, at 2:00 PM MST.
Proposers shall submit their proposal and all required forms via DEN's Rocky Mountain E-Purchasing System's (BidNet) website:

https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

Schedule of Activities
This projected schedule is an estimated timeline and is subject to change at the sole discretion of the City. All times listed in this document are understood to be Denver local time (Mountain Time Zone).

RFP Advertisement	**Fri., August 15, 2025**
Optional Pre-Proposal Conference	**Fri., September 5, 2025, at 10:00 AM MST**
Site Visit Pre-Registration	**Fri., September 5, 2025, at 5:00 PM MST**
Guided Tour - Optional	**Thur., September 11, 2025, at 9:00 AM MST**
Last Date to Submit Written Questions	**Fri., September 26, 2025, at 2:00 p.m. MST**
Proposal Due Date	**Mon., November 17, 2025, at 2:00 p.m. MST**
DEN Evaluates Proposals	**November 2025**
Proposer Interviews	**December 2025**
Negotiations with Selected Proposer	**January 2026**

Contract Execution	**May 2026**
Design Complete	**July 2026**
Construction Drawings Complete	**November 2026**
Construction Drawing Review & Permitting Complete	**March 2027**
Notice to Proceed & Notice of Possession	**April 2027**
Required Opening Date	**December 2027**

Pre-Proposal Conference – OPTIONAL

An Optional Pre-Proposal Conference will be held virtually via Microsoft Teams at the date and time listed above in Schedule of Activities.

PRE-PROPOSAL TOWN HALL LINK

Guided Tour - OPTIONAL

A guided tour will be conducted **at 9:00am on September 11, 2025**. This will provide an opportunity to visit the space. **You must pre-register by submitting the requested information as noted below, regardless of if you are badged or not.** Event staff will be available on-site to assist proposers in understanding the concession layout. Please note event staff is not there to answer RFP related questions, and all questions must be submitted to BidNet for an official response. Answers are only considered official when posted to BidNet. Any answers to questions that are not posted to BidNet are considered unofficial and have no merit.

Pre-Registration Link - Optional Site Visit

All proposers interested in attending the guided tour **must preregister at the above link by 5:00 pm on September 5, 2025**, providing the information detailed below:

- Full legal first and last name
- Company or Organization
- Telephone number
- Email address

Attendees that did not pre-register for the guided tour will not be allowed on the guided tour.

RFP Questions

DEN will not answer any telephone inquiries or any communications about this RFP that are not submitted through BidNet. Written questions are due by the deadline listed in the Schedule of Activities above and shall be submitted electronically via the Rocky Mountain E-Purchasing System (BidNet) website. DEN requires all questions to be submitted individually on this site. Note: BidNet limits the characters available to input for DEN to respond to each question. For this reason, multiple questions may not be submitted as a single question, DEN reserves the right to reject groups of questions submitted in a single question box or to select and respond to only one question posed. A multi-part question containing an initial question and a follow-up is the exception to this rule. All questions and answers will be posted on the BidNet website as an Addendum to the RFP at the link below following the deadline for submittal of questions:
https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

Proposal Submittal

The proposal shall be prepared in accordance with the Instructions to Proposers as described in this RFP. Proposers shall submit their proposal and all required forms via the BidNet website at the link below:
https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

Proposals are due by the date and time listed above in the Schedule of Activities. Original proposal surety must be received within 7 calendar days of the proposal due date at the address listed above. If the original proposal surety is not received Proposer will be found non-responsive. Please note: DEN will not accept hand-delivered proposal sureties for this opportunity.

Note: Allow ample time for the electronic submission of your proposal. DEN strongly encourages proposers to review this information prior to starting your submission in addition to starting the submission process at least one business day prior to the proposal due date. DEN will not extend the submission deadline due to any technical issues or outages you may experience.

END OF PART B RFP DETAILS INTRODUCTION

PROPOSAL SUBMITTAL CHECKLIST

The following is a checklist for reference when compiling the proposal submission. **Proposers are strongly encouraged to utilize this checklist in the preparation of their proposal. Failure to include any information listed on this checklist may cause the proposal to be deemed non-responsive.** The documents listed below are required to be submitted in accordance with the submittal instructions contained in the Request for Proposals.

Proposal Narrative

☐ **Complete responses to the Proposal Narrative**

The proposal narrative shall not exceed the number of pages allowed per section. The proposal narrative shall not exceed 38 pages in total (one-page equals to a single side). Failure to submit a proposal within the prescribed page limits by section and in total will cause the proposal to be deemed non-responsive.

Proposal Forms – Completely filled out and signed in the order provided

☐ **Acknowledgment Letter**

Proposer must review all addendums and acknowledge them on the correct form that corresponds to that RFP. It is incumbent upon the Proposer to incorporate the information contained in each addendum into their response. Failure to do so may cause the proposal to be deemed non-responsive.

☐ **Proposer Information Form**

Must be complete in its entirety. No fields may be left blank.

☐ **Diversity and Inclusiveness in City Solicitations Information Request Form**

☐ **Airport Concession Disadvantaged Business Enterprise (ACDBE) Requirements**

Proposer must submit all applicable forms and documents in accordance with Part B, Section I-11. Failure to provide a required ACDBE form/document will result in the proposal being deemed non-responsive.

☐ **Form W-9**

☐ **Percentage Fee Rate**

DEN will accept a percentage rate offer. Proposer shall submit **Attachment 1, Part 7 Percentage Fee Rate form**, along with a separate attachment detailing the proposal, if applicable. If proposing a percentage fee rate Proposer shall reference it on the **Attachment 1, Part 7 Percentage Fee Rate form** on Percentage Fee Rate (written) field and must type "see attached". Failure to include the percentage rate offer, if applicable, will result in the proposal being deemed non-responsive.

(Continued next page)

PROPOSAL SUBMITTAL CHECKLIST (CONTINUED)

☐ **Capital Investments and Funding**

Proposer shall submit in accordance with the instructions to Proposers as described in Section III-3 Proposal Narrative Contents, under Business Plan.

☐ **Funding Source Letter**

Proof of funding must be provided in accordance with paragraph I-14, subsection G of the RFP. All parties to the proposal shall each obtain their respective Funding Source Letters supporting their initial Capital Investment. Funding Source Letters shall confirm both the extension of debt and/or cash on hand to invest as equity. If the Proposer is awarded the opportunity, all parties during the contract negotiation shall provide further supporting documentation related to their respective Capital Investment. For guidance on Capital Investments for Airport Concessions Disadvantaged Business Enterprise (ACDBE), please review the requirements established in the U.S. Department of Transportation Federal Aviation Administration (FAA) Airport Concession Disadvantaged Business Enterprise Joint Venture Guidance (FAA Guidance). The FAA Guidance for ACDBE is available at **https://www.faa.gov/sites/faa.gov/files/about/office_org/headquarters_offices/acr/JVGuideFinal508_0.pdf.** If you are operating as a Joint Venture, please review Section 3 - Joint Venture Review, pages 11 – 17, and specifically pay close attention to sections 3.2 and 3.3 regarding Capital Investments.

☐ **Financial Pro Forma (in Excel format)**

Proposer shall submit in accordance with the instructions to Proposers as described in Section III-3 Proposal Narrative Contents, under Business Plan. Proposer must provide a scanned copy in PDF format and submit in Excel format.

☐ **Disclosure of Legal and Administrative Proceedings and Financial Condition Form and Attachments**

Proposer must provide tabs to separate the different Disclosures from each entity that make up the Joint Venture and utilize tabs to separate the financials from each entity that make up the Joint Venture.

☐ **Financial Statement Form (in Excel format)**

Proposer shall submit in accordance with the instructions to Proposers as described, in Section I-14 Part G. Proposer must submit in Excel format.

☐ **Personal Financial Statement Form (If Applicable)**

Proposer shall submit in accordance with the instructions to Proposers as described, in Section I-14 Part G.

☐ **Concentration of Ownership Affidavit**

Proposer shall submit in accordance with the instructions to Proposers as described, in Section III-5.

Other Required Submittals

☐ **Evidence of Licensing or Franchising Authority**

Include a letter from the brand owner stating that the proposer will be authorized to operate using the brand. Further evidence will be required prior to execution of the concession agreement. If the Proposer's concept(s) are proprietary, the Proposer must disclose that in **Attachment 1, Part 2, Question 11.**

☐ **Proposal Surety**

Proposer must submit in accordance with Section III-4 Proposal Surety. Note: Proposal surety must be received electronically via Bidnet at the time of submittal or within 7 calendar days of proposal due date at the address listed below if submitting an original paper copy. If proposal surety is not received either electronically or via mail delivery Proposer will be found non-responsive. Hard copies of proposals Sureties must be mailed to:

Airport Office Building
ATTN: Sheila Motley, Contract.Procurement@flydenver.com
Denver International Airport
8500 Peña Blvd., Room 8810
Denver, CO 80249-6340

On the outside of the envelope, please note the RFP name and number.

☐ **Certificate of Good Standing**

Proposer must submit in Bidding Entity's name only.

Proposal Submittal

The proposal shall be prepared in accordance with the RFP Document to Proposers of this RFP. Proposers shall submit their proposal and all required forms via the BidNet website at this link:

https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

Proposals are due by **Monday, November 17th, 2025, at 2:00 pm MST**. Original proposal surety must be received within 7 calendar days of proposal due date at the address listed above. If the original proposal surety is not received Proposer will be found non-responsive. Please note: DEN will not accept hand-delivered proposal sureties for this opportunity.

END OF PROPOSAL SUBMITTAL CHECKLIST

I. SCOPE OF WORK

I-1 CONCEPT DESCRIPTION

The selected concessionaire will install, operate and maintain ADA compliant Automated Teller Machines (ATMs) as well as design, build out and operate a banking services branch within the Great Hall at Denver International Airport. ATMs will be installed in compliance with all applicable regulations and standards at identified locations. ATMs will utilize Wi-Fi connections and will not require a wired data connection. ATMs will provide a range of services including cash withdrawals, balance inquiries and fund transfers.

The term of this opportunity is 9 years. The Commerce Hub has established a 0% ACDBE goal for this opportunity. The Division of Small Business Opportunity (DSBO) has established a 25% Minority and Women-Owned Business Enterprise (MWBE) participation goal.

Additional location information is included in space exhibits are attached as Appendix A. The Key Adjacencies Map and information below, represent the concourse level concessions.

I-2 General Conditions:

The selected concessionaire will ensure ATMs are operational 24/7 with minimal downtime. ATMs will be regularly serviced and maintained to ensure optimal performance. The selected concessionaire will conduct routine checks and updates to ensure the security of machines and will provide 24/7 customer support.

The banking services provided will include commercial and personal banking solutions for airport passengers, employees and tenants to include mobile and online banking capabilities. The selected concessionaire will adhere to all regulatory requirements and implement security to protect customer information and transactions.

City is developing a Sustainability Master Plan and encourages Proposer to incorporate sustainability practices in its facility design and operations that are consistent with City's objectives. Concessionaire is responsible for obtaining all required licenses.

I-3 LOCATION INFORMATION

The Bank Branch location for this procurement opportunity is in the Great Hall of the Terminal, MOD 3, Level 6, East side and is planned for 557 square feet total and is subject to change at DEN's discretion to complete the Great Hall Project. The Bank Branch Location will be provided in a white box like condition as further defined in Appendix A. The ATM units will be located throughout the airport, including all three concourses and in the terminal with approximately 17 units.

I-4 Design Guidelines

The following details are provided to assist with preparing your proposal, more detailed information will be provided to the selected proposer for your full design. Tenant will be required to provide including but not limited to:

- The design of the concession space must support the vision of the Colorado Living Room, including being uniquely Colorado, reflective of an outdoor vibe, and compliments the Atrium material.
- The awarded space will be provided in as-is condition. The successful Proposer will, at its own cost, be required to use a DEN approved contractor to demolish the existing conditions as part of the project scope of work.
- The tenant is required to plan queueing for banking services customers and type of queuing proposed.
- The tenant is required to provide and install point of sale (POS) systems including but not limited to network components, conduit, cabling, and data outlets as required.
- Signage for Bank Branch: Tenant to provide infill graphic panel (576 sq. inches, two sided), two blade signs are provided for each Storefront bay, per DEN Standard. Tenant to provide complete sign (1,224 square inches), per DEN Standard.
- Code compliant life safety and fire alarm systems must be provided within concessions spaces and must be coordinated with and interfaced with appropriate DEN life safety and fire alarm systems as needed, including but not limited to emergency communication systems, and visual paging requirements, etc.
- Proposer will provide and install all voice/data/TV connectivity including but not limited to active network components and passive (e.g., cable trays, structured cabling, data outlets and interface boxes as required).
- Proposer will provide access control on all doors with regulatory compliance requirements.
- Proposer will coordinate with DEN Security and utilize DEN Design Standards Manuals and Specifications to ensure a full and functional system.
- Proposer will be required to install any and all necessary ventilation in the premises.
- Tenant is responsible for all work associated with the buildout of this project, including, but not limited to applicable demolition, electrical, mechanical, plumbing, structural, life safety, architectural, and general construction.
- Proposer is encouraged to review the Rules and Regulations Governing DEN to ensure full compliance with DEN's operational requirements.

I-5 Joint Marketing Fund

All DEN concessionaires contribute to the joint marketing fund. The Joint Marketing Fund is used to create awareness about the concessions program and administer the Excellence in Service (EIS) concession incentive program. EIS establishes standards for best-in-class concessions and encourages concessionaires to voluntarily achieve targets and participate in extra assessments that promote the values of DEN and the City and County of Denver.

I-6 Brands, Franchises, and Licensing of Concepts

Proposals based on a branded concept must include a letter from the brand owner certifying the proposer has the authority to use and/or operate the brand at DEN. The successful proposer will be required to document its contractual relationship with the brand owner before City executes any final agreement.

Proposals submitted without the right to use or operate a brand/concept at DEN are non-responsive. Substitution of proposed brands and/or concepts will not be permitted, without prior written approval from City. Substitution of proposed brands and/or concepts without prior written approval of City will result in cancellation of the award of this opportunity and forfeiture of the proposal bond.

I-7 Minimum Qualifications

Proposers must meet the minimum qualifications described below.

1. Minimum Years of Experience Required: Four (4) of the last five (5) years' operating or managing a concept (standalone or airport concession) similar to the opportunity offered in this RFP.
2. Minimum Gross Revenue Required: A minimum average of $5 million per year of gross sales during the minimum years of experience relied on.
3. Financial Capability: Proposing entities must demonstrate the proposer's ability to fund the capital investment and undertake the obligations and operation in this opportunity. Proposers' capital funding source(s) must be greater than its proposed Capital Investment as submitted on the Capital Investments and Funding Form.
4. ACDBE/MWBE Goals: A minimum ACDBE goal of **0%** and a minimum MWBE goal of **25%** (for design of the concession location) apply to this opportunity.

These are minimum qualifications/goals only. In the event the proposing entity is a partnership, joint venture, or other combined legal entity, the aggregate experience and capabilities of the members shall count toward the minimum requirements. If a proposing entity fails to meet these minimum qualifications/goals or fails to provide evidence of a good faith effort to meet these goals, the proposal will be found non-responsive and will not be evaluated further.

I-8 Key Business Terms

Term:	9 Years
Minimum Annual Guarantee (MAG)	**Year 1**: Year 1 MAG will be waived if the concession is open on or before the Required Opening Date, percentage fee only. **Year 2:** Prorated Year 1 Privilege Fee x 85%, (Year 2 will be established as the base MAG, that the location may not fall below) **Subsequent Years:** Privilege Fee x 85%
Proposed Percentage Fee	As proposed on the Percentage Fee Rate Form
Anticipated Minimum Capital Investment:	$1,221 per square foot
Joint Marketing Fund Assessment:	N/A
ACDBE Participation Goal	0%
M/WBE Design Goal	25%

M/WBE Construction Goal	To be determined after the contract has been awarded.
Required Hours:	ATMS: 24 hours a day, 7 days a week, 365 days (366 days in case of a leap year) a year. Bank Branch: 8:30 am – 5:30 pm, Mon. – Fri.
Use of Concession Location	The space associated with this concession opportunity may be used only for the sale of permitted Food and Beverages as stated in the successful proposal, consistent with the Concept Description in this Request for Proposals document and with the Concessions Agreement. The specific concept will be documented in a final executed concession agreement. No advertising or sponsorship is allowed in the Concession Location.
Size of Location	557 square feet
Storage Space	N/A
Restrictions on Use of Concession Location	Proposers are restricted from proposing any uses except as described in the Concept Description in this Request for Proposals document and in the Concessions Agreement. ATMs: Operation of Automatic Teller Machines (ATMs) in the Concourses and Terminal and additional services and locations as may be agreed between Concessionaire and Manager Bank Branch: Operation of a high-quality concession at DIA, offering for sale the following: Provide full banking services to its members and limited financial services to the traveling public and non-members. Location includes an ATM and night-drop commercial depository and when available, installation of at least one self-service, cash recycling machines providing 24/7 capabilities in the branch.
Merchandise Categories	**Major Category**: Services **Minor Category:** Banking Services

END OF SCOPE OF WORK

II. ADMINISTRATION INFORMATION

II -1 City, Airport, and Project Overview

The values of equity, diversity, inclusivity, accessibility, and sustainability are inherent to the City and County of Denver's (the City's or DEN's) strategy to develop and maintain prosperous communities. Accordingly, these values are imbedded into all the City's procurement processes to ensure competitive procurements that offer equitable opportunities for all potential Proposers, including greater contracted and significant participation for historically underutilized multicultural businesses to ensure Denver's long-term economic, social, and environmental health. Through equitable procurements, the City is committed to working to remove barriers and increase access to City contracting opportunities for all historically underutilized and small businesses including those owned by minorities, women, veterans, LGBTQ+, and individuals living with disabilities as well as those in economically distressed or redlined neighborhoods. It is a primary value to promote economic equity by engaging a more diverse and inclusive community of Proposers and contractors, both as prime and sub-contractors to address racial, socioeconomic and gender disparities. Through this promotion of equity, diversity, and inclusion, the City strives to improve opportunities that ensure fair and just access to jobs, housing, education, mobility options, and healthier communities. It is the City's expectation that all successful Proposers demonstrate their commitment to these City values through their procurement responses and post contract and/or lease activities.

Each procurement opportunity is to be approached with ethical and honest behavior. The City will solicit, evaluate, and award contracts based upon the Proposer's alignment with the City's values as it relates to its approach, proven experience, ability to perform work, costs, and pricing. DEN is looking for Proposers that demonstrate a history of equity, diversity, integrity, stewardship, innovation, and humanity. The City is looking for Proposers that have equity, diversity, and inclusion (EDI) embedded in their policies, procedures, practices, initiatives, and exhibit actionable results and ensures that of those that they partner with.

The City's values may be demonstrated through but are not limited to: (a) workforce expansion; (b) utilization of and work with the historically underutilized community, separate from required certified goals; (c) environmental sustainability and (d) EDI and Equal Employment Opportunity (EEO) programs for staff.

DEN plays a unique role as a gateway to the world for the region, our passengers, our communities, and our partners. As such, DEN has a generation of operators, concessionaires, designers, builders, planners, and small businesses that are stronger and more successful because of this work. DEN has also helped build new businesses that have flourished and grown into mature industry leaders. As part of its new Vision 100 plan, DEN intends to expand this legacy by looking to the community that has succeeded in the past at DEN to bring the next generation forward.

In its review of this contract opportunity, DEN believes that the scope of work and firms in the industry lends itself to unique partnership opportunities, and therefore, highly encourages firms that have historically proposed as prime contractors to serve as subcontractors to MWBE firms in their contract with DEN, or to create Joint Ventures with MWBE firms. A focus of this partnership should be for the contracting partners to build a meaningful relationship that is not merely transactional to meet a numerical goal. The objective is to afford the MWBE firm the opportunity to learn from the large contractor, grow its financial capacity, build its generational wealth and its portfolio, and increase its capability to perform new commercially useful functions on future contracts.

In accordance with procedures described herein, you are hereby invited to submit a proposal for the subject project, which is described in the Scope of Work incorporated herein. The proposal must be prepared and submitted in accordance with the requirements and procedures contained in this RFP document and the City's ordinances, rules, policies, and procedures. Compliance with these requirements by the Proposer is mandatory and is a condition of responsiveness. Any failure to satisfy these requirements may, in the City's discretion, disqualify the Proposer. The City shall not be liable for any of the Proposer's expenses associated with its preparation of the proposal or DEN's consideration of it. The Proposer, if selected, shall not include any such expenses as part of its fee for performing the Scope of Work.

II -2 Issuing Office

The City and County of Denver's Department of Aviation (City or DEN), by the Contract Services Department (DEN Contract Services). This RFP is governed by the City's ordinances and Procurement Rules in effect at the time of its issuance. DEN Contract Services is the sole point of contact concerning this RFP. All communication must be done through the Contract Services Department.

II -3 Introduction and Acceptance of RFP Terms

The Proposer, by submitting its proposal, acknowledges that it understands and will agree to DEN's Sample Agreement in the form existing at time of contract, including the City's Required Contract Provisions and corresponding Exhibits, and that the Proposer shall be able to perform as required. Acknowledgement of this condition shall be indicated by the signature of the Proposer or an officer of the Proposer legally authorized to execute contractual obligations on the Proposal Acknowledgement Letter, which is referenced as (**Attachment 1, Part 1**). A submission in response to this RFP acknowledges acceptance by the Proposer of all terms and conditions as set forth herein. The Proposer shall identify clearly and thoroughly any variations between its proposal and this RFP. Failure to do so shall be deemed a waiver of any rights to subsequently modify the terms of performance, except as outlined or specified in this RFP.

Proposers shall undertake a detailed review of the **Sample Agreement** and submit with their proposal a list of all legal issues or proposed modifications which the Proposer would like DEN to review and address, should they be selected as the apparent best Proposer. Proposers are strongly advised to seek legal counsel for advice regarding the Sample Agreement. DEN will not respond to legal questions such as the interpretation of a provision of the Sample Agreement or provide legal advice regarding the Sample Agreement to Proposers. DEN shall assume that the Sample Agreement has been thoroughly reviewed and discussed with legal counsel prior to submission of the Proposal. The City may consider the Proposer's comments in considering whether to select Proposer as the apparent best Proposer.

If the Proposer does not identify any issues or proposed modifications to the Sample Agreement, the City will not consider any proposed revisions received later, if they are selected as apparent best Proposer. Negotiation of any issues or proposed modifications to the Sample

Agreement that were identified in the apparent best Proposer's proposal will be negotiated earnestly and expeditiously by the City and Proposer. If the Proposer causes delay in the negotiation or execution of the awarded agreement beyond the applicable timelines reflected in this RFP (see Process and Timelines above), the City may retain the Proposer's Proposal Bond as liquidated damages, cancel the awarded agreement to the Proposer, and either award the agreement to the next best apparent Proposer, cancel, or re-release the RFP entirely.

DEN reserves the right to modify any term or condition of this Sample Agreement, and to add, delete, or modify terms and conditions, as DEN's interests may require, prior to execution of a final agreement. **The Sample Agreement contains provisions required by Federal, State, and/or City law and policy, and these provisions may not be revised or negotiated.**

II -4 <u>Means of Communication</u>

During the solicitation process for this RFP, all communication between the Contract Services Department and Proposers will be via postings on DEN's Rocky Mountain E-Purchasing System's (BidNet's) website:
https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

The Contract Services Department will post notices, which include, but are not limited to, any modifications to administrative or performance requirements, answers to inquiries received, clarifications to requirements, addenda, and the announcement of the apparent successful Proposer. It is the responsibility of each potential Proposer to monitor the BidNet website regularly in order to be aware of changes, communications and/or addenda to bids.

DEN is not responsible for inaccurate information Proposers obtain from other sources. Please use the DEN BidNet website to obtain solicitation information for the airport.

II -5 <u>Interpretation of Proposal Documents</u>

The Proposer may request, in writing, a clarification or interpretation of any aspect of the RFP documents. Such requests must be made via the Rocky Mountain E-Purchasing System (BidNet) by the due date and time specified in the **Schedule of Activities.** DEN shall post all questions and answers on the BidNet Website following the deadline for submittal of questions as an addendum to the bid. DEN will not accept or respond to oral inquiries except for those made at the Pre-Proposal Conference. The only 'official' responses are those that are posted to the BidNet Website for this RFP.

Note: BidNet limits the number of characters DEN may use to respond to each question. For this reason, do not submit multiple questions within a single question box, as DEN is unable to respond to multiple questions in the space provided. Because of this limitation, DEN reserves the right to reject groups of questions submitted in a single question box or to select and respond to only one question posed.

II -6 <u>Addenda</u>

DEN reserves the right to revise the RFP documents at any time up to the deadline set for submission of the proposals. Any such revision(s) shall be described in an addendum to the RFP and shall be posted on the DEN BidNet Website at the following link:
https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

If DEN determines that an addendum significantly changes the Scope of Work, the deadline for submitting the proposals may be postponed by the number of days that DEN determines will allow Proposers sufficient time to revise their proposals. Any new submittal deadline date for delivering proposals to DEN shall be included in the addendum.

Proposers must acknowledge in the proposal submission that they received all addenda to the proposal documents (**see Attachment 1, Part 1**). Failure to acknowledge receipt of addenda may disqualify the proposal.

II -7 DEN Website

It shall be conclusively presumed that the Proposer did, before submitting a proposal and prior to the final proposal deadline, read all addenda, posted decisions, and other information items relevant to the RFP which appeared on the DEN BidNet Website. Proposer may also contact the DEN Contract Administrator, Steven Joyce, by email at contract.procurement@flydenver.com to confirm all posted information.

Please visit the DEN BidNet Website at the following link which contains such services and information as:
https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

a. Advertisements for RFx and IFB opportunities
b. Status of RFx and IFB opportunities
c. Addendums including vendor questions and responses
d. Plan holder's/Document Taker's list
e. Award information

II -8 Withdrawal of Proposal

A Proposer may withdraw its proposal by submitting to DEN a written request signed by the Proposer's authorized representative. The withdrawal of a proposal does not prejudice the right of the Proposer to submit future proposals.

II -9 Rights of DEN

DEN reserves the right to cancel or modify this RFP at any time and to reject any or all proposals for any reason or for no reason. This RFP is an open and equitable invitation for proposals, and each proposal constitutes an offer to contract that DEN may consider in its sole and absolute discretion. Any errors or omissions in a proposal may result in the rejection and disqualification of the entire proposal. Errors, omissions, and other acts that may result in proposal rejection and disqualification include, but are not limited to, failure to strictly comply with the RFP requirements or any applicable ordinances, rules, or policies; the submission of any inaccurate or false information; any improper communications or collusion involving Proposers; default or termination for cause of any public or private contracts within the past five years; delinquent arrearages owed to DEN; and failure to submit proof of licensing or franchise authority and any related exclusivity requirements.

Notwithstanding the broad rights reserved to DEN to reject and disqualify any or all proposals, DEN may waive any immaterial deficiencies in proposals and may allow Proposers to cure any such deficiencies if an opportunity to cure is determined by DEN to be in DEN's best interests. If given an opportunity to cure, Proposers will be notified of the allotted time to correct the identified deficiency; failure to correct the deficiency in the time allotted may result in proposals being deemed non-responsive and disqualified. DEN's waiver of an immaterial deficiency will in no way modify the RFP or excuse Proposers from full compliance with all RFP specifications. DEN may exercise the foregoing rights at any time without notice and without any liability whatsoever to any Proposer or other party. By responding to this RFP, each Proposer is deemed to accept and agree to all of these terms and conditions and to waive any rights to challenge DEN's determinations regarding proposal deficiencies in accordance with this section.

During the evaluation process, DEN reserves the right to request additional information from any Proposer, to seek clarification of information provided, to conduct its own due diligence with respect to any Proposer or proposal, including self-guided tours of a Proposer's other operations, reference checks, credit checks, health department checks, or any other investigations deemed necessary.

II -10 Confidentiality of Records

Documents submitted to or created by DEN in response to this RFP are subject to the Colorado Open Records Act (C.R.S. § 24-72-201 et seq.) (CORA). All documents related to this RFP, including proposals submitted and documents created by DEN are protected under CORA because they are confidential and privileged, and they may not be inspected until an award is made or the solicitation is ended by DEN. An award is made when DEN formally executes a contract resulting from this solicitation. A solicitation is ended when the Chief Executive Officer (CEO) declares the solicitation ended.

Proposals will be opened to avoid disclosure of contents to competing Proposers during the process of negotiating and making an award. A register of Proposers will be prepared and made available to the public after the proposals have been submitted. This register will be in no particular order and does not constitute or reflect any assessment of the proposals.

CORA provides certain information deemed confidential, including commercial and financial data or privileged, proprietary, copyrighted information, or which describes trade secrets, is exempt from public disclosure. To designate portions of the RFP as confidential, Proposer must:

1. Mark the cover page as follows: "This response to the Request for Proposal includes trade secrets or other proprietary data."
2. Mark each sheet or data to be restricted with the following: "Confidential: Use or disclosure of data contained on this sheet is subject to the restriction on the cover page of this response to the Request for Proposal."
3. If necessary, you must provide a separate electronic file named as such with a redacted copy of your entire response to this RFP. Proposer is responsible for properly and adequately redacting any data which Proposer believes is protected under CORA. If entire pages or sections are removed, a page indicating that the page or section has been redacted must represent the redacted pages. Failure to provide a separate electronic file with a redacted copy may result in disclosure of an unredacted copy under CORA.

4. Provide a written explanation of the basis under which each redacted item has been deemed confidential, making reference to the exception under CORA and/or any other law restricting disclosure.

A request for non-disclosure of any part of your proposal under the guidelines stated above does not guarantee it is not subject to disclosure under CORA. The Proposer's opinion as to what constitutes confidential or proprietary information is not binding on DEN in responding to a CORA request. Where a request is made to inspect or copy proposals or other documents related to this opportunity, DEN has sole discretion to determine whether information or records must be provided under CORA, and the City and DEN shall not be liable if it provides responsive records that the Proposer contends are protected under CORA and DEN disagrees.

In the event of a request to DEN for disclosure of such information, time, and circumstances permitting, DEN will make a good faith effort to advise Proposers of such request and provide an opportunity to identify and object to disclosure of any material Proposers consider confidential, proprietary, or otherwise exempt from disclosure pursuant to CORA. In the event Proposers objects to disclosure, DEN, in its sole and absolute discretion, or Proposer may file an application to the Denver District Court for a determination of whether disclosure is required or exempted as provided for in CORA. In the event a lawsuit to compel disclosure is filed prior to DEN's application, DEN will tender all such requested material to the court for judicial determination and Proposer may intervene if it objects to production of the material. Proposer agrees to defend, indemnify, and hold harmless DEN, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of a Proposer's objection to disclosure including prompt reimbursement to DEN of all reasonable attorney fees, costs, and damages DEN may incur directly or may be ordered to pay by such court if DEN withheld information or records at Proposer's request.

II -11 <u>Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation</u>

ACDBE Program at Denver International Airport

The City is committed to ensuring that Airport Concession Disadvantaged Business Enterprises (ACDBEs), as defined in 49 CFR Part 23, have maximum opportunity to participate in the performance of concession opportunities at Denver International Airport (DEN). DEN has developed and implemented an ACDBE Program in compliance with 49 CFR Part 23. As stated in DEN's Policy Statement:

- To ensure nondiscrimination in the award and administration of opportunities for concessions at DEN;
- To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- To ensure that DEN's ACDBE Program is narrowly tailored in accordance with the Regulations and other applicable law;
- To ensure that only firms that fully meet the eligibility requirements of the Regulations are permitted to participate as ACDBEs at DEN;
- To help remove barriers to the participation of ACDBEs in opportunities for concessions at DEN; and
- To provide appropriate flexibility in establishing and providing opportunities for ACDBEs at DEN.

ACDBE Goal Requirement

In accordance with 49 CFR Part 23, a concession-specific ACDBE goal of 0% of estimated annual gross revenue has been established for this concession opportunity. This determination reflects the outcome of the goal-setting process and consultation requirements outlined in §23.25 and §23.43. Proposers are strongly encouraged to engage certified ACDBE firms as partners, sub concessionaires, and/or suppliers where feasible, in alignment with the race-neutral objectives of the ACDBE program (§23.25(e), §23.26). Proposers must disclose any ACDBE participation and submit all relevant documentation as specified in the submittal requirements. This ensures transparency and supports the airport's ongoing efforts to foster small business inclusion in concession activities (§23.26). These efforts should focus on engaging certified ACDBEs through the purchase of goods and services relevant to the concession.

It is DEN's policy to ensure that the selected Proposer complies with the ACDBE regulation, 49 CFR Part 23, throughout the term of the contract. In accordance with the ACDBE Program, the selected Proposer will be required to cooperate with DEN and to provide all information requested by DEN in order to allow for the effective monitoring of the selected Proposer's ACDBE participation in the contract.

- Selected Proposer(s) agrees that it shall make good faith efforts to use a process that includes ACDBE participation throughout the term of the contract.
- Selected Proposer(s) agrees that it shall submit a monthly report, in a form acceptable to DEN, describing total gross receipts for the contract and for each ACDBE participant.
- Selected Proposer(s) shall have no right to terminate an ACDBE without DEN's prior written consent. If an ACDBE is terminated after DEN has consented or because of the ACDBE's default, then the selected Proposer(s) must make a good faith effort, in accordance with the requirements of 49 CFR section 23.25(e)(1)(iii) and (iv), and 49 CFR section 26.53, to find another ACDBE to meet the stated ACDBE goal. Any substituted ACDBE must be certified in the NAICS code appropriate for the trade of the contract.
- Failure to comply with the ACDBE Regulations, including DEN's ACDBE Program and monitoring procedures, shall be a default under the selected Proposer(s) contract and shall entitle DEN to exercise any contractual or legal remedies, up to and including termination of the contract.

Meeting ACDBE Goal

For this opportunity, proposers will meet the ACDBE participation commitment through the purchase of goods and/or services from firms currently ACDBE certified with the City and County of Denver (CCD) (49 CFR 23.55(h)), which requires proof of ACDBE certification by the CUCP pursuant to 49 CFR Part 23:

Any firm listed as an ACDBE participant for this opportunity must be certified by the State of Colorado with the six-digit NAICS code directly related to the scope of service the firm is performing (e.g., the NAICS codes for the appropriate food/beverage business for food/beverage opportunity, NAICS codes for the appropriate retail business if retail opportunity, etc.).

A list of ACDBE certified vendors can be found at: The Colorado Unified Certification Program Directory .

The ACDBE participation proposed on the ACDBE Commitment Form shall constitute a binding obligation upon the successful proposer and will be incorporated into any final executed contract(s). In accordance with 49 CFR Parts 23 and 26, this commitment will be subject to ongoing monitoring and enforcement throughout the duration of the contract to ensure compliance with federal regulations. As an express condition of contract performance, the proposer agrees to comply fully with all applicable provisions of 49 CFR Part 23 and Part 26, including but not limited to commercially useful function (CUF) requirements, good faith efforts, and any modifications to ACDBE participation, which must be pre-approved by DEN.

Submittal Requirements

The successful Proposer will be responsible for submitting the ACDBE forms and information below with its Proposal. Forms may be found at https://www.flydenver.com/business-and-community/acdbe/#formsdoc and in Attachment 1, Part 4 ACDBE *(and M/WBE)* Forms.

- **ACDBE Commitment Form (required with all proposals)**
- ACDBE Letter of Intent Form *(only if ACDBEs are being used)*
- Proof of Current ACDBE Certification in the appropriate NAICS Code *(only if ACDBEs are being used)*

Review Process

DEN will conduct a cursory review of ACDBE submittal requirements for all proposals. This review will verify that all required ACDBE forms have been submitted and that basic requirements, such as ACDBE certification in applicable NAICS codes and/or the submission of a formal JV agreement, have been met.

Other Resources

- Certification applications may be obtained at: https://denver.mwdbe.com/
- Questions regarding any ACDBE questions that arise concerning this specific concession opportunity should be directed via email to Revenue-Procurement@flydenver.com.
- General questions regarding the ACDBE Program at DEN can be directed to DEN-ACDBE@flydenver.com
- For more information on the ACDBE program at DEN, please visit https://www.flydenver.com/business-and-community/acdbe/

II -12 <u>Minority Business Enterprise and Women Business Enterprise Participation</u>

Pursuant to Article III, of Chapter 28 of the Denver Revised Municipal Code (D.R.M.C.) the Division of Small Business Opportunity (DSBO) participation requirements for this project are:

Design: 25% MWBE

Construction: To be established after substantial completion of the Design phase and as a requirement to receive a City-issued Notice to Proceed.

The participation requirement must be met with certified firms, §§ 28-62, 28-66, D.R.M.C., found in the Small Business Certification and Contract Management System, or through the demonstration of a sufficient good faith effort. §§ 28-60, 28-64, D.R.M.C. The project is subject to additional requirements pursuant to the D.R.M.C.

Section - Minority and Women-Owned Business Enterprise (MWBE) Program Requirements

The following information serves as a notice to proposers regarding MWBE program and general DSBO requirements; DSBO requirements do not constitute conditions of proposal responsiveness. Failure to adhere to the DSBO requirements may prevent the awarded Proposer(s) from proceeding with the project.

Design (Initial Design of the Premises): If DSBO has established a participation goal on the Design portion of the project at the time of solicitation, the selected Proposer/Concessionaire will be required to provide DSBO forms, entitled "Commitment to MWBE Participation" and "Letter of Intent" (LOI). The LOI evidences Concessionaire/Proposer's understanding that they and/or their selected Design firm will enter into a contractual relationship with the listed MWBE firm(s). A separate LOI is required for each MWBE subcontractor, subconsultant, and/or supplier at all tiers. The collective LOI amounts must be consistent with the total committed MWBE participation percentage stated on the Commitment to MWBE Participation form. The completed forms must be received and approved by DSBO. The Design portion of the project under the Concessionaire/Proposer's agreement with the City will be monitored for DSBO program compliance throughout the duration of the project until completion.

If DSBO has established a "No Program" determination on project's Design portion, no additional DSBO review is required for this portion of the project. The project's construction phase will be assessed for small business program participation goals after substantial completion of Design. Please see the next section.

Construction (Initial Construction and Buildout of the Premises): After the substantial completion of Design and **as a requirement to receive a Notice to Proceed** issued by the City, the Concessionaire must contact DSBO to establish an Initial Construction and Buildout goal. **Contact should be made in the form of an email to** goals@denvergov.org **with a copy to** DSBO@flydenver.com. If a DSBO program participation goal is established, the Concessionaire shall provide completed DSBO forms, entitled "Commitment to MWBE Participation" and " Letter of Intent" (LOI). The LOI evidences Concessionaire's understanding that they will enter into a contractual relationship with the listed MWBE firm or that Concessionaire's General Contractor, subcontractor(s), subconsultant(s), and/or supplier(s) will do so. A separate LOI is required for each MWBE subcontractor, subconsultant, and/or supplier at all tiers. The collective LOI amounts must be consistent with the total committed MWBE participation percentage stated on the Commitment to MWBE Participation form. The Construction portion will be monitored for DSBO program compliance throughout the duration of the project until completion.

Refurbishment and/or Reconstruction: Future design and construction work under the executed Agreement, including but not limited to the Mid-Term Refurbishment, will be subject to new MWBE goal(s) established by DSBO. Upon determination of the scope of work to be performed for any refurbishment or other future design and/or construction amounting to over $250,000.00, the Concessionaire must contact DSBO, to request an MWBE participation goal on the refurbishment and/or reconstruction (design and construction goal requests should be submitted separately). Design and Construction projects estimated at $249,999 or less are exempt but must also be submitted to DSBO to receive a formal "No Program" determination documentation. Design and Construction projects over $250,000 will be subject to formal DSBO program analysis. Contact should be made in the form of an email to goals@denvergov.org with a copy to DSBO@flydenver.com.

For additional information regarding DSBO requirements including DSBO Ordinance and Rules and Regulations please review DSBO website. Proposer is encouraged to contract the procuring agency with specific questions related to compliance therewith, who will coordinate with DSBO to reply to Proposer's questions.

II -13 Certification of Independent Proposal Determination

By submission of this proposal, each Proposer, and in the case of a joint proposal, each party thereto, certified, that, in connection with this procurement:

1. Prices and specific work processes in this proposal have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor, or with any party contracted by DEN to design and/or manage all or part of the program or work of which this RFP is a part;
2. Unless otherwise required by law, the prices quoted and specific work processes described in this proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly to any other Proposer or to any competitor or to any party contracted by DEN to design and/or manage all or part of the program or work of which this RFP is a part; and
3. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

Further, each person signing **Attachment 1, Part 1 Proposal Acknowledgement Letter**, for this proposal certified that:

4. They are the person in the Proposer's organization responsible for the decision as to the prices being offered herein and that they have not participated, and will not participate, in any action contrary to subsection (1) through (3) above; or
5. He / She is not the person in the Proposer's organization responsible for the decision as to the prices being offered herein but that they have been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to subsections (1) through (3), above, and as their agent does hereby so certify; and they have not participated, and will not participate, in any action contrary to subsections (1) through (3), above.

A proposal will not be considered for award where subsections (1), (3), (4) or (5), above, have been deleted or modified. Where (2) above has been deleted or modified, the proposal will not be considered for award unless the Proposer furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the CEO, or its designee, determines that such disclosure was not made for the purpose of restricting competition.

II -14 Disclosure of Legal and Administrative Proceedings and Financial Condition

B. The Proposer shall submit (at time of submittal) a statement which shall disclose all legal or administrative proceedings that involve a civil claim in excess of Fifty Thousand Dollars ($50,000) in which the Proposer, its principals or key personnel were a party in the last five years. The Proposer shall include in the statement:

   1. The caption of the action naming all parties;
   2. The case number, jurisdiction and the date the action was filed;
   3. A brief description of the action, the amount of the claim and whether the action involved performance under any public or private construction contract; and
   4. The outcome or disposition of the action.

C. The Proposer shall submit (at time of submittal) a statement which shall disclose whether Proposer has filed for protection under the laws of the U. S. Bankruptcy Code within the last ten (10) years.

D. The Proposer shall submit (at time of submittal) a statement as to whether the Proposer, its principals, or key employees presently, or in the past, are or have been involved in any debarment or suspension proceedings. Please include a description of any proceedings which prohibited or limited the Proposer from bidding or entering into any contract with any federal, state or local government entity. Include a brief description of the reason(s) for such action having been taken, the effective dates thereof and the governmental agency.

   If the Proposer is a partnership or JV, please include a statement disclosing the information listed in subparagraph A and B, above, for each partner or JV. If the Proposer is fifty percent (50%) or greater owned by another entity or individual, please include a statement disclosing the above information for such entity or individual.

E. The Proposer shall submit (at time of submittal) a statement as to whether the Proposer, its principals or key employees have been convicted of any crime related embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, fraud, unfair trade practices, violation of state of federal antitrust statutes, or other law indicating a lack of business integrity or business honesty or have been convicted of any other felony in any jurisdiction within the last five (5) years. Include the current status of any such principal or key employees.

F. The Proposer shall submit (at time of submittal) its Dun & Bradstreet identification number. If the Proposer is a partnership or JV, it must submit the Dun & Bradstreet identification number for each partner of a JV.

G. If the Proposer is a publicly held company, it shall submit (at the time of submittal) a list of any holders of ten percent (10%) or more of its stock.

H. Proposers must also submit the following for the bidding entity. In addition, each company or entity that makes up the JV shall disclose their respective company's information for each item listed below. If any financial statements are in a language other than English, the

Proposer shall also provide a translated version of any foreign language financial statements into English with their proposal.

1. Provide full financial statements for the most recent fiscal year and provide a summary of financial statements for the most recent three fiscal years (see **Attachment 1, Proposal Forms, Part 11 Financial Statement Form**). Independently audited financial statements are strongly preferred. In the event independently audited financial statements are not available, all financial statements must be certified by the responder's Controller or an Officer of the company. If any entity is newly formed and does not have financial statements, then that entity must provide a combination of the newly formed entity's financial statements along with financial statements from its parent company. If the Proposer is an individual, attach a copy of the Proposer's current signed and certified personal financial statement (see attached **Attachment 1, Proposal Forms, Part 12 Personal Financial Statement Form**) and a copy of their most recent federal income tax return with social security number(s) redacted.

2. Attach information demonstrating the Proposer's ability to fund the work required in the Scope of Work. (For example, letter of commitment for financing from a bank or other lender, funding sources, guarantors, investors, cash available, line of credit, etc., as referenced in **Attachment 1, Proposal Forms, Part 8 Funding Source Letter**). The Funding Source Letter must include the RFP number and name.

II -15 <u>Insurance Requirements</u>

Proposer shall adhere to all insurance requirements stated in **Attachment 2, Insurance Certification,** which are attached hereto and incorporated herein by reference. The official repository for Certificates of Insurance (COIs) within DEN is PINS Advantage. Upon contract initiation, an email will be sent to the Commercial Operator with instructions for uploading COIs to ensure insurance compliance. The City reserves the right to modify submission requirements at any time, including the use of third-party software and/or services, which may involve an additional fee to the Commercial Operator.

II -16 <u>Governmental Immunity</u>

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

II -17 <u>Security</u>

After receiving an executed contract, the Proposer shall be deemed a Contractor of DEN. The Contractor (or subcontractor) requiring access to the Controlled Area, Sterile Area or Secured Area shall become a "Participant" in the Airport Security Program and remain in good standing in order to retain Airport Security privileges.

Participant guidelines are outlined in DEN Rules and Regulations Part 20. A Contractor must be sponsored by an Air Carrier, Tenant or by the City. Once a Contractor company has been sponsored, they must designate an Authorized Signatory.

The sponsorship establishes that a Contractor (or subcontractor) has legitimate business at the Airport. All construction Contractors must submit a Participant Sponsorship form signed by their sponsor. A company sponsoring a Participant shall immediately notify Airport Security when any sponsorship is terminated.

A subcontractor company working under its own entity must be sponsored by a Contractor company. The subcontracting company must designate its own Authorized Signatory(ies).

Each Participant shall designate an Authorized Signatory to ensure the Participant's compliance with the Airport Security Program and act as the point of contact between the Participant and Airport Security. The Authorized Signatory shall be designated in writing to Airport Security by the Participant.

The Authorized Signatory is responsible for signing and verifying all information on the DEN Fingerprinting and Badging applications. All submitted applications must be an original. It is the Authorized Signatory's responsibility to ensure that Airport Security maintains valid contact information. The Authorized Signatory must maintain a current and valid Airport Identification Badge (ID Badge).

The security status of the Airport is subject to change without notice. Should the security status of the Airport change at any time during the term of the Contract, a written notice shall be issued to the Contractor, detailing all applicable security modifications. The Contractor must take immediate steps to comply with those security modifications.

The Contractor shall return to DEN, upon Contract completion or termination, or upon demand by DEN, all access keys and Airport ID Badges issued to it by DEN to Controlled Areas, Sterile Areas, or Secured Areas of the Airport. If the Contractor fails to return any such Airport ID Badge(s) or Airport Security Key(s) at Contract completion or termination or upon demand by the DEN, the Contractor shall be liable to the DEN for all DEN's costs, including the DEN's labor costs for re-coring doors and any other work which is required to prevent compromise of any Airport Security system. In order to collect such costs hereunder, the DEN may withhold funds in such amount from any amounts due and payable to the Contractor under the Contract.

Airport Security must be immediately notified if an Airport ID badge or security key is lost or stolen and must be notified immediately upon the termination of an individual's employment. A fee shall be assessed against any employer who fails to return an Airport ID badge or security keys upon the termination of an individual's employment, transfer, or completion of a project or contract. An additional fee may be requested to cover the administrative cost of processing a lost badge or security key.

II -18 <u>Airport Identification (ID) Badge Requirements</u>

All individuals employed at the Airport with Secured Area access, or working in the Terminal, Concourses or Parking and Ground Transportation facilities, must obtain an Airport ID Badge. Airport ID Badges will be issued by Airport Security. All Airport ID Badges shall be and remain the property of the Airport. The Airport ID Badge must be surrendered on demand to Airport Operations and/or a Contract Security Guard. An individual employed by more than one (1) company, or changing employers, must obtain an Airport ID Badge for each company. Badge color indicates general areas and levels of authorization in relationship with direct support of an individual's job function. Badge color does not determine access. The respective classes of Airport ID Badges, indicated by badge color and associated driving endorsement icon, describe driving privileges in direct correlation with job function.

The individual must complete an application, on a form prepared and currently approved by Airport Security. Two (2) valid forms of identification must be presented with the application, one of which must be a government-issued photo identification. The second form of identification must verify proof of citizenship (i.e., birth certificate or legal residency with work authorization). All information regarding the individual's name, age, gender, and other vital statistics on both forms of identification must be consistent and verifiable.

A Denver International Airport Fingerprinting and Badge Application, Security Threat Assessment (STA) and Criminal History Record Check (CHRC) must be completed for everyone requesting an Airport ID Badge. Denver International Airport Fingerprinting and Badge Applications are available from the Airport Security Office. Allow adequate time for processing of the STA and CHRC.

The individual must view a training film on DEN Rules and Regulations as they pertain to overall security and pass a corresponding test to assure understanding of the Rules and Regulations.

If the individual requests driver authorization, a valid driver's license must be presented, and the individual must view a training film on DEN Rules and Regulations as they pertain to overall Movement of Vehicles in the Secured Area and pass a corresponding test to assure understanding of the Rules and Regulations.

A construction orientation specific to the project must be conducted. A designated time for this session must be coordinated with Planning and Development and Airport Operations.

A lost or stolen Airport ID Badge must be immediately reported to Airport Security. For a replacement Airport ID Badge, a new Denver International Airport Fingerprinting and Badge Application must be completed and signed by the Company(s) Authorized Signatory. A non-refundable fee must be paid for a replacement Airport ID Badge.

If for any reason the Airport ID Badge becomes inoperable or damaged, the Airport ID Badge holder shall return that badge to Airport Security, and a replacement badge will be issued. A replacement fee may be assessed should the damage be attributable to the negligence of the employee who was issued the badge.

When an employee is terminated, the Contractor company shall immediately notify Airport Security. This notification must be followed by the return of the Airport ID Badge and written confirmation of this information. The Contractor company must recover Airport ID Badges from individuals whose employment at the Airport has been terminated. The Contractor company shall notify Airport Security in writing when a subcontractor is no longer under the Contractor company's sponsorship. All Airport ID Badges must be returned to Airport Security.

An employee possessing a valid Airport ID Badge may escort other individuals into the Secured Area(s) under the conditions listed in the DEN Rules and Regulations Part 20. If the project is extended, DEN's Project Manager must submit a new Sponsorship Form with a new expiration date. This can be accomplished thirty (30) calendar days prior to expiration of the Airport ID Badge. An application revision must be completed for each employee still required on the project if the badges have expired.

II -19 Background Checks

Every individual requesting an Airport ID Badge must complete a CHRC and a STA for unescorted access to the Sterile and Secured Area(s).

If an applicant has been convicted of a crime or found guilty by reason of insanity or has been arrested for any of the disqualifying crimes or is awaiting judicial proceedings, they may be ineligible to obtain an Airport ID Badge. A list of the disqualifying crimes may be found in 49 C.F.R. 1542.209.

II -20 Vehicles in the Secured Area

All Contractor employees who are required to drive in the Sterile and Secured Area(s) unescorted to perform their jobs are required to complete a training film on DEN Rules and Regulations as they pertain to overall movement of vehicles in the Sterile and Secured Area(s) and pass a corresponding test to assure understanding of the DEN Rules and Regulations.

All unescorted vehicles must display a current Airport Contractor Vehicle Permit (Permit). Permits are available from Airport Security. An application form must be completed, signed by an Authorized Signatory, and all applicable permit fees must be paid for each Permit requested, and it must be signed by the Authorized Signatory. A Permit is required for each state licensed vehicle, and the vehicle Permit is not transferable.

The Contractor shall purchase and maintain in force a minimum of Ten Million Dollars ($10,000,000.00) in combined, single-limit automobile insurance for bodily injury and property damage liability per accident or occurrence.

II -21 Violations

Any Contractor employer not regulated under 49 C.F.R. Part 1544, Aircraft Operator, will be responsible for payment or reimbursement to DEN of any Civil Penalties imposed by the Transportation Security Administration (TSA) for individual security violations by their employees and/or subcontractor employees for violations under 49 C.F.R. Part 1542.

A Contractor employee may be personally subject to Civil Penalties imposed by TSA for individual security violations committed by Contractor employees and/or subcontractor employees under 49 C.F.R Part 1542.

Everyone who is issued an Airport ID Badge shall comply with all Security Advisories, Rules and Regulations Governing the DEN Rules and Regulations, the CEO Directives and the Denver International Airport Standard Policies and Procedures regarding Airport Safety, Security and Operations. The failure of any individual to comply with such Security Advisories, rules, and directives, etc. will result in the issuance of a Violation Notice and may result in the assessment of a Federal Civil Penalty and/or the denial, suspension, or revocation of their Airport ID Badges.

II -22 <u>Diversity and Inclusivity in City Solicitations</u>

Each Proposer shall, as a condition of responsiveness to this solicitation, complete and return the "Diversity and Inclusiveness in City Solicitations Information Request Form" with their proposal. Using the "Diversity and Inclusiveness in City Solicitations Information Request Form," please state whether your firm has a diversity and inclusiveness program for employment and retention, procurement and supply chain activities, or customer service, and provide the additional information requested on the form. The information provided on the "Diversity and Inclusiveness in City Solicitations Information Request Form" will provide an opportunity for DEN contractors to describe their own diversity and inclusiveness practices. Proposers are not expected to conduct intrusive examinations of its employees, managers, subcontractors, or business partners in order to describe diversity and inclusiveness measures. Rather, DEN simply seeks a description of the Proposer's current practices, if any.

Diversity and Inclusiveness information provided by Proposers in response to DEN solicitations for services or goods will be collated, analyzed, and made available in reports consistent with the Mayor's Executive Order No. 101. However, no personally identifiable information provided by or obtained from Proposers will be in such reports.

For DEN to consider a proposal, Proposers must complete the electronic version of the Diversity and Inclusiveness in City Solicitations Form – then **<u>save an electronic copy of the completed form and include the electronic copy as part of its proposal</u>**. **<u>A proposal or response to a solicitation by a Proposer that does not include this completed form shall be deemed non-responsive.</u>** The form is found at:

https://us.openforms.com/Form/57f3a8ea-39b7-4115-be17-1770f38d3cf6

The Diversity and Inclusiveness Form is separate from the requirements established by the Division of Small Business Opportunity (DSBO) and must always be completed – regardless of whether there are any DSBO goals assigned to this project.

II -23 <u>Wage Ordinance</u>

The services being requested in this RFP may involve services that are covered pursuant to Article IV of Chapter 20, D.R.M.C., which is designed to address the issue of wage equity and cost of living affordability in the City & County of Denver. Proposer agrees that any contract with DEN shall include a requirement that Proposer will comply with the provisions of D.R.M.C. relating to living, minimum and prevailing wages, including, but not limited to, paying all covered workers no less than the City Minimum Wage for all covered services rendered in connection with the resulting contract. Additionally, Proposer agrees that the contract shall require compliance with all current and future federal and state laws and City ordinances.

II -24 <u>Conflicts of Interest</u>

An organizational conflict of interest occurs when, because of the relationship between two organizations or one organization (including its subsidiaries or related organizations) performing or proposing for multiple scopes of work, there is or could be in the future a lack of impartiality, impaired objectivity, an unfair advantage over one or more firms competing for the work, or a financial or other interest in other scopes of work.

If the Submitter currently has existing contracts with the City for work at DEN, including any contracts held by Proposer's parent, affiliates, or subsidiary corporations, this could pose a conflict of interest and could place your Proposal in jeopardy of being rejected for conflict of interest. If the Proposer believes a conflict of interest may exist but can be mitigated, please describe the steps it proposes that it will take to mitigate the conflict.

If the City identifies a conflict of interest that is not identified by the Proposer in its response, the City may find the Proposer to be non-responsive. If the City identifies a conflict during the course of the contract and the Proposer failed to disclose such conflict, the City may terminate the contract for cause or convenience at the discretion of the City.

II -25 Title VI Solicitation Notice

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

END OF ADMINISTRATION INFORMATION

III. PREPARATION OF PROPOSAL

III-Preparation of Proposal - Proposal Forms

The proposal shall be submitted in accordance with and meet all requirements set forth in the Proposal Forms, which are attached hereto. The Proposer shall fill in all blank spaces in the applicable Proposal Forms and initial all interlineations, alterations, or erasures in its proposal. The Proposer shall not delete, modify, or supplement the printed matter on the forms which are included in **Attachment 1, Proposal Forms** or make substitutions thereon. The Proposer's completed Proposal Forms and Proposal Narrative shall constitute its proposal. It shall be conclusively presumed that the Proposer did, before submitting a proposal, read all addenda, posted decisions and other information items relevant to the RFP that appeared on the DEN Website.

An authorized representative of the Proposer shall execute **Attachment 1, Part 1 of its Proposal Forms – the Proposal Acknowledgment Letter.**

- If the Proposer is a corporation, it shall upon execution of the Contract provide a certificate from the Secretary of State, showing that it is qualified to do business in the State of Colorado. Please call the Secretary of State for Colorado at (303) 894-2200 for information on obtaining such certification.

- If the Proposer is a partnership, the Proposer must include with its proposal evidence satisfactory to DEN that the partner signing the proposal has the authority to do so.

- If the Proposer is a JV, the Proposer shall submit with its proposal a notarized copy of the JV agreement. That agreement must describe the scope and amount of work each participant will perform and contain a provision that each participant will be jointly and severally liable to DEN for completing all the work and to third parties for all duties, obligations and liabilities which arise out of the JV's performance of the work.

III-2 Preparation of Proposal - Proposal Narrative

A. GENERAL

The Proposer shall prepare its proposal in the format described below and must ensure that each page of its proposal is identified with the:

- Contract Name
- RFP #
- Proposer's name
- Page number

B. FORMAT

Proposals shall meet the following formatting requirements:

- Proposals shall be printable on 8 ½" x 11" paper.
- Proposals can include one floorplan that may be printable on 11" x 17" paper, but this floor plan must fit within the maximum page limit.
- Proposals shall use the font type and size of Times New Roman 12 point.

- Proposals shall be in a format and sequencing commensurate with the RFP (in the order the Narrative Content is listed). DEN requires the **Part 4 ACDBE/MWBE Forms and Part 10 Disclosure of Legal and Administrative Proceedings and Financial Condition** to be extracted from the proposal and submitted as separate documents in BidNet.
- Proposals shall include a table of contents (does not count toward the page limit).
- Proposals shall include tabbed or bookmarked sections as appropriate.
- The proposal narrative shall not exceed the number of pages allowed per section.
- The proposal narrative shall not exceed 38 pages. This page limit does not include the cover letter, table of contents, resumes, additional pages (which must be separate) with comments or proposed changes to the Sample Agreement, additional pages to describe disclosure of legal and administrative proceedings and financial condition, tabs, or DEN-required forms.
- Resumes shall be limited to one (1) page per individual. Please attach resumes to the end of your proposal after additional information.
- Menus or product lists of up to two pages per concept may be attached to the end of your proposal as well as one additional page for a kid's menu per concept may be attached and do not count toward the page limit. Menus and product lists may deviate from font and size requirements but must be printable on 8 ½" x 11" paper. No information other than menu items, products, and prices may be included on these pages.
- Videos are not permitted.
- Proposals which contain unnecessarily elaborate artwork are discouraged.
- Proposal shall be submitted as an electronic document in an un-secured/un-password protected Adobe Acrobat (.pdf) format. If applicable, Proposer must provide a separate upload in BidNet with a redacted copy of their RFP.

III-3 Proposal Narrative Contents

This section describes the required contents for your proposal. The proposal is to be organized as follows:

Evaluation Criteria		Maximum # of pages	Evaluation Weights
1.	Cover Letter	1	N/A
2.	DEN Equity, Diversity, and Inclusion Plan	N/A	15%
3.	Qualifications and Experience	4	10%
4.	Concept, Menu/Product, and Pricing	11	25%
5.	Design & Construction	8	10%
6.	Operations and Management	11	20%
7.	Business Plan and Financial Offer	3	20%
Total		**38**	**100%**

1. Cover Letter

   The Proposer shall prepare a cover letter, not exceeding one (1) page in length, which summarizes the key points in the proposal. It shall include the full name of the company or JV members and all proposed subconsultants. If the Proposer is made up of more than one (1) company, the legal relationship between those companies must be described. The cover letter must include a statement committing the availability of the key personnel identified in the Qualifications and Experience section listed below, to perform the work for the duration of the Contract term. The letter must be signed by a person who is authorized to sign a contract with DEN. This signatory shall be the same person identified in **Attachment 1, Part 1 Proposal Acknowledgement Letter**, as the authorized representative.

If the Proposer believes any information, data, process, or other material in its proposal should be considered by DEN to be confidential or proprietary, the Proposer shall identify that material with specificity as to the page and paragraph and on what basis it believes the material is proprietary or confidential. Proposals with all materials marked “Confidential” will be treated as if none of the materials are confidential.

2. <u>DEN Equity, Diversity, and Inclusion Plan (EDI Plan)</u>
The City is committed to advancing its vision of business equity, diversity, inclusion, and sustainability through growing the capacity of our historically underutilized multicultural businesses which shall include businesses and those owned by various ethnicities, genders, veterans, LGBTQ+, and individuals living with disabilities, as well as those in economically distressed or redlined neighborhoods. As previously stated in the City’s Values Statement, the City will provide significant contracting opportunities among these historically underutilized multicultural businesses and ensure they benefit from the contract. Aligning with the City’s intention to contract with historically underutilized multicultural businesses, this contract’s historically underutilized multicultural business engagement initiatives are intended as a part of the City’s values and commitment to ensure historically underutilized multicultural businesses are actively and impactfully participating throughout the life of the Project. The City believes that the utilization of these historically underutilized multicultural businesses is a best value in the procurement of its contracts, and the award of proposals of this Project will be determined, in part, on the Proposer’s commitment to the growth and sustainability of historically underutilized multicultural businesses. As specified in the City’s values, it is the City’s expectation that the Proposer exemplify its alignment to that of the City’s values and EDI as part of their business culture and practice.

The Proposer shall describe what they have done to engage with historically underutilized multicultural businesses in their ongoing operations. The engagement should be an innovative, comprehensive, open, and transparent approach that makes a significant impact through the promotion of equity, diversity, and inclusion to improve opportunities that ensure fair and just access to jobs, housing, education, mobility options, and healthier communities. This engagement may include, but is not limited to, utilization of historically underutilized multicultural businesses, mentor / protégé programs, prompt payment, workforce expansion, joint ventures, technical assistance, access to capital platforms and community outreach.

Proposer’s response in the form of a plan should include, but is not limited to:

A. Equity, Diversity and Inclusion Strategies. Describe the strategies and tactics Proposer will use to increase the participation of new and existing historically underutilized multicultural businesses in contracting opportunities, and the degree to which these and other strategies drive or play a role in upholding a culture of equity, diversity, and inclusion in the Proposer’s organization.

B. Technical Assistance & Support Services. Describe the assistance and/or guidance that Proposer is and will provide to small businesses that helps move this next generation of historically underutilized multicultural businesses forward. This assistance and/or guidance could include technical, financial, or support services to the historically underutilized multicultural businesses that allows them to have meaningful participation on this or other contracts with the Proposer or other business partners. Describe the community resource organizations that Proposer is and will partner with and/or sponsor to provide assistance and/or guidance to historically underutilized multicultural businesses. Examples of such assistance and guidance may include, but are not limited to, quality control, bonding, insurance, prompt payment, mentoring programs, joint ventures, workforce development, technical assistance, access to capital platforms etc.

C. Procurement Process. Describe Proposer's procurement process (including policies and procedures) and provide details on the principles used throughout the process to remove barriers in an effort to promote equity, diversity, and inclusion and how you ensure that these efforts flow down to all tiers of subcontractors and subconsultants.

D. Communication and Proposer Management. Describe the communication strategies and assistance Proposer is and will use with historically underutilized multicultural businesses to align their work with the contract requirements which may include, but are not limited to, training for internal and external staff to ensure effective communication, scheduling, safety requirements, terms and conditions, performance expectations, and dispute resolution.

E. Past Performance. Provide examples where the Proposer has been successful in promoting equity, diversity, and inclusion both internally and externally. Describe practices of Proposer's efforts and initiatives towards youth mentorship & development, employee recruitment, training, development, and succession planning to promote equity, diversity, and inclusion. Describe how the Proposer has promoted these values to both historically underutilized multicultural businesses and communities that they serve.

   Describe times when Proposer has been successful in promoting the participation of historically underutilized multicultural businesses and/or any assistance provided to the historically underutilized multicultural businesses that promoted their overall growth and success. Examples of such promotion may include, but are not limited to, bonding and insurance assistance, mentor-protégé programs, prompt payment, workforce expansion, innovative and successful partnering with historically underutilized multicultural businesses (i.e., joint venture, performing as a subcontractor to a historically underutilized multicultural business, etc.) technical assistance, access to capital platforms, innovative teaming strategies between historically underutilized multicultural businesses and Proposer (i.e. DSBO approved joint ventures or historically underutilized multicultural businesses performing as prime), and community outreach.

F. Proposer's Culture. Describe how EDI has been promoted internally and rooted within your company through programs that include but are not limited to 1) company policy and programs that advance equity, diversity, and inclusion priorities, 2) employment practices of recruitment/hiring, employee development/advancement, training (i.e., implicit bias), and 3) expectations of valuing and actively collaborating through partnerships with subcontractors / subconsultants.

G. Future Initiatives. Provide a roadmap of the work Proposer intends to do over the next 5 years to promote equity, diversity, and inclusion both internally and externally. Describe practices Proposer intends to use in youth mentoring & development, employee recruitment, training, development, and succession planning to promote equity, diversity, and inclusion. Describe any plans Proposer has made to promote these values to both businesses and communities that they serve.

3. Qualifications and Experience

Overall Experience: Describe your business experience. Provide details of the bidding entity outlining the skills, experience, and specific expertise of any and all members of the bidding entity bring and how they will contribute to the ongoing success of the concept(s) in your proposal.

Experience with this concept: Describe the Proposer's experience in operating the proposed concept(s). Identify where any members of the bidding entity successfully manage the same concept(s) and provide annual aggregate gross sales for each location for each of the past four years.

Experience with a similar concept: Describe the Proposer's experience in operating concepts similar to the proposed concept(s). Identify where any members of the bidding entity successfully manage similar concept(s) and provide annual aggregate gross sales for each location for each of the past four years, provide data in a chart format.

Bidding entity and team: Provide details of the structure of all parties' organizations at a corporate level, regional level, and at a local level. Where relevant, include key management personnel. Clearly indicate where DEN sits within your organizational structure, including which resources will be shared and which will be dedicated to DEN. (Up to five resumes of up to one page each may be attached to the end of your proposal and do not count toward the page limit).

ACDBE Participation: Describe how you intend to meet the City's ACDBE participation goal for this RFP. For each ACDBE, provide a complete description of their participation, experience, and qualifications.

References: For reference purposes, provide names, titles, email addresses, and phone numbers of up to three (3) landlords. If no landlord references are available, submit other references from business ventures and/or business partners. Provide references for each entity in the bidding party, as appropriate.

4. Concept Description, Menu/Product, and Pricing

Overall Description: Provide a detailed description of your proposed concept(s). Provide specific differentiators that make each brand or concept unique.

Concept Fit: Describe how and why the proposed concept(s) is the best fit for DEN's customers and the location for which it is proposed. Provide a description of how the proposed concept(s) complement the nearby offer and how the proposed mix of concept(s) work together to maximize success.

Concept Background: For each proposed concept, provide background on the brand or concept including the number and location of existing units, typical sales volume, and any awards and accolades the brand has received. Also provide any deviations or adaptations of the concept as it would be operated at DEN compared to a typical location.

Menu: Provide a full menu including indicative prices for all menu items. Outline your strategy for menu revisions. Highlight any local menu items. A menu of up to two pages per concept as well as one additional page for a kid's menu per concept may be attached to the end of your proposal and will not count toward the page limit.

Meeting Customer Needs: Describe how you will adapt your menu and/or product offering to best meet the needs of customers. Identify how you will meet needs arising from specific types of customers, different seasons, times of day, dietary requirements, etc.

Suppliers/Service Providers: Describe details of specific supplier companies, service providers, and brands across key subcategories. Highlight where suppliers or service providers are local, regional, and national.

Pricing: Detail your pricing strategy, how you would approach pricing new items, and how you will evaluate changes to pricing.

5. Design & Construction (including layouts, renderings, etc.)
   Design: A concept, incorporating key design elements and fit-out for the unit must be submitted. Because this is to demonstrate the overall design philosophy and intent for each concept, detailed plans are not allowed. Should you be the selected bidder, the designs submitted as part of this procurement are not considered approved or accepted by DEN and detailed designs must be developed, submitted, and reviewed after discussions with DEN's in-house design team. The design will ultimately have to be approved through DEN's Design Review Process. This RFP evaluation is limited to the following information:
   - A single floorplan/layout/space plan of the premises indicating the location of both front of house and back of house spaces including counters, service areas, kitchen layouts, Point of Sale (POS), seating areas, queueing spaces, etc. Please clearly indicate the amount of square feet dedicated to each area.
   - A maximum of two (2) renderings or artists' impressions of the proposed concept(s). Photographs of very similar existing executions of the proposed concept(s) may be used in place of renderings or impressions. The renderings, artists' impressions, or photos should demonstrate the proposed unit's look and feel and convey the desired experience of your concept.
   - Description of the execution of the concept or brand including proposed finishing materials, furniture types and styles, positions and size of branding and signage, staff uniforms, and any design features that make this concept unique and differentiated.

- Highlight how this unit contributes to the unique sense of place being delivered at DEN, including how you believe the concept will support the DEN brand and experience ambitions.
- Provide a design and construction schedule indicating key milestones required to open the concession location within xx days of contract execution. Each milestone must include how the proposers will achieve each milestone. Milestones that should be included are as follows: Design Review Committee 1st Submittal, Design Review Committee 2nd Submittal, Design Review Committee Approval, Construction Drawing 60% submittal to DEN, Construction Drawing 90% Submittal to DEN, Construction Drawing 100% Submittal to DEN and Denver Building Department, DEN Construction Drawing Approval, Building Department Construction Drawing Approval (Permit Issuance), Contractor Award, Construction Contract Negotiation, Construction Contract Execution, MWBE Program requirements for the Design Phase (if known at the time of proposal submission)Notice to Proceed Documents Submitted to Airport, Construction Duration, Fire Alarm Pre-Test Inspection, Denver Fire Department Inspections, Final Building Inspection, Training, Soft Opening, and Grand Opening.

6. Operations and Management

Operations Plan: Please provide a simple operations plan that includes a logistics and replenishment plan (goods-in/waste-away), security plan, point of sale system, and how operations will be adapted to maintain service standards during times of peak passenger volumes or during irregular weather conditions.

Customer Service: Outline your customer service philosophy and how this translates into your operations. Share details about your employee training program.

Staffing Plan: Provide a draft staffing plan that includes management and operations teams, roles and responsibilities, and an example of a typical staffing plan.

Irregular Operations: How will you plan to support the broader airport community during irregular operations (i.e. weather events, significant delays, etc.).

Quality Control and Supervision by Owners: State your approach to quality control and corporate monitoring and supervision of the concession in order to maintain high standards of service and performance.

Sustainability: Describe how you will incorporate sustainable business practices into your operation. Outline how you will ensure that your operation meets or exceeds DEN's sustainability requirements.

Business Performance: Describe how you monitor and measure the performance of your business and engage in continuous improvement.

Marketing and Promotions: Provide your strategy and plan to drive sales through marketing and promotions.

Customer Relationship Management: If you have a customer relationship management program and/or tools, please outline them.

7. Business Plan and Financial Offer (plus provided forms Pro Forma must be submitted in Excel format)
Financial Pro Forma: Complete the pro forma form provided and submit one form for the entire package. This form will be used as the primary evaluation of the business plan. Include a description of any of the assumptions you have made in completing the pro forma. Assumptions should include but not limited to: Total Concourse Enplanements, Capture Rate, Spend Per Enplaning Passenger, Annual Transactions, Average Ticket, and Product Category Sales.

Capital Investment & Funding: Complete the Capital Investment & Funding form provided and submit one form for the entire package square footage, which includes both the concourse level and ramp level spaces.

III-4 Proposal Surety

By submitting a proposal, the Proposer agrees its proposal constitutes a firm and binding offer to DEN and may be accepted by DEN at any time within one hundred eighty (180) days after the proposal due date. Thereafter, the Proposer has the option to extend its offer if requested by DEN.

Each Proposer must submit, with its proposal, a surety ("Proposal Surety"), payable to the City and County of Denver, in the amount listed below, in one of the following forms:

1. Cashier's Check,
2. Proposal Bond, or
3. Irrevocable Letter of Credit ("ILOC"; a sample ILOC can be found at the following website: https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation. The ILOC will be listed under the document's column for this opportunity.

If a Proposer is submitting a proposal for more than one of the following RFPs, Proposer is only required to submit one Proposal Surety, but the Surety must be for the largest amount required among the RFPs on which Proposer is submitting, e.g., if the Proposer is proposing on both M3L5W1 Fast Casual Dining RFP 202580303 ($10,000)and M3L6E1 Food Hall RFP 202580310 ($15,000), the Proposal Surety must be for $15,000.00.

- M2L5W1 Grab and Go Café SBEC RFP 202580328 ($5,000)
- M2L5E1 Travel Convenience Marketplace SBEC RFP 202580299 ($5,000)
- M3L5W1 Fast Casual Dining RFP 202580303 ($10,000)
- M3L5E1 & M3L5C1 Casual Dining Restaurant with Bar and Common Seating Area 202580301 RFP ($15,000)
- M3L6E2 Banking Services RFP 202580521 ($5,000)
- M3L6E1 Food Hall RFP 202580310 ($15,000)

If Proposer is submitting one Cashier's check, Proposal Bond, or ILOC for more than one RFP opportunity, the RFP No., and Project Name of each RFP that the Proposer is submitting on must be provided on the Cashier's check, Proposal Bond, or ILOC. Proposer must submit the original

Proposal Surety within seven (7) calendar days of the proposal due date, or Proposer will be found non-responsive. The Proposer must mail the proposal surety to the location referenced in the **Submittal Checklist. DEN will not accept hand delivered proposal sureties for this opportunity.**

The Proposal Surety must be valid for one hundred eighty (180) days from date of submittal. The successful Proposer's Proposal Surety will be held to guarantee execution of at least one agreement and the furnishing of a performance surety required by the agreement. DEN will retain the Proposal Surety as liquidated damages in the event the successful Proposer fails to execute an agreement with DEN. The Proposal Surety will be returned to the successful Proposer after execution of a final agreement.

Proposal Sureties of all unsuccessful Proposers will be returned as soon as an award of the opportunity is made, or, in the event all proposals are rejected, within ten (10) days after the date of rejection.

III-5 **Concentration of Ownership Affidavit & Organizational Structure**

The proposer shall submit a Concentration of Ownership Affidavit and organizational structure for the bidding entity in the DEN Proposal Forms. The proposer acknowledges that if award of this opportunity would cause any member of the bidding entity to exceed the allotted concentration of ownership allowed in the DEN Concessions Policy, the member must proportionately divest its ownership in this or other concessions the exceeding member has an ownership interest at DEN prior to being awarded the right to negotiate the contract. In such case, the proposer will have 10 business days after notification by DEN to submit the exceeding member's divestment plans.

END OF PREPARATION OF PROPOSAL

III. EVALUATION OF PROPOSALS

IV-1 Evaluation of Proposals

DEN's Evaluation and Selection Committee (Evaluation Committee) will review and evaluate the proposals in accordance with the Evaluation Criteria below, the Proposer's demonstrated experience and the Proposer's qualifications as they relate to the scope of services required. The Proposer's ability to present its proposal in writing in a clear, concise, and organized manner will be considered in the evaluation. Responsive Proposers may be required to participate in interviews to be held in the presence of the Evaluation Committee. DEN may, in its sole discretion, consider a Proposer's comments on the Sample Agreement or other proposed terms and conditions. DEN shall then, taking into consideration the recommendations of the Evaluation Committee, attempt to negotiate a Contract with the Proposer which it considers the most qualified, responsive, and responsible.

Any scoresheets, notes, deliberations, and ultimate conclusions of the Evaluation Committee will be kept strictly confidential up through and after award of the opportunity and are protected by the deliberative process privilege. The Evaluation Committee's function is to assist the CEO in determining which proposal(s) to recommend for award. However, the CEO has the sole and absolute discretion to recommend any proposal for award deemed to be in accordance with the best interests of DEN. Proposers may not contact members of the Evaluation Committee for any reason whatsoever once this RFP is issued.

IV-2 Past Performance

If a Proposer has performed prior work at DEN, documented instances in which the Proposer failed to perform under the terms of the contract may be reviewed as part of DEN's overall evaluation. This evaluation will consider past performance information submitted as a part of such.

IV-3 Proposal Rejection and/or Disqualification

Proposals are non-responsive and will be excluded, rejected, or disqualified if the Proposer fails to comply with the requirements of this RFP, or with any applicable City ordinances, rules, or policies, including but not limited to for the following reasons:

1. Proposer's failure to meet the Minimum Qualifications.
2. Proposer's failure to provide complete documentation, Proposal Forms, and Other Required Submittals (**see Proposal Submittal Checklist**);
3. Improper communications and/or collusion among Proposers or between the Proposer and any DEN stakeholder, including any project managers, with oversight of the project of which the RFP is a part;
4. Default or termination for cause of other contracts with any public or private entity within the past five (5) years;
5. Improper contact as described in Section IV-3, above;
6. Failure to comply with the concessions concentration of ownership policy as amended;
7. Lack of ability to operate the proposed brand(s) and/or concept(s);
8. Omissions and/or fraudulent statements of any fact that is significant or essential to the subject matter of this RFP;
9. Proposer's delinquent arrearages or debts presently owed under any agreement with DEN, or any other creditor; or

10. Proposer's failure to disclose all trademark, copyright, licensing, franchise, and other contractual or property rights Proposer has with third parties, Proposer intends to use at DEN, which may restrict current business operators in any way, or may have an unfavorable impact on future Proposers for opportunities at DEN.

In addition, the CEO reserves the right to reject any and all proposals, to waive irregularities and technicalities, to re-advertise, to provide the services, or to otherwise proceed in the best interest of DEN.

IV-4 Shortlisting and Interviews (If Necessary)

The Evaluation Committee will prepare an initial evaluation, in accordance with this Section IV. The Evaluation Committee, may, at its discretion, invite the highest ranked Proposers for interviews. Such presentations and/or site visits will be at the Proposer's expense.

Interviews are an opportunity for members of the Evaluation Committee to ask questions and/or seek clarification of proposals from Proposers. The Evaluation Committee may provide questions to Proposers in advance of the interview. In the interest of minimizing Proposers' costs, the following rules will apply to interviews:

Proposers invited to an interview **may not**:

- Bring merchandise, gifts, or any other leave-behinds for the Evaluation Committee;
- Introduce new information at interviews not in the original written proposal;
- Change or alter the proposed business terms or concept in any way.

Proposers may provide written answers to any questions provided in advance by the Evaluation Committee.

All invited Proposers may be asked to prepare a presentation, lasting no longer than 30 minutes, explaining the company's strong points in each area of the evaluation criteria. The presentation will be incorporated into the time allotted for the interview; no additional time will be provided.

The presentation must be in a PC compatible format utilizing standard MS Office Suite including PowerPoint. Proposers may use a PowerPoint presentation in their interview.

Following interviews, if any, each member of the Evaluation Committee may revise its initial evaluation. The Evaluation Committee's work is complete when the CEO authorizes direct negotiations with a Proposer.

IV-5 Best and Final Offers

DEN, at its discretion, may utilize a Best and Final Offer (BAFO) stage after submission and prior to award to clarify the Scope of Work, assure full understanding of, and responsiveness to, the solicitation requirement, update pricing, or any other component of the RFP identified by DEN. In BAFO discussions, there shall be no disclosure of any information derived from proposals submitted by competing Proposers. The Contract Administrator Agent shall coordinate the Proposer's responses for review by the Evaluation Committee. The Contract Administrator shall be the SOLE point of contact throughout the process for all Proposers. If DEN requests a BAFO stage, Evaluation Committee members may revise their initial scores based upon additional information and clarification received in this phase. In lieu of revising scoring, DEN reserves the right to evaluate BAFOs by use of a narrative.

IV-6 Evaluation Criteria

In preparing responses, Proposers shall describe in detail how they propose to meet the specifications detailed in Section II, Scope of Work. Specific factors will be applied to the proposal information to assist DEN in selecting the most qualified Proposer(s) for this opportunity. Evaluation criteria that will be used as follows, listed in no particular order.

Evaluation Criteria		Maximum # of pages
1.	Cover Letter	1
2.	DEN Equity, Diversity, and Inclusion Plan	N/A
3.	Qualifications and Experience	4
4.	Concept, Menu/Product, and Pricing	11
5.	Design & Construction	8
6.	Operations and Management	11
7.	Business Plan and Financial Offer	3
Total		38

END OF EVALUATION OF PROPOSALS

IV. ATTACHMENT 1, PROPOSAL FORMS

PROPOSAL FORMS

Proposer must complete and submit all required Proposal Forms with their proposal. All Proposal Forms are incorporated herein by this reference. The excel documents are listed under the Documents column for this opportunity:
https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation.

Please refer to Proposal Submittal **Checklist** to ensure all forms are completed in their entirety.

V. ATTACHMENT 2, INSURANCE CERTIFICATE

INSURANCE CERTIFICATE REQUIREMENTS

The insurance requirements relative to this contract are contained in the pages immediately following this page.

These pages are not included in the page numbering of this contract document.

CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
CONCESSION AGREEMENT

A. Certificate Holder and Submission Instructions

Commercial Operator must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard
Denver CO 80249

- ACORD Form (or equivalent) certificate is required.
- Commercial Operator must be evidenced as a Named Insured party.
- Electronic submission only, hard copy documents will not be accepted.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The official repository for Certificates of Insurance (COIs) within DEN is PINS Advantage. Upon contract initiation, an email will be sent to the Commercial Operator with instructions to upload the COIs for insurance compliance. The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Commercial Operator.

B. Defined Terms

1. "Agreement" as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. "Commercial Operator" as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the attached Agreement.

C. Coverages and Limits

1. Commercial General Liability
   Commercial Operator shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of $1,000,000 each occurrence, $2,000,000 products and completed operations annual aggregate; if policy contains a general aggregate, a minimum limit of $2,000,000 annual per location aggregate must be maintained.

   a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
   b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.
   c. If a "per location" policy aggregate is required, "location" shall mean the entire airport premises.
   d. Coverage shall include Fire Damage Legal Liability in a minimum limit of $100,000 per fire.
   e. Coverage shall include Liquor Legal Liability in minimum limits of $2,000,000 each occurrence, $2,000,000 annual aggregate, if Concessionaire serves or sells alcoholic beverages in its operations. This coverage may also be provided under a separate Liquor Legal Liability policy.

2. Business Automobile Liability

   Commercial Operator shall maintain a minimum limit of $1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

a. If operating vehicles unescorted airside at DEN, a $10,000,000 combined single limit each occurrence for bodily injury and property damage is required. DEN has established an Airside Unescorted Excess Auto Liability Program to support Commercial Operators in meeting the $10,000,000 auto liability requirement for unescorted airside driving privileges. This program offers $9,000,000 in excess coverage over a $1,000,000 base liability. For more information, please visit: DEN AirsideDrive Program.
b. If Commercial Operator does not have blanket coverage on all owned and/or operated vehicles and will require unescorted airside driving privileges, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
c. If transporting waste, hazardous material, or regulated substances, Commercial Operator shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
d. If Commercial Operator does not own any fleet vehicles and Commercial Operator's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Commercial Operator shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Commercial Operator. This provision does not apply to persons solely commuting to and from the airport.
e. If Commercial Operator will be completing all services to DEN under this Agreement remotely and not be driving to locations under direction of the City to perform services this requirement is waived.

3. Workers' Compensation and Employer's Liability Insurance
Commercial Operator shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than $100,000 per occurrence for each bodily injury claim, $100,000 per occurrence for each bodily injury caused by disease claim, and $500,000 aggregate for all bodily injuries caused by disease claims.

    a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Commercial Operator to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing exemption status must be submitted with the Certificate of Insurance.

4. Builder's Risk Insurance or Installation Floater:
During the duration of any tenant buildout activity, Commercial Operator shall provide, coverage on a Completed Value Replacement Cost Basis, including value of subsequent modifications, change orders, and cost of material supplied or installed by others, comprising total value of the entire project at the site. Such insurance shall:

    a. apply from the time any covered property becomes the responsibility of the Commercial Operator, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site;
    b. be maintained until formal acceptance of the project by DEN or the placement of permanent property insurance coverage, whichever is later;
    c. include interests of the City and if applicable, affiliated, or associate entities, the General Commercial Operator, subcontractors, and sub-tier contractors in the project;
    d. be written on a Special Completed Value Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal, demolition, increased cost of construction, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, pilings including the ground on which the structure rests and excavation, backfilling, filling and grading;
    e. include a Beneficial Occupancy Clause, specifically permitting occupancy of the building during

construction. Commercial Operator shall take reasonable steps to obtain consent of the insurer and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builder's Risk Policy;

f. include Equipment Breakdown Coverage (a.k.a. Boiler & Machinery), if appropriate, which shall specifically cover insured equipment during installation and testing (including cold and hot testing).

5. Commercial Crime
Commercial Operator shall maintain a minimum limit of $1,000,000 per occurrence covering, but not limited to, loss arising from employee theft, employee dishonesty, forgery or alteration, robbery, burglary, embezzlement, disappearance, destruction; money orders and counterfeit currency; depositor's forgery; computer fraud, on premises and in transit.

6. Property Insurance
Commercial Operator is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, tenant improvements and betterments, materials, supplies, tools, equipment, vehicles, inventory, furnishings, structures and any personal property of its employees, subcontractors or other entities on DEN premises on behalf of Commercial Operator. If Commercial Operator carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.

7. Property Insurance – Contractor Improvements and Betterments
Commercial Operator shall maintain All-Risk Form Property Insurance on a replacement cost basis. If leased property is located in a flood or earthquake zone (including land subsidence), flood and/or earthquake insurance shall be provided separately or within the property policy.
   a. City shall be included as First Loss Payee, as its interests may appear.
   b. The City and County of Denver shall maintain All-Risk Form Property Insurance coverage for the real property occupied by Commercial Operator.

8. Property Insurance – Business Interruption Coverage
Business Interruption Coverage in such amounts as will reimburse Contactor for direct or indirect loss of earnings attributable to the perils commonly covered by business interruption insurance, which shall include losses arising from mechanical failures on or interruption of services to DEN premises.

9. Excess/Umbrella Liability
Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

D. Reference to Project and/or Contract

The City Project Name, Title of Agreement and/or Contract Number and description shall be noted on the Certificate of Insurance, if applicable.

E. Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation, Employer's Liability and Professional Liability, if required), Commercial Operator's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers as Additional Insureds by policy endorsement.

F. Waiver of Subrogation

For all coverages required under this Agreement (excluding Professional Liability, if required), Commercial Operator's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers by policy endorsement.

If Commercial Operator will be completing all services to the City under this Agreement remotely and not be traveling to locations under direction of the City to perform services, this requirement is waived specific to Workers' Compensation coverage.

If Commercial Operator and its employees performing services under this Agreement are domiciled in a monopolistic state this requirement shall not apply to Workers' Compensation policy(ies) issued by a state fund. However, Commercial Operator understands any subrogation against the City from its state-funded Workers' Compensation insurer arising from a claim related to this Agreement shall become the responsibility of the Commercial Operator under Section 14.01 Defense and Indemnification of this Agreement subject to the terms, conditions and limitations therein.

G Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Such notice shall be sent thirty (30) calendar days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) calendar days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Commercial Operator shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within three (3) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer(s) as verification. Commercial Operator shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.
4. In the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits, Commercial Operator will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Commercial Operator cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

H. Cooperation

Commercial Operator agrees to fully cooperate in connection with any investigation or inquiry and accept any formally tendered claim related to this Agreement, whether received from the City or its representative. Commercial Operator's failure to fully cooperate may, as determined in the City's sole discretion, provide cause for default under the Agreement. The City understands acceptance of a tendered claim does not constitute acceptance of liability.

I. Additional Provisions

1. Deductibles or any type of retention are the sole responsibility of the Commercial Operator.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. Coverage required may not contain an exclusion related to operations on airport premises.
4. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
5. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.
6. If the Commercial Operator procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.
7. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended reporting period placed

for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.

8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by an authorized representative and must be submitted to the City at the time Commercial Operator signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements shall not act as a waiver of Commercial Operator's breach of this Agreement or of any of the City's rights or remedies under this Agreement. All coverage requirements shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Commercial Operator is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements.
11. The City shall have the right to verify, at any time, all coverage, information, or representations, and the insured and its insurance representatives shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of copies of insurance policies upon request. In the case of such audit, the City may be subject to a non-disclosure agreement and/or redactions of policy information unrelated to verification of required coverage.
12. No material changes, modifications, or interlineations to required insurance coverage shall be allowed without the review and written approval of DEN Risk Management.
13. Commercial Operator shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to each policy renewal.
14. Commercial Operator's failure to maintain required insurance shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.

J. Part 230 and the DEN Airport Rules and Regulations

If the minimum insurance requirements set forth herein differ from the equivalent types of insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management. Part 230 applies to Commercial Operator and its subcontractors of any tier. Part 230 and the DEN Airport Rules and Regulations may be found: DEN Airport Rules and Regulations.

VI. ATTACHMENT 3, SAMPLE AGREEMENT

SAMPLE AGREEMENT

The Sample Contract form and required Federal provisions are contained in the pages immediately following this page. The complete contract will include other exhibits in addition to the form and the Federal provisions.

These pages are not included in the page numbering of this contract document.

Notice to Proposers:

City Required Contract Provisions

The following contract provisions are required in every contract issued by the City. The language of each clause is drafted in accordance with Federal, State, and City law and policy and are not subject to modification. Accordingly, Proposers should carefully review this Sample Agreement provided with the Request for Proposals, including these required provisions, in preparation of their proposals.

- **Standard Federal Provisions contained in the Contract and the Exhibit or Appendix**
- **Minority/Women Owned Business Enterprise (DEN-funded), Small Business Enterprise (DEN-funded) and Disadvantaged Business Enterprise (Federally-funded) requirements**
- **MWBE Prompt Pay (if applicable) and City Prompt Pay**
- **Prevailing Wage Ordinance**
- **City Minimum Wage provisions; worker retention provision if applicable**
- **Insurance Requirements**
- **Defense and Indemnification (subject to very limited exceptions and approval; Proposer must provide comments and any provisions it *cannot accept with its Proposal*)**
- **Disputes/Dispute Resolution (see D.R.M.C. § 5-17 and DEN Rules and Regulations Part 250)**
- **Compliance with All Laws and Regulations/with Patent, Trademark and Copyright Laws (subject to very limited exceptions and approval) compliance with all Executive Orders including drugs/alcohol/tobacco**
- **Governing Law and Venue**
- **Bond Ordinances**
- **Force Majeure**
- **Taxes and Costs**
- **Environmental Requirements**
- **Records Retention and Other Standard City Provisions, including but not limited to:**
- **Diversity and Inclusiveness**
- **No Discrimination in Employment**
- **Advertising and Public Disclosure**
- **Colorado Open Records Act**
- **Examination of Records and Audits, including Federal and City Auditor provisions**
- **Conflict of Interest**
- **Sensitive Security Information, DEN Security, Badging, and other Security Provisions**

CONCESSION AGREEMENT

This Concession Agreement for the Denver International Airport ("**DEN**")'s Concessions Program ("**Agreement**") is entered into as of the Effective Date, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of its Department of Aviation (hereinafter "**City**"), Party of the First Part, and ________, a _______ organized and existing under and by virtue of the laws of _______ and authorized to do business in Colorado ("**Concessionaire**"), Party of the Second Part (collectively, "**Parties**").

RECITALS

WHEREAS, the City owns and operates Denver International Airport ("**DEN**" or the "**Airport**") and has the power to grant rights and privileges with respect thereto, as hereinafter provided; and

WHEREAS, the City issued Request for Proposal No. ________ ("**RFP**") to competitively identify a concessionaire for the opportunity to operate a concession (the "**Concession**") as advertised in the RFP at the Airport; and

WHEREAS, proposals in response to the RFP were received and reviewed by the City, and Concessionaire's proposal in response to the RFP ("**Concessionaire's Proposal**") was selected for award of this Agreement; and

WHEREAS, the Concessionaire is engaged in the business of operating concessions and was the successful proposer for this procurement; and

NOW, THEREFORE, in consideration of the respective representations and agreements contained herein, the City and the Company hereby agree as follows:

ARTICLE I: SUMMARY

1.01 SUMMARY OF CONTRACT PROVISIONS

<table>
<tr><td colspan="5">Premises: See Exhibit A ("Premises Description")</td></tr>
<tr><th>Location</th><th>Space</th><th>Sq. Ft.</th><th>Address Identification No.</th><th>Trade Name</th></tr>
<tr><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td colspan="3">Premises Total</td><td colspan="2"></td></tr>
<tr><td colspan="3">Term</td><td colspan="2"></td></tr>
<tr><td colspan="3">Effective Date</td><td colspan="2">Date of City Execution, as reflected on the City's Signature Page</td></tr>
<tr><td colspan="3">Date of Possession</td><td colspan="2"></td></tr>
<tr><td colspan="3">Required Opening Date</td><td colspan="2"></td></tr>
</table>

Required Mid-Term Refurbishment Completion Date	
Expiration Date	
Initial Minimum Annual Guarantee ("MAG")	$
Percentage Fee	
Common Maintenance Services Fee	$0
Total Minimum Capital Investment	$ ($ per sq. ft. x sq. ft.)
Joint Marketing Fee Rate	1% of Gross Revenue
Common Area Capital Improvement and Maintenance Share [Food Court]	
Surety Amount	$
Major Merchandise Category	
Minor Merchandise Category	
ACDBE Goal	0%
ACDBE Operator Name(s)	
Ownership Participation	
MWBE Design Goal	%
MWBE Construction Goal	TBD; see Section 5.10

1.02 MODIFICATIONS TO SUMMARY OF CONTRACT PROVISIONS

A. The Parties acknowledge and agree certain provisions stated in the Summary of Contract Provisions are estimates as of the Effective Date.

B. The Parties further acknowledge and agree that the provisions stated in the Summary of Contract Provisions, excepting for the length of the Term, are subject to change in accordance with the provisions of this Agreement, and the Parties agree to modify the Summary of Contract Provisions as needed by letter executed by the CEO or CEO's representative without formal amendment.

1.03 CONCESSIONS HANDBOOK

As used in this Agreement, "**Concessions Handbook**" shall mean the current version of the Denver International Airport Concessions Handbook and Tenant Work Permit Guide. Concessionaire shall comply with the requirements set forth in the Concessions Handbook, and acknowledges and agrees that the City may from time to time amend the Concessions Handbook. Upon notice to all concessionaires at DEN, and after an opportunity to comment on proposed changes, any amendment of the Concession Handbook will be binding on Concessionaire without amendment to this Agreement.

1.04 DELEGATION OF AUTHORITY

The CEO exercises the City's authority and discretion under the Agreement, and has the authority and discretion to further delegate any authority or discretion granted to the CEO. The CEO has designated as their representative and delegated their authority and discretion under this Agreement to DEN's Executive Vice President, Chief Commercial Officer ("**EVP**"). Only the CEO and/or EVP may exercise City's authority and discretion granted under the Agreement, *except that* the EVP has delegated authority for all day-to-day management responsibilities and decisions to the Senior Vice President of Concessions ("**SVP**"). The CEO and/or EVP may rescind or amend any designation of representative or delegation of authority and discretion under the Agreement upon written notice to Concessionaire.

1.05 CONCESSIONAIRE

As used in this Agreement, Concessionaire shall include all sub-concessionaires and contract operators of Concessionaire who are operating within the Premises with City's written consent or pursuant to City pre-approved subleases with Concessionaire. In all provisions of this Agreement that require a person to comply with a specific provision requiring representation of Concessionaire, this person shall be an authorized official of Concessionaire.

1.06 CONCESSIONAIRE'S PROPOSAL.

Concessionaire and City acknowledge that Concessionaire's Proposal was valuable consideration in the award of this Agreement to Concessionaire and is an authoritative reference for understanding the intention of the Parties. The Parties agree that the financial Pro Forma, operational or performance standards, and licensed concepts included in Concessionaire's Proposal are material parts of the bargain between the Parties. Concessionaire acknowledges that City relied upon Concessionaire's Proposal in entering into this Agreement, and failure to comply with such assurances made in the Proposal and relied on by the City would be a breach of contract.

ARTICLE II: LEASE OF PREMISES

2.01 PREMISES DESCRIPTION

Effective on the date City delivers procession to Concessionaire (the "**Date of Possession**"), City hereby grants to Concessionaire the privilege to occupy, improve, and use the Premises. The total area of the Premises as determined by DEN is listed in the Summary of Contract Provisions. Through a letter executed by the CEO, or the CEO's representative, City may, in its sole discretion, modify the Premises (and update the Summary of Contract Provisions to reflect such modification) to incorporate any additional as-built areas and other spaces that were not included in the original Premises Description, and may increase the compensation owed under this Agreement to account for such additional space without need for formal amendment to this Agreement. The Date of Possession will be memorialized by the City in a written notice to Concessionaire.

2.02 PREMISES ACCEPTANCE AS IS

City will provide the space for concession according to the Concession Design Guidelines as defined in [RFP Appendix A]. Concessionaire understands, acknowledges, and accepts the Premises in its present condition, "As Is," "Where Is," and "With All Faults" and with absolutely no warranties as to condition or suitability for use being given by City. City shall have no obligation, liability, or responsibility to construct additional improvements, modify existing conditions, provide services of any type, character, or nature on or to the Premises other than as explicitly stated in this Agreement.

2.03 INGRESS AND EGRESS

Concessionaire will have the privilege of ingress to and egress from DEN and the Premises for Concessionaire's officers, authorized officials, employees, agents, and invitees, including customers, suppliers of materials, furnishers of services, equipment, vehicles, machinery, and other property. Privilege of ingress and egress will be subject to Federal Aviation Administration ("**FAA**") and Transportation Security Administration ("**TSA**") requirements, and the Denver Municipal Airport Systems Rules and Regulations (the "**DEN Rules**"), which can be found at https://www.flydenver.com/about-den/governance/rules-and-regulations/. Moreover, nothing in this Agreement shall be construed to prevent City from charging the operators of vehicles carrying passengers and property a fee for the privilege of entering upon DEN, using DEN's roadways, or otherwise operating vehicles at DEN.

2.04 PERMITTED USES

A. **Permitted Uses**. Concessionaire shall use the Premises only for the purposes of operating the Concession, as further described in this Article II, and for such other uses as City may agree to in writing. No portion of the Premises shall be used to warehouse, stock, or store any goods, wares, or merchandise not intended to be offered for sale at or from the Premises. ***Exhibit B*** Permitted Uses sets forth the trade name for the Concession and a listing, by general category, of goods and services Concessionaire is allowed to offer or sell from the Premises. Such list of the Permitted Uses shall constitute a limitation of the goods and services, which may be sold at the Concession. City reserves the right to amend ***Exhibit B*** without need for formal amendment of this Agreement.

B. **Price List**. No later than sixty (60) days prior to the Required Opening Date of the Premises, Concessionaire must submit to City a Price List in accordance with the procedures outlined in Section 13.01 of the Concessions Handbook. The Price List shall include the Concessionaire's price lists for all goods and services to be sold from the Premises.

C. City may, at its discretion, require Concessionaire to add or delete goods or services that are in public demand to the Price List, in accordance with the procedures outlined in Sections 13.01 and 13.12 of the Concessions Handbook.

2.05 NON-EXCLUSIVE RIGHTS

A. The privileges granted herein for the performance of the Concession are non-exclusive. City may, at any time, award space (existing or newly created) to other parties who may be given the privilege(s) to sell goods or services similar to those granted to Concessionaire herein. City may also, in its sole discretion, grant exclusive privileges to other concessionaires to sell goods or services that Concessionaire is not authorized to sell.

B. In the event of a dispute between Concessionaire and any other party operating at DEN as to the privileges of the parties under their respective concession agreements, City shall determine the privileges of each party and Concessionaire agrees to be bound by City's decision.

2.06 PERMITS AND LICENSES

Concessionaire will obtain and maintain all permits, certificates, licenses, or other authorizations required in connection with the operation of the Concession, including licenses for specific concepts that are part of the Concessionaire's Proposal. Copies of all required permits, certificates, licenses, or other authorizations will be appropriately displayed within the Premises, with a copy of any permit or renewed permit provided to the City upon City's request.

2.07 RESTRICTIONS

Nothing in this Agreement shall be construed as authorizing Concessionaire to conduct any business separate and apart from those specifically allowed in this Agreement or to operate or use areas of DEN other than the Premises. All privileges not specifically granted to Concessionaire in this Agreement for its use of and operations at DEN pursuant to this Agreement are hereby reserved for and to City.

2.08 PROHIBITED STORAGE OR USE OF CERTAIN GOODS, MATERIALS, MACHINERY, OR HAZARDOUS SUBSTANCES

A. No goods or materials will be kept, stored, or used in or on the Premises that are flammable, explosive, hazardous, or that may be offensive or cause harm to the general public or cause damage to the Premises, unless the use or storage is approved by the City. Any hazardous or potentially hazardous condition on the Premises shall be corrected immediately upon receipt of a verbal or written notice from the City. At the sole discretion of the City, Concessionaire shall close the Premises or affected portion thereof until the hazardous or potentially hazardous condition is corrected.

B. Concessionaire is responsible for compliance and shall require its Contractors to comply with all federal, state, and local environmental statutes, rules, regulations, and requirements, including as they may be amended after the Effective Date. This includes compliance with DEN's Rules.

C. Nothing will be done on the Premises other than as provided in this Agreement that will increase the rate of or suspend the insurance on the Premises or on any structure of City.

D. No machinery may be used or operated on the Premises that may damage the Premises or adjacent areas; provided, however, that nothing in this Article II will preclude Concessionaire from bringing or using on or about the Premises, with approval by City, such materials, supplies, equipment, and machinery as are appropriate or customary in the operation of Concessionaire's business under this Agreement.

E. Concessionaire agrees that nothing shall be done or kept on the Premises that might impair the value of City's property or that would constitute waste.

F. All materials, equipment, and all other items used by Concessionaire in the performance of its operations under this Agreement will be used and kept in compliance with Occupational Safety and Health Administration requirements.

2.09 CONCESSIONAIRE'S MAINTENANCE OBLIGATIONS

A. Except for such maintenance of the Premises to be provided by City as set forth in this Agreement, Concessionaire shall, at its own cost and expense, maintain the Premises and every part thereof, including Trade Fixtures and personal property, in good appearance and repair, in a safe First-Class condition, and in accordance with Sections 2.09 and 2.10. Concessionaire shall maintain, repair, replace, paint, or otherwise finish all Premises Improvements (as defined in Section 5.01), including, without limitation, walls, partitions, floors, ceilings, windows, doors, glass and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by City. All of the maintenance, repairs, finishing and replacements shall be of quality equal to or better than the original in materials and workmanship. All work, including finishing colors, shall be subject to the City's prior written approval.

B. If it is determined that Concessionaire's maintenance does not comply with this Agreement, City will follow the procedures identified in Section 13.08 of the Concessions Handbook.

2.10 COMMON MAINTENANCE SERVICES AND UTILITY OBLIGATIONS

A. City shall provide structural maintenance of DEN and, except as provided below, maintain and repair the exterior windows and walls of the Premises. However, maintenance of all interior and exterior walls within the Premises shall be Concessionaire's responsibility.

B. Further, City has established Common Maintenance Services at DEN. Concessionaire agrees to pay its proportionate share of the Common Maintenance Services provided by City, in amounts stated in Section 1.01.

C. City provides utility mains and lines throughout DEN. Concessionaire, at its sole cost, shall tie into the utility mains and lines at the locations as specified by City. Supplemental heated or cooled air, electrical or other utilities required by Concessionaire in excess of what is customarily available in DEN will be, if approved by City, at the expense of Concessionaire.

D. City may, at City's sole discretion, maintain the utilities within the Premises and in doing so shall be permitted to enter upon the Premises at all times to make any repairs, replacements, and alterations when and as may, in the opinion of City, be deemed necessary. Furthermore, Concessionaire will permit City or its representatives access to construct or install over, on, in, or under the Premises, new systems, pipes, lines, mains, wires, conduits, ducts and equipment; provided, however, that City shall exercise such right in a manner that minimizes interference with Concessionaire's operations. Moreover, during an emergency, City, or its agents, may enter the Premises forcibly, if necessary.

E. Concessionaire understands, accepts, and agrees that City shall not be liable for Concessionaire's loss or damage for failure to supply any utility services or Common Maintenance Services. City reserves the right to temporarily discontinue utility services or Common Maintenance Services as may be necessary by reason of accident, unavailability of employees, repairs, alterations, or improvements, strikes, lockouts, riots, acts of God, or any other happenings beyond the control of City and causes City to be unable to furnish such utility services or Common Maintenance Services. Discontinuance shall not be construed as cause for abatement of compensation or operate to release Concessionaire from any of its obligations.

F. City owns and maintains DEN's cabling infrastructure supporting telephone and data transmission generated within, to and from the Premises (hereinafter referred to as "**Data Network Distribution System**"). Concessionaire may use City's Data Network Distribution System for voice and data connectivity. Concessionaire is required to pay City, or pay a competitive local exchange carrier, for dial tone or internet access for its telephone services and communication systems. City will provide annual maintenance and any needed repairs for the fiber optic cable within the Data Network Distribution System. Relocation of the fiber cable or additional strands of fiber cable will be at Concessionaire's expense, provided that Concessionaire will need prior City approval to move any existing fiber cable(s). If Concessionaire installs Electronic Visual Information Display systems ("**EVIDS**"), Concessionaire will be required to use City's Data Network Distribution System. Installation and ongoing maintenance of EVIDS will be at Concessionaire's expense and, at Concessionaire's discretion, may be performed by City or an outside vendor approved by City, subject to a Tenant Work Permit.

2.11 MODIFICATIONS AND CLOSING OF PREMISES

City shall have the right to close or make modifications to any portion of the Premises, at the sole discretion of City, to accommodate DEN operations, health and safety measures, security renovations, maintenance, public art, or other work to be completed at DEN.

2.12 RECLAIMING PREMISES FOR AIRPORT PURPOSES

A. City reserves the right to reclaim the Premises or portions thereof when, in the sole discretion of City, such reclaiming is necessary for the development or operations of DEN or is in the best interest of City. City will make a reasonable effort to identify replacement premises with similar area, visibility, and exposure to passenger traffic as the reclaimed Premises.

B. City may exercise such right to reclaim by giving Concessionaire ninety (90) days' prior written notice (the "**Reclaiming Notice**") specifying the effective date of the reclaiming ("**Reclaiming Effective Date**") and identifying any replacement Premises. If any replacement premises are identified, Concessionaire shall notify City in writing as to its acceptance or rejection of the replacement premises within thirty (30) days after its receipt of the Reclaiming Notice. If Concessionaire accepts the replacement premises, the following provisions will go into effect immediately:

1. All of the terms, covenants, conditions, and provisions of this Agreement shall continue in full force and effect and apply to the replacement premises; provided, however, that City may reasonably adjust the Privilege Fees owed to compensate for any change to the square footage provided to Concessionaire at the replacement Premises.

2. Concessionaire shall vacate and surrender possession of the reclaimed Premises by the Reclaiming Effective Date.

3. Concessionaire shall accept possession of the replacement Premises in its "**As Is**," "**Where is**," and "**With All Faults**" condition as of the Reclaiming Effective Date.

4. City will pay Concessionaire's basic moving expenses limited to the moving of furniture, equipment, and other personal property from the reclaimed Premises to the replacement premises. Concessionaire shall pay all other costs to improve and fit out the replacement premises and shall perform such work in accordance with this Agreement and City directions.

C. Subject to the exceptions and requirements outlined below, City will pay Concessionaire an amount equal to the reasonable and necessary expenses incurred in the direct physical construction and equipping of the reclaimed Premises, less any amounts attributable to asset depreciation, as calculated by City. City will not pay for any costs or expenses for furniture, equipment, or other property that is relocated to any replacement Premises, or for any such items that are destroyed, transferred, or repurposed, or that otherwise remain in the possession or control of Concessionaire or any third parties. City will not pay for any costs or expenses that reflect travel expenditures, shipping and delivery, internal employee wages, bid proposal costs, meals, design services, or any other expenses that are not for the direct physical construction and equipping of the reclaimed Premises. City will not pay for any reimbursable costs or expenses that cannot be directly verified via invoices and other documentation to the satisfaction of City in its sole discretion, and will not pay any amount in excess of the Minimum Capital Investment. City further reserves the right to deny or reduce any claims for expenses for goods and services that it determines were not reasonable or that were not actually paid for, received, or used for the replacement Premises. Concessionaire shall submit all documentation relating to claimed expenses within sixty (60) days after the City's notice, and shall promptly cooperate with all specific requests to provide information about any such expenses, including contracts and purchase orders between Concessionaire and its contractors. Failure to timely submit documentation or cooperate with City may result in denial of expense at City's sole discretion. If Concessionaire moves to replacement Premises, any final amount determined by City for reimbursement will be provided solely in the form of an credit the Privilege Fee(s) owned by Concessionaire.

D. Concessionaire shall not be compensated and City shall not be liable for any inconvenience to Concessionaire or for any damages, lost profits, or interruption of Concessionaire's business relating to or arising in any way from the reclaiming of the Premises or moving to any replacement premises.

E. Within a reasonable time after the Reclaiming Effective Date, the City will modify the Summary of Contract Provisions and ***Exhibit A*** to delete the reclaimed Premises and formally incorporate the replacement Premises, if any, via letter executed by the CEO, or CEO's representative, without need for formal amendment to this Agreement. If Concessionaire accepts the replacement Premises, the following such acceptance, the term Premises as used in this Agreement shall mean the replacement Premises.

F. Notwithstanding any other provision, if no adequate replacement Premises are available, as determined solely by City in its discretion, or if Concessionaire fails to respond to the Reclaiming Notice within thirty (30) days after the date of such notice or otherwise rejects any replacement premises, this Agreement will terminate on the Reclaiming Effective Date and this Agreement's termination provisions shall apply.

2.13 NO WARRANTY FOR ECONOMIC VIABILITY

City makes no warranty, promises, or representations as to the economic viability of the Premises, Concessionaire's business concept, or any other matter pertinent to the potential or likelihood for success or failure of Concessionaire's business operations. Concessionaire understands, acknowledges, and accepts that airline gate usage and other aspects of DEN operations are subject to change without notice and that City makes no warranty regarding passenger numbers or traffic, or airline gate usage. Except as is specifically set forth herein, City shall not, by virtue of the existence of this Agreement, be constrained in connection with its operation of DEN.

2.14 RIGHT TO DEVELOP AIRPORT

Concessionaire recognizes that from time to time, it may be necessary for City to commence or complete extensive programs of development, improvement, construction, expansion, relocation, maintenance, and repair in order for DEN and its facilities to be maintained, improved, completed, and operated in accordance with any present or future master layout plan. Further, Concessionaire acknowledges that such construction, expansion, relocation, maintenance, and repair may inconvenience Concessionaire in its operation at DEN. Concessionaire agrees that no liability shall attach to City, its officers, agents, employees, Contractors, subcontractors, and representatives by way of such inconveniences. Concessionaire agrees to waive any right to claim damages or other consideration therefrom.

2.15 RIGHT OF FLIGHT

Concessionaire’s privilege to use the Premises shall be secondary and subordinate to the City’s operation of DEN. Concessionaire acknowledges that because of the location of the Premises at DEN, noise, vibrations, fumes, debris, and other interference with the Permitted Use(s) may be caused by DEN operations. Concessionaire waives all rights or remedies against City arising out of any noise, vibration, fumes, debris, and/or interference that is caused by the operation of DEN. City specifically reserves for itself and for the public a right of flight for the passage of aircraft in the airspace above the surface of DEN. Additionally, City reserves for itself the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft. Concessionaire expressly agrees for itself, its successors, and assigns, to prevent any use of the Premises, which would interfere with or adversely affect the operation or maintenance of DEN, or otherwise constitute an airport hazard.

ARTICLE III: RENT

3.01 GROSS REVENUE

A. Gross Revenue includes all monies paid or payable to Concessionaire or due or received from customers by Concessionaire for sales made, services rendered, and customer orders fulfilled at or from the Premises, regardless of when or where the customer order is placed (including outside the Premises), and any other receipts, credits, rebates, allowances, internet sales, or revenues of any type arising out of or in connection with Concessionaire’s, or agents’ operations at the Premises, including, but not limited to, branding fees, marketing fees, merchandising fees, promotional allowances, performance allowances, retail display allowances, and any other type of ancillary advertising or product placement fees, other allowances and fees, and any amount charged by Concessionaire as a pass through to its customers of the Privilege Fee or any other fee or charge payable per this Agreement.

B. Gross Revenue shall not include:

1. Any taxes imposed by any law, ordinance, statute, code, rule, regulation, common law, order or decree of any governmental authority (a "**Law**"), including as these may be amended after the Effective Date of this Agreement law that are separately stated to and paid by a customer and directly payable to the taxing authority by Concessionaire.

2. Notwithstanding the foregoing, amounts and credits received from suppliers for merchandise, including those received for merchandise returned by concessionaire.

3. Cash and credit card refunds to customers for merchandise returned.

4. Amounts and credits received in settlement of claims for loss of, or damage to, merchandise.

5. Insurance proceeds received from the settlement of claims for the loss of or damage to Concessionaire's property at or on the Premises other than the proceeds from business interruption insurance.

6. Inter-company store transfers.

7. United States Postal Service stamp sales.

8. Amounts received for uniforms or clothing purchased by employees where such uniforms or clothing are required to be worn by employees.

9. Reimbursements from Concessionaire's sub-concessionaires for any taxes, fees, franchise or license fees, utilities or other services paid or provided by Concessionaire for or on behalf of its sub-concessionaires; provided, however, that any reimbursement in excess of the actual cost of such taxes, fees, franchise or license fees, utilities or other services shall be included in Gross Revenue.

10. Compensational fees, and charges paid to Concessionaire by its sub-concessionaires pursuant to the provisions of this Agreement; provided, however, that any such payment in excess of the amounts required hereunder shall be included in Gross Revenue.

11. Gift cards sold at the Premises. When a gift card is redeemed or accepted as payment for a purchase at the Premises, the transaction must be reported as part of Gross Revenue.

12. Amounts for coupons and other forms of discounts including complimentary customer services, such that only the amounts actually received are ultimately included in Gross Revenue.

13. Gratuities for services performed by employees paid by Concessionaire or by its customers except to the extent Concessionaire may be entitled to receive a portion of the gratuities.

3.02 PRIVILEGE FEE

A. As consideration for the privileges granted herein to operate the Concession at DEN, beginning on the earlier of the Actual Opening Date or the Required Opening Date, which date will be the "**Privilege Fee Commencement Date**" and continuing through the Term, Concessionaire shall pay the Privilege Fee to City for each month, or portion thereof, during the Term. The Privilege Fee shall be comprised of the Minimum Annual Guarantee ("**MAG**") and/or the Percentage Fee, as set forth in this Article III.

1. The "**Required Opening Date**" is the date the Concession is required to be Open for Business, as set forth in the Summary of Contract Provisions at Section 1.01. The "**Actual Opening Date**" is the first date the Concession is actually Open for Business. "**Open for Business**" means the date on which Concessionaire has met the requirements stated in the Concessions Handbook necessary to be open to the public for business and has (i) delivered documentation satisfactory to City of Substantial Completion of the Premises; (ii) obtained written permission from the CEO or CEO's representative to remove any construction wall surrounding the Premises, if applicable; and (iii) commenced generating Gross Revenue from the Premises. "**Substantial Completion**" occurs when any construction or other work is sufficiently complete and Concessionaire has received a Certificate of Occupancy and/or a Temporary Certificate of Occupancy from City and County of Denver Building Department and is able to occupy the Premises for the purpose of opening for business.

B. **Percentage Fee**. Concessionaire covenants to pay a Percentage Fee in an amount equal to Gross Revenue for a month multiplied by the Percentage Fee Rate stated in the Summary of Contract Provisions, but only to the extent that such calculated amount exceeds the MAG payable for that month. If MAG is greater than the Percentage Fee in a month, then Concessionaire shall pay the monthly share of MAG as the Privilege Fee for that month.

C. **MAG**

1. **First Year MAG**. Beginning on the Privilege Fee Commencement Date and continuing through the end of the calendar year in which such Privilege Fee Commencement Date occurs, the Initial MAG amount in the Summary of Contract Provisions will be pro-rated to include only the months from the Privilege Fee Commencement Date to the end of that calendar year. Any full monthly amount will be one-twelfth (1/12th) of the Initial MAG amount in the Summary of Contract Provisions. If the Privilege Fee Commencement Date is after the first of a month, the calculation of the first

month's MAG will be pro-rated based upon the number of days in that month.

2. **Waiver of First Year MAG.** If the Privilege Fee Commencement Date occurs on a date that is earlier than the Required Opening Date, the Concessionaire shall not have to pay First Year MAG as set forth in Section 3.02.C.1 above, and instead shall only be required to pay the monthly Percentage Rent as the Privilege fee until the end of the calendar year in which the Privilege Fee Commencement Date occurs.

3. **Subsequent Contract Years**. Beginning on January 1 following the Privilege Fee Commencement Date and continuing each year thereafter until the Expiration Date, including any holdover period, the MAG will equal the greater of the initial MAG or eighty-five percent (85%) of the total Privilege Fee payable in the prior calendar year. The MAG applicable to the last year of this Agreement will be pro-rated if such Contract Year is less than twelve (12) months.

3.03 OTHER FEES AND CHARGES

A. **Joint Marketing Fee**. Beginning on the earlier of the Actual Opening Date or the Required Opening Date, Concessionaire agrees to pay the applicable Joint Marketing Fee in accordance with the procedure identified in the Concessions Handbook, within ten (10) days after the last day of each month, as payment for the performance by City of marketing services through the Joint Marketing Fund, a Joint Marketing Fee in an amount equal to the Joint Marketing Fee Rate as stated in the Summary of Contract Provisions multiplied by Gross Revenue for the month. See Concessions Handbook Section 12.02.

B. **RTD EcoPass Program**. Concessionaire will participate in the EcoPass Program as described in ***Exhibit F***.

C. **Commons Area Maintenance**. When the Premises, or any part of the Premises, is located in a food court, Concessionaire agrees to be charged and pay on the first (1st) day of each month the "**Common Area Maintenance Fee**." The Common Area Maintenance Fee is payment for City's performance of maintenance of the food court areas, and represents the Concessionaire's share of the annual Common Area Maintenance Costs in twelfths (1/12) applicable to the Premises, as stated in the Summary of Contract Provisions. The Parties agree Concessionaire's share may increase or decrease during the Term. The City may update the Summary of Contract Provisions to incorporate any increase or decrease, to be confirmed by letter executed by the CEO or the CEO's representative and acknowledged by Concessionaire, without need for formal amendment to this Agreement. Additional guidance on the Common Area Maintenance fee is in Section 12.02 of the Concessions Handbook.

D. **Utilities**. City may provide certain utility connections as stated in the Concessions Handbook. Concessionaire may connect into or extend, at its cost, such utilities in accordance with the Concessions Handbook. Beginning on the Date of Possession, Concessionaire covenants to pay for all utilities necessary in the operation of the Premises by a method determined by the City. All utility charges shall be paid by Concessionaire, regardless of whether the utility services are furnished by City or other utility service entities. Concessionaire covenants to execute and deliver any utility data release forms required for City to have access to Concessionaire's utility data. Concessionaire agrees to participate in any airport wide utility program established by the City at Concessionaire's expense.

E. **Other Fees and Charges**. Concessionaire covenants to pay in a timely manner damages due to City, or other charges and fees as City assesses, in accordance with its procedures and requirements stated in the Concessions Handbook, and also other fees that Concessionaire incurs in the normal course of business, including but not limited to telephone, badging, fingerprinting, plus any applicable taxes. See Concessions Handbook Section 12.02.

3.04 FAILURE TO MAKE TIMELY PAYMENTS

A. Immediately upon Concessionaire's receipt of monies from sales, services, or doing business under this Agreement, the percentages of said monies belonging to City per this Agreement shall immediately vest in and become the property of City. Concessionaire understands, accepts, and agrees to be responsible as a trustee for said monies until the same are delivered to City. Concessionaire also covenants to pay all compensation, damages, charges, and fees under this Agreement independent of any obligation of City. No breach of this Agreement by City shall relieve Concessionaire of its obligation and duty to pay all such obligations when due.

B. Without waiving any other right or action available to City, in the event Concessionaire is delinquent in the payment of compensation, damages, charges, or fees rightly due and owing by an audit of Concessionaire's books and records as provided in Section 3.05, and in the event Concessionaire is delinquent in paying to City any such compensation, damages, charges, or fees for a period of five (5) business days after the payment is due, City reserves the right to charge Concessionaire interest thereon, from the date such compensation, damages, charges, or fees became due to the date of payment, at 18% per annum, to the maximum extent permitted by law.

C. In the event of a dispute as to the amount to be paid, City shall accept the sum tendered without waiving any legal rights or claims and, if a deficiency is determined to exist, interest shall apply only to the deficiency.

D. The right of City to require payment of interest and the obligation of the Concessionaire to pay such interest shall be in addition to and not in lieu of the right of City to enforce other provisions herein, including termination of this Agreement, and to pursue any remedies provided by law.

E. The failure of City to take action in the event of any delinquent payment(s) shall in no way waive the right of City to take action at a subsequent time. City expects all compensation, fees, and charges to be paid on time and Concessionaire agrees to pay on time. Further, any acceptance of payment, endorsements or statements on a check or letter accompanying such payment for compensation or other charges shall not be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever.

F. City may terminate this Agreement upon written notice to Concessionaire, in accordance with Section 7.02, if (i) there are recurring instances in which Concessionaire's payments required hereunder are not timely or are less than the sums actually due and payable to City; or (ii) Concessionaire fails to maintain adequate records and accounts reflecting its business operations at DEN and calculation of Gross Revenue under this Agreement; or (iii) Concessionaire fails or refuses to submit the formal supporting paperwork as required herein.

3.05 RECORD KEEPING, REPORTS, ANNUAL STATEMENT, AND END OF YEAR ADJUSTMENT

A. **Records Maintenance**. Concessionaire shall establish and maintain, in accordance with Generally Accepted Accounting Principles, a bookkeeping system with complete and accurate books and records that include all financial transactions in the performance of this Agreement. Such system shall be kept in a manner that distinguishes each Concession location that is operated by the Concessionaire and such system is subject to City's approval. Concessionaire shall retain such books and records onsite or otherwise make readily available for a period in accordance with this Agreement for inspection by representatives of the City, including, without limitation, the City's Auditor and independent auditors hired by the City. Such books and records shall include, without limitation, all sales slips, cash register tapes, stand sheets, sales books, bank books or duplicate deposit slips, and all other evidence of total receipts, Gross Revenue, Direct Operating Expenses, Net Operating Profits, Net Operating Losses, Minimum Guaranteed Payments, City Commissions, Monthly Reports, Weekly Reports, Annual Reports, and CCC Business Incentive Fund, Marketing Fund, Additional Expenditures, and Reserve Fund balances, copies of all business tax returns filed with the State of Colorado and all federal income tax returns (collectively, the "**Financial Records**").

B. **Cash Registers and Inventory Sheets**. At each location where cash registers are used, cash register tapes shall be balanced with the inventory to determine the Gross Revenue from that location. At each location where cash registers are not used, the Inventory Method as established by Generally Accepted Accounting Principles shall be used to determine Gross Revenue. Concessionaire shall retain all cash register receipts and stand inventory sheets in accordance with this Agreement; and these documents are subject to audit by the City in accordance with this Agreement.

C. **Financial Reports**. Concessionaire covenants to prepare and submit reports to City as specified in Section 12.03 of the Concessions Handbook. City reserves the right to change the form and frequency of reports and statements, including, but not limited to, ***Exhibit C*** Monthly Concession Report, and to require the submission by Concessionaire of other statistics and information pertaining to the Gross Revenue hereunder. Concessionaire agrees to change the form of the required reports and statements as requested by City and to provide any additional statistics and information City may request.

D. **Annual Statement**. No later than February 28 each year following the Privilege Fee Commencement Date, Concessionaire will, at its sole cost and expense, provide an "**Annual Statement**" to City prepared by an Independent Certified Public Accountant ("**CPA**"). There may be no limitation on the scope of the engagement that would preclude the CPA from expressing an unqualified opinion as to the correctness and completeness of the reported Gross Revenue. The engagement will include a schedule of Gross Revenue and Privilege Fees for each month of the Concessionaire's operations in the Contract Year, prepared in accordance with the comprehensive basis of accounting defined herein and reported in a format acceptable to City. The engagement will be conducted in accordance with Generally Accepted Auditing Standards and shall include an opinion from the CPA on whether the Gross Revenue, Privilege Fees, and all other fees or charges payable under this Agreement have been completely and accurately presented, calculated, reported, and paid according to the terms of this Agreement. City reserves the right to reject Concessionaire's choice of CPA, where in City's view the CPA does not have the appropriate standing, reputation, or independence from the Concessionaire. The City may further define or modify the requirements for the Annual Statement through updates to the Concessions Handbook or by the CEO's signed directive.

E. **Findings**. City reserves the right to challenge any findings or conclusions of the Annual Statement. In such event, City may conduct its own audit under the provisions in Section 3.07 or may require production of the supporting documentation used to reach the finding or conclusion in question. The resolution by City of any dispute will be final. Delivery of an Annual Statement containing a qualified opinion, or an adverse opinion, or a disclaimer of opinion as defined in the then-current Statements on Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor board or agency thereto, will be deemed a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

F. **End of Year Adjustment**. If Concessionaire has paid to City an amount greater than Concessionaire is required to pay as the Privilege Fee for a calendar year, Concessionaire shall be entitled to a credit against Concessionaire's MAG for the amount of the overpayment. If Concessionaire has paid less than the amount required to be paid as Privilege Fee for such calendar year, then Concessionaire shall pay the difference to City in the next payment of MAG.

G. **Acceptance of Reporting**. Acceptance of any financial reports or payments by City does not constitute agreement by City to the amounts reported and paid. City reserves the right to reject any reports submitted by Concessionaire.

3.06 FORM OF PAYMENT

All payments due under this Agreement shall be paid in United States dollars. City may accept payment without prejudice to its right to recover the balance of any amount due and to pursue any other remedies in this Agreement or otherwise available at law. All payments of MAG, Percentage Fee, and all other damages, fees, and/or charges shall be made by the method specified in Section 12.01 of the Concessions Handbook. Concessionaire assumes all risk of loss of payments.

3.07 CITY'S RIGHT TO PERFORM AUDITS, INSPECTIONS, ATTESTATION ENGAGEMENTS

A. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Concessionaire's performance under this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Concessionaire shall cooperate with City, and City shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or the expiration or early termination of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with Denver Revised Municipal Code ("**D.R.M.C.**") § 20-276.

B. Concessionaire agrees that City, and any of City's agents including the City's Auditor or an authorized representative of the Auditor, may inspect any document, return, data or report filed by Concessionaire pursuant to Chapter 53 of the D.R.M.C., and in regard to such inspection Concessionaire waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

C. If City requests and Concessionaire fails to furnish any records in a timely manner, City reserves the right to, in addition to all other remedies available hereunder, at law have an independent forensic accounting firm attempt to reconstruct the missing records. Concessionaire shall reimburse City for the reasonable cost associated with reconstructing any missing records, including but not limited to, the cost of the independent forensic accounting firm, attorney's fees, and litigation expenses incurred. Engagements will be conducted in accordance with the procedures identified in the Concessions Handbook.

D. If City determines after an audit for any Contract Year that any payment(s) made to City were understated or materially misstated in the Annual Report, Concessionaire shall pay the amount of the deficiency plus interest at two percent (2%) per month compounded daily computed from the date due until the date paid. If such payments were understated or materially misstated by more than one percent (1%), Concessionaire shall pay to the City the cost of the City's audit in addition to the deficiency and interest. If City determines after an audit that City was overpaid, City shall have the option to either credit an overpayment against a subsequent amount due or provide a refund to Concessionaire.

E. Concessionaire will include a provision providing City the same rights to initiate and perform audits, inspections, or attestation engagements in any sub-concessionaire agreement that it enters and cause its sub-concessionaires to include the statements in further sub-concessionaire agreements.

ARTICLE IV: TERM

4.01 AGREEMENT TERM

This Agreement shall be effective and binding upon the Parties as of the Effective Date. Concession operation shall begin on the Required Opening Date and continue through the Expiration Date ("**Term**") unless this Agreement is earlier terminated as provided herein. In no case will the Term extend beyond the Expiration Date as stated in the Summary of Contract Provisions.

4.02 TEMPORARY OPERATIONS

After the Effective Date and continuing during the Term, City, in the sole discretion of the CEO, may grant Concessionaire the privilege of conducting temporary concession operations at DEN. Where the CEO determines it is in the best interest of City to allow Concessionaire the privilege of conducting temporary concession operations, City shall notify Concessionaire by letter, executed by the CEO or CEO's authorized representative and acknowledged by Concessionaire, without need for formal amendment to this Agreement. Such privilege shall be on a temporary basis, and upon the same terms and conditions as set forth in this Agreement. Temporary operations added in accordance with this Section shall open within ninety (90) days from the date of the CEO's letter and terminate on a date determined by City.

4.03 HOLDOVER

A. Concessionaire shall have no right to holdover after the expiration or early termination of this Agreement unless the City specifically permits, in writing, such holdover. Any exercise by Concessionaire of the privileges granted herein after the Expiration Date, if permitted by City, shall be on a month-to-month basis and all terms and conditions of this Agreement, including compensation, fees, charges, insurance requirements, Surety, and Guarantees remaining in place until such time City gives notice to Concessionaire to surrender the Premises. Notice to surrender will be provided in writing not less than thirty (30) days prior to the anticipated surrender date.

B. The expiration or early termination of this Agreement without the written approval of City constitutes a trespass, in accordance with D.R.M.C. § 38-115. Occupancy of any portion of the Premises by Concessionaire after the Expiration Date or other termination of this Agreement, without City's written approval, does not extend the Term of such portion of the Premises. Nothing herein shall be construed to give Concessionaire the right to hold over. In the event of such trespass, Concessionaire shall indemnify City against all damages arising out of the Concessionaire's trespass, including but not limited to, any costs incurred by City to evict Concessionaire, regain possession of the Premises or any portion(s) thereof, and all insurance policies, Surety, and Guarantees required to be obtained and maintained by Concessionaire as set forth in this Agreement shall continue in full force and effect.

4.04 PRIVILEGES AND OBLIGATIONS UPON EXPIRATION OR TERMINATION

A. Upon the expiration or early termination of this Agreement, Concessionaire will surrender the Premises to City peaceably, quietly, and in as good order and condition as the same may be hereafter improved by Concessionaire or City, reasonable use and wear thereof and damage by casualty, which damage Concessionaire did not cause and is not required to repair or restore under this Agreement, excepted.

B. Concessionaire shall provide to City any and all keys to doors, window displays, or any area of controlled access within the footprint of the Premises.

C. City shall be entitled to exercise the non-judicial remedy of locking Concessionaire out of the Premises as a means of enforcing City's right of possession, regardless of whether Concessionaire is delinquent in compensation payments, including without limitation, the deactivation of Concessionaire's security badges or credentials. City's right of deactivation shall not, and legally cannot, limit or otherwise affect City's governmental police powers to deactivate security credentials for security or other governmental reasons.

D. Upon the expiration or termination of this Agreement, Concessionaire shall remove all its Trade Fixtures and Concessionaire or brand proprietary property, inventory, and other personal property, and leave the Premises in broom clean condition. Additionally, at the option and upon the written request of City, and to the extent assignable under license agreement or otherwise, Concessionaire shall convey the rights to any permit or license applicable to the Premises to any designee of City for the designee's use on an "as is" basis without warranties. No act by City shall be deemed an acceptance of a surrender of the Premises; the City's acceptance of a surrender of the Premises shall be valid only if such acceptance is in writing and signed by City.

E. The Parties understand and agree all terms and conditions of this Agreement which by reasonable implication contemplate continued performance or compliance beyond termination of this Agreement (by expiration of the term or otherwise), shall survive the expiration or earlier termination of this Agreement and shall continue to be fully enforceable as provided herein.

4.05 END OF TERM TRANSITION

During the final calendar year of the Term, City may award and transition to a new concession agreement that may include privileges to the Premises or portions thereof. If Concessionaire is not selected for the new agreement, Concessionaire acknowledges and agrees to follow the end of term transition procedures and guidelines identified in Section 9.02 of the Concessions Handbook.

ARTICLE V: CONSTRUCTION, MINIMUM CAPITAL INVESTMENT AND MID-TERM RENOVATION

5.01 INITIAL CAPITAL INVESTMENT

A. As a valuable consideration for City awarding the Concession to the Concessionaire and entering into this Agreement, Concessionaire shall make a capital investment in the initial construction, furnishing, and equipping of the Premises in an amount that shall not be less than the Minimum Capital Investment set forth in the Summary of Contract Provisions. Concessionaire agrees to follow the process for certification and approval of the Minimum Capital Investment described in Section 1.02 of the Concessions Handbook. Any amounts paid to City because of this provision or the procedure described in the Concessions Handbook shall not be deemed a Capital Investment for any purpose under this Agreement nor shall it be deemed payment of any compensation or other fees due under this Agreement.

B. The Initial Capital Investments shall be used by the Concessionaire for the design, Construction and installation of the Premises Improvements and Trade Fixtures. "**Premises Improvements**" includes all improvements and equipment that are structural in nature or are affixed to the Premises and cannot be removed without material damage to the Premises including, but not limited to, mechanical, electrical and plumbing work, floors, ceilings, demising walls, store fronts, lighting fixtures, and built-in shelving. "**Trade Fixtures**" includes all furniture, fixtures, and major equipment installed by Concessionaire for use in its performance of the Concession and which are removable from the Premises without causing material damage to the Premises.

C. Concessionaire's construction, furnishing, fixturing, refurbishing, and remodeling of any portion of the Premises shall be reviewed and approved by City (an "**Approved Project**") in accordance with the Concessions Handbook.

5.02 DESIGN AND CONSTRUCTION STANDARDS

In its design and construction work on the Premises, Concessionaire will fully comply with the standards and development guidelines identified in Articles 2 and 3 of the Concessions Handbook.

5.03 CONSTRUCTION BY CONCESSIONAIRE

Concessionaire shall not make any improvements or modifications, do any construction work on the Premises, or alter, modify, or make additions, improvements, replacements, or repairs, except emergency repairs, (collectively, "**Construction**") to any structure now existing or built without prior written approval of City. Concessionaire shall not install any fixtures, other than typical trade fixtures, without the prior written approval of City. In the event any Construction is made without City approval, or done in a manner other than as approved, City may, at its discretion, (i) terminate this Agreement; or (ii) require Concessionaire to remove the unauthorized Construction; or (iii) require Concessionaire to change the unauthorized Construction to the satisfaction of City. In case of any failure on the part of Concessionaire to comply, City may, in addition to any other remedies available to it at law, remove, repair, or change the unauthorized Construction, and Concessionaire shall pay the cost thereof to City including reasonable City oversight charges.

5.04 DEVELOPMENT SCHEDULE

A. The development schedule for the initial construction of the Concession within the Premises will be coordinated with City. The Required Opening Date or any other portions of the development schedule may only be changed by City in its sole discretion based on delays caused by City or other factors clearly outside either Party's fault or control. In no event will delays attributable to Concessionaire's actions or failure to act be a cause for City to modify the development schedule.

B. Any failure by City to deliver possession of the Premises to Concessionaire on the agreed-upon expected Date of Possession will not give rise to any claim for damages by Concessionaire against City or against City's Contractor(s), and such failure shall not affect the validity of this Agreement or Concessionaire's obligations and related deadlines hereunder.

5.05 SUBMITTAL AND APPROVAL OF PLANS

A. **Submittal of Plans**. Prior to Concessionaire's commencement of any Construction within the Premises, Concessionaire shall submit plans and specifications, that conform to all of the requirements of the Concessions Handbook, to City for review and approval. No Construction shall commence until City has approved the plans and specifications and has issued a Notice to Proceed. Concessionaire shall submit plans and specifications in the form and number identified in the Concessions Handbook. In the event City disapproves any portion of any submittal of plans and specifications, Concessionaire shall promptly make modifications and revisions and resubmit for approval by City.

B. **Disclaimer of Compliance with Laws or Codes**. The approval by City of any plans and specifications refers to the conformity of such plans and specifications to City standards. Approval of any plans and specifications by City does not constitute its representation or warranty as to their conformity with any applicable Laws or permits and responsibility therefore always remains with Concessionaire.

C. **Approvals Extend to Architectural and Aesthetic Matters**. City approval will be required for all Construction and systems, including architectural and aesthetic matters. City may reject any designs submitted by Concessionaire and require Concessionaire, at Concessionaire's sole cost and expense, to make modifications and revisions, and to resubmit designs until designs are deemed acceptable and subsequently approved in writing by City.

D. **Design and Permitting**. Concessionaire shall be responsible, at its sole cost and expense, for the costs of design and permitting of all improvements within the Premises and shall not commence any work with respect to an Approved Project until all governmental permits and approvals with respect to the Approved Project have been obtained. At no cost or liability to City, City shall reasonably cooperate with Concessionaire's efforts to obtain such permits and approvals, which cooperation shall include, without limitation, the execution of such instruments as may be required by governmental authorities in order for Concessionaire to apply for and obtain such permits and approvals.

5.06 CONSTRUCTION

A. **Procedures**. Concessionaire shall, at its own cost and expense, commence construction of an Approved Project in accordance with the procedures described in the Concessions Handbook. Concessionaire agrees that all construction work to be performed, including all workmanship and materials, shall be of First Class quality and in accordance with the Approved Project. All construction shall be performed in accordance with the requirements of this Agreement, the Concessions Handbook, and applicable Laws and DEN Rules. City shall have the right from time to time to inspect each Approved Project.

B. **Bonding During Construction**. Concessionaire shall obtain performance and payment bonds, in the form and the amount required by the Concessions Handbook, before beginning any Construction.

C. **Timing**. Concessionaire must complete the Construction of the initial Approved Project and be Open for Business no later than the Required Opening Date, and by any required completion date for all later Approved Projects, subject to any extensions that may be approved by City.

D. **Liquidated Damages for Failure to Meet Date**. Concessionaire acknowledges that if it fails to Open for Business by the Required Opening Date, or a required completion date for later Approved Projects, the delay will cause City to suffer substantial damages that are difficult to ascertain or prove. Therefore, if

Concessionaire fails to complete any Approved Project by its required completion date, City will have the right to exercise any and all remedies available at law or in equity, including but not limited to, imposing of liquidated damages on Concessionaire or terminating this Agreement.

5.07 COMPLETION OF CONSTRUCTION

For each Approved Project, Concessionaire shall conform to Project Closeout Activities set forth in Section 4.02 of the Concessions Handbook.

5.08 TITLE TO IMPROVEMENTS

All Premises Improvements made to the Premises by Concessionaire, and any additions and alterations thereto made by Concessionaire, including approved changes and renovations affixed to the realty, shall become, at no cost to the City, the property of City upon their completion and acceptance by City.

5.09 MID-TERM REFURBISHMENT

A. Concessionaire shall, at its sole cost and expense, construct and install all approved improvements (the "**Mid-Term Refurbishment**") no later than the Mid-Term Refurbishment Completion Date set forth in Section 1.01. The Mid-Term Refurbishment shall exclude improvements or maintenance performed as routine maintenance in accordance with the Agreement. City and Concessionaire shall jointly determine the scope and extent of the Mid-Term Refurbishment for the Premises. The Parties shall cooperate to identify the scope of the Mid-Term Refurbishment. However, if Concessionaire and City cannot agree upon the necessary scope and extent of the Mid-Term Refurbishment, City may, at its sole discretion, determine the refurbishment required and Concessionaire agrees to be bound by City's determination.

B. Concessionaire's plans, specifications, and timeline for work needed for the Mid-Term Refurbishment must be in accordance with Section 8.02 of the Concessions Handbook. Concessionaire shall submit its plan specifications for refurbishment to City for review and approval in accordance with the procedures stated in the Concessions Handbook.

5.10 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE ("MWBE") REQUIREMENTS

A. This Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, of the D.R.M.C., designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the "**MWBE Ordinance**") and any rules and regulations promulgated pursuant thereto. The Division of Small Business Opportunity's ("**DSBO**") has established ___% MWBE requirements on the design of the proposed Concession within the Premises. The Concessionaire shall be required to provide a Goal Commitment to MWBE participation applicable to the Concession design by submitting required DSBO forms.

B. Upon substantial completion of the Concession design by Concessionaire, and as a condition of receiving a City-issued construction Notice to Proceed, Concessionaire shall work with the City, including DSBO, to obtain Concessionaire's DSBO Program Goal for the construction work associated with the Approved Project ("**MWBE Construction Goal**"). Should a DSBO Program Goal be applicable to the construction portion of the Approved Project, Concessionaire will be required to demonstrate their Goal Commitment to MWBE participation through the required DSBO forms ("**Goal Commitment**"). That construction Goal Commitment shall be enforceable by the City as if set forth herein, and the provisions of this Section 5.10 shall apply equally to the design Goal Commitment and the construction Goal Commitment. Concessionaire shall contact DSBO at goals@denvergov.org with a copy to DSBO@flydenver.com for further instructions.

C. Under D.R.M.C. § 28-68, Concessionaire has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with the MWBE participation goal upon which this Agreement was awarded, unless the City initiates a material modification to the scope of work affecting MWBEs performing on this Agreement through change order, contract amendment, force account, or other modification under D.R.M.C. § 28-70. Concessionaire acknowledges that:

1. If directed by DSBO, Concessionaire is required to develop and comply with a Utilization Plan for utilization of MWBEs in accordance with D.R.M.C. § 28-62(b) ("**Utilization Plan**"). Along with the Utilization Plan requirements, Concessionaire must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the Utilization Plan and achieving the MWBE requirement. The Utilization Plan is subject to modification by DSBO.

2. If change orders or any other contract modifications are issued under the Agreement, Concessionaire shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases under D.R.M.C. § 28-70, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change by the City.

3. If change orders or other amendments or modifications are issued under the contract that include an increase in the scope of work of this Agreement, whether by amendment, change order, force account or otherwise, which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such change orders or contract modification shall be promptly submitted to DSBO for notification purposes.

4. Those amendments, change orders, force accounts or other contract modifications that involve a changed scope of work that cannot be performed by existing project subcontractors/subconsultants are subject to the original overall contract requirement. Concessionaire shall satisfy the requirement with respect to such changed scope of work by soliciting new MWBEs in accordance with D.R.M.C. § 28-70. Concessionaire must also satisfy the requirements under D.R.M.C. §§ 28-60 and 28-73 with regard to changes in scope or participation. Concessionaire shall supply to the DSBO Director all required documentation under D.R.M.C. §§ 28-60, 28-70, and 28-73, with respect to the modified dollar value or work under the contract.

5. If applicable, for contracts of one million dollars ($1,000,000.00) and over, Concessionaire is required to comply with D.R.M.C. § 28-72, regarding prompt payment to MWBEs. Payment to MWBE subcontractors/subconsultants shall be made by no later than thirty-five (35) days after receipt of the MWBE subcontractor/subconsultant's invoice.

6. Termination or substitution of an MWBE subcontractor requires compliance with D.R.M.C. § 28-73.

7. Failure to comply with these provisions may subject Concessionaire to sanctions set forth in § 28-76 of the MWBE Ordinance.

8. Should any questions arise regarding specific circumstances, Concessionaire should consult the MWBE Ordinance or may contact the Project's designated DSBO representative at (720) 913-1999.

5.11 PREVAILING WAGE

A. To the extent required by law, Concessionaire shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wage Ordinance, D.R.M.C. §§ 20-76 through 20-79, including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, Concessionaire shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the Agreement were encumbered.

1. Date bid or proposal issuance was advertised: [Date]

B. Prevailing wage and fringe rates will adjust on the yearly anniversary of the actual date of bid or proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable.

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

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

E. Concessionaire shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling (720) 913-5000 or emailing: auditor@denvergov.org.

F. If Concessionaire fails to pay workers as required by the Prevailing Wage Ordinance, Concessionaire will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Concessionaire fails to pay required wages and fringe benefits.

ARTICLE VI: OPERATION OF CONCESSION

6.01 LIENS

A. The interest of City in the Premises will not be subject to liens for any work, labor, materials, or improvements (collectively, "**Liens**") made by or for Concessionaire to the Premises, whether or not the same is made or done in accordance with an agreement between City and Concessionaire. It is specifically understood and agreed by Concessionaire that in no event will City or the interest of City in the Premises be liable for or subject to any Liens for materials furnished, improvements, labor or work made by or for Concessionaire to the Premises. Concessionaire is specifically prohibited from pledging, liening, or otherwise encumbering any assets located at DEN or any interest in this Agreement without prior, written approval by City. Concessionaire is specifically prohibited from subjecting City's interest in the Premises to any Liens for improvements made by or for Concessionaire or for any materials, improvements, or work for which Concessionaire is responsible for payment. Concessionaire will indemnify, defend, and hold City harmless for any expense or cost associated with any Lien or claim of Lien that may be filed against the Premises, DEN, or City, including attorney fees incurred by City. Concessionaire will provide notice of this disclaimer of Liens to all Contractors or subcontractors providing any materials or making any improvements to the Premises.

B. In the event any construction, Lien, or notice of Lien is filed against any portion of the Premises for any work, labor or materials furnished to the Premises, whether or not the same is made or done in accordance with an agreement between City and Concessionaire, Concessionaire will cause any such lien to be discharged of record within thirty (30) days after notice of filing thereof by payment bond or otherwise or by posting with a reputable title company or other escrow agent acceptable to

City, security satisfactory to City to secure payment of such lien, if requested by City, while Concessionaire contests to conclusion the claim giving rise to such lien.

6.02 SIGNAGE

Subject to the terms and conditions of Article VI, Concessionaire shall have the privilege to install and maintain signs on or within the Premises. The design, installation, and maintenance of all signs shall be subject to the terms of this Section and comply with Article V of the Concessions Handbook. Concessionaire shall not install signs of any type on or within the Premises without prior written approval of City.

6.03 CITY'S ACDBE POLICY

As a condition of eligibility for financial assistance from the FAA, DEN developed and implemented an ACDBE Policy and Program. The ACDBE Program was developed and implemented in accordance with the Department of Transportation ("**DOT**")'s Final Rule 49 Code of Federal Regulations Part 23. DEN's Director of the Airport Commerce Hub ("**Director**," as used in this Article VI only) has been delegated as the ACDBE Liaison Officer for DEN. In that capacity, the Director is responsible for compliance with all aspects of the ACDBE program. The Director has established ACDBE goals for DEN and may also establish ACDBE concession specific goals as a percentage of annual Gross Revenue for this Agreement. The applicable concession-specific ACDBE goal, if any, is stated in the Summary of Contract Provisions of this Agreement. The stated goal was included in a competitive solicitation process in which Concessionaire was recommended to operate in the Premises. During that process, Concessionaire submitted its required ***Exhibit E*** ("**ACDBE Commitment Form**") to meet the ACDBE goal. The Director found the required ***Exhibit E*** to be responsive and thus, required ***Exhibit E*** is attached to this Agreement. If its actions or failure to act violates its ACDBE responsibilities under this Agreement or the ACDBE regulations of the DOT as they may be adopted or amended from time to time, such actions shall constitute a material breach by Concessionaire of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

6.04 ACDBE PARTICIPATION AND COMPLIANCE

A. **ACDBE Goal**. Concessionaire agrees that it will provide for a level of ACDBE participation in this Agreement equal to or greater than the percent of the total annual Gross Revenue stated on the Summary of Contract Provisions or clearly demonstrate in a manner acceptable to City its good faith efforts to do so. Concessionaire will contract with the ACDBEs identified in ***Exhibit E*** presented with Concessionaire's Proposal and approved by City, or such other ACDBEs certified with DEN as may be approved by City. Concessionaire is required to make good faith efforts to explore all available options to meet the goal to the maximum extent practicable.

B. **ACDBE Termination and Substitution**. Concessionaire will not terminate an ACDBE for convenience without City's prior written consent. If an ACDBE is terminated by Concessionaire with City's consent or, if an ACDBE fails to complete its work on this Agreement for any reason, Concessionaire must make good faith efforts to replace such ACDBE in accordance with the procedures described in the Concessions Handbook. See Concessions Handbook Section 10.03.

C. **Reporting Requirements**. Concessionaire shall submit to the Director regular ACDBE Utilization Reports, in accordance with the procedures described in the Concessions Handbook. Concessionaire further agrees to submit any other report(s) or information that City is required by law or regulation to obtain from Concessionaire, or which the Director may request relating to Concessionaire's operations.

D. **Monitoring**. The Director will monitor the compliance and good faith efforts of Concessionaire in meeting the requirements of this Article. Concessionaire covenants to grant the Director access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Article, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the termination of this Agreement. Concessionaire covenants to grant the Director access to the Premises under this agreement for purposes of such monitoring. The extent of ACDBE participation will be reviewed prior to the exercise of any renewal, extension, or material amendment of this Agreement to consider whether an adjustment in the ACDBE requirement is warranted. Without limiting the requirements of this Agreement, City reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of these goals.

E. **Prompt Payment**. Concessionaire agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of City. This clause applies to both MWBE/SBE and non-MWBE/SBE subcontractors.

F. **Other Requirements**. Concessionaire agrees to comply with Federal, State, and Local Disadvantage Business Programs as fully set forth in ***Exhibit E***. Concessionaire's failure to comply with Federal, State, and Local Disadvantage Business Programs shall constitute a material breach by Concessionaire of this Agreement and, in addition all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

G. **Non-Compliance**. In the event of Concessionaire's non-compliance with the ACDBE Program or failure to either meet the ACDBE goal set forth in Section 6.03 or to demonstrate a good faith effort to do so, City may, in addition to pursuing any other available legal remedy, terminate, suspend or cancel this Agreement in whole or in part; and/or suspend or debar Concessionaire from eligibility to contract with City in the future or to receive bid packages or request for proposal packages or other solicitations, unless Concessionaire demonstrates, within a reasonable time as determined by City, its compliance with the terms of the ACDBE Program or this Article or its good faith efforts to comply.

H. **ACDBE Contact Information.** Should any questions arise regarding ACDBE participation for this agreement, or the ACDBE Program at DEN, the Concessionaire should consult CFR 49 Part 23 and Part 26 or may contact the designated ACDBE representative at: DEN-ACDBE@flydenver.com. Information about the ACDBE Program at DEN can be found at: https://www.flydenver.com/business-and- community/acdbe/.

6.05 COMPLIANCE WITH EQUITY, DIVERSITY, AND INCLUSIVENESS PLAN

Concessionaire shall comply with its Equity, Diversity and Inclusion Plan attached as ***Exhibit G*** ("**EDI Plan**") and as it may be modified in the future. City will monitor Concessionaire's compliance with the EDI Plan. Failure to adhere to any representations, policies, or efforts contained in the EDI Plan, as determined by City, will amount to default.

6.06 FAIR LABOR STANDARDS ACT

This Agreement incorporates by reference the provisions of 29 C.F.R. Part 201, the Federal Fair Labor Standards Act ("**FLSA**"), with the same force and effect as if given in full text. The FLSA sets federal minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Concessionaire agrees to incorporate by reference the provisions of FLSA in all contracts and subcontracts resulting from this Agreement. Concessionaire has full responsibility to monitor compliance to the referenced regulation. Concessionaire must address any claims or disputes arising from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

6.07 OCCUPATIONAL SAFETY AND HEALTH ACT

This Agreement incorporates by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Concessionaire retains full responsibility to monitor its compliance and any subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 C.F.R. Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

6.08 POINT OF SALE TERMINALS

Concessionaire must install an electronic Point-of-Sale Terminal(s) ("**POS Terminals**") to accurately record all business transactions occurring for accounting, reporting, and auditing purposes as set forth in Sections 14.20 and 14.21 of the Concessions Handbook. City reserves the right to implement and/or modify a universal point-of-sale system or other technology to work in tandem with Concessionaire's POS Terminals for continual access to point-of-sale data. Concessionaire agrees to cooperate in the implementation of such a universal point-of-sale system or other technology. If City instructs Concessionaire to install any technology, equipment, software, and systems as part of such implementation, City shall not be obligated to pay the cost of or furnish Concessionaire with the technology, equipment, software, or systems necessary to do so, or to pay any related costs.

6.09 CASH HANDLING AND CREDIT CARD REQUIREMENTS

Concessionaire must accept cash payments and all other payment mechanisms required by Sections 14.18 and 14.19 of the Concessions Handbook. The Concessionaire also may request that City approve other payment mechanisms. Concessionaire shall at all times observe cash-handling and record-handling procedures in accordance with sound accounting and financial control practices and as necessary to provide timely and accurate reports to City. City may at any time request a copy of these procedures. Additionally, Concessionaires Cash Handling and Credit Card requirements must meet the standards described in the Concessions Handbook. City shall have the right to monitor and test all of Concessionaire's procedures and controls and require Concessionaire to make changes to its procedures. Concessionaire must yearly provide certification that Concessionaire's operations are compliant with Payment Card Industry Data Security Standards. City reserves the right to receive reports required by the Payment Card Industry Security Standards Council.

6.10 ADVERTISED SALES OR PROMOTIONS

Concessionaire shall adhere to the advertising promotions guidelines stated in the Concessions Handbook. See Concessions Handbook Section 14.31. Concessionaire may not advertise in DEN, except with City's advertising contractors who sell advertising at DEN. Permission will not be granted to Concessionaire for any other advertising at DEN. Concessionaire shall not use nor permit Premises to be used as a medium for third party paid advertising, including sponsorships or any advertising material, sign, fixture, or equipment, whether paid for in-kind, by cash, or by credit.

6.11 COMPLAINTS

Concessionaire must respond to all customer complaints, written or oral, in accordance with the procedures outlined in the Concession Handbook.

6.12 CONCESSION PROMOTIONS PROGRAM

In addition to other compensation, fees, and charges due City under this Agreement, Concessionaire agrees to pay to City a Joint Marketing Fee for DEN's Concession Promotions Program, in accordance with the procedures stated in the Concession Handbook.

A. **Joint Marketing Fund**. City shall provide or cause to be provided a Joint Marketing Fund to support DEN's Concession Promotions Program.

Concessionaire shall pay the Joint Marketing Fee, as reflected in the Summary of Contract Provisions, for the Joint Marketing Fund for every month during the Term. City shall not be obligated to expend more for promotions and advertising than is actually collected from all DEN concessionaires. Any promotional services and personnel so provided shall be under the exclusive control and supervision of City. City reserves the right at any time to terminate the Joint Marketing Fund and thereafter, continue to provide marketing and promotional services until the balances remaining in the fund are exhausted.

B. **DEN's Concession Promotions Program**. The Concessions Promotions Program may include, but is not limited to, the costs of any incentive programs and activities with direct application to promoting and monitoring the concessions at DEN such as food, services, and retail merchandise advertising, marketing, public relations, media production and placements, special events, brochures, videos, directories, catalogues, customer service training, mystery shopper programs, and concession surveys relating to consumer satisfaction and market research, as well as the costs of administration of the Promotions Program.

C. **Prohibition**. City may prohibit Concessionaire from participating in any promotional activities including, but not limited, to grand opening events if Concessionaire is in breach of this Agreement.

6.13 OPERATING PROCEDURES AND STANDARDS

A. **City Requirements**. The occupancy and use by Concessionaire of the Premises and the privileges herein conferred upon Concessionaire shall be conditioned upon and subject to the DEN Rules, and any operational directives as are now or may hereafter be prescribed by City through the lawful exercise of its powers.

B. **Health and Safety Standards**. Concessionaire shall comply with all health and sanitary regulations adopted by City, State of Colorado, and any other governmental authority with jurisdiction. Concessionaire shall give access for inspection purposes to any duly authorized representatives of all such governing bodies. Concessionaire shall provide City with copies of all inspection reports by other health and sanitary governing bodies within forty-eight (48) hours of receipt. This paragraph does not require Concessionaire to waive any applicable attorney-client or attorney work product privileges.

C. **Sustainability**. City is committed to incorporating sustainable practices into all aspects of DEN operations. Concessionaire shall operate in a manner consistent with DEN's Sustainability Policy and participate in the sustainability programs outlined in the Concessions Handbook, at its own cost and expense, including but not limited to energy programs and waste reduction programs such as composting and recycling. See Concessions Handbook Section 13.05 and Concessions Handbook Section 13.06.

D. **Additional Compliance**. Concessionaire shall comply with all current and future Laws applicable to its operations of the Concession and use and occupancy of the Premises.

E. **Concessionaire's Standards**. Subject to licensor or franchisor agreements, Concessionaire shall submit to City a copy of its standards, plans, and manuals for customer service and operation, according to the procedures stated in the Concessions Handbook. Concessionaire shall ensure continuous adherence to Concessionaire's own standards, in addition to other standards as set forth herein.

6.14 CLEANING AND ROUTINE MAINTENANCE

A. **General Obligations**. Concessionaire shall ensure that the Concession is maintained and operated in a First-Class manner and that the Premises are kept in a safe, clean, orderly, and inviting condition at all times in a manner satisfactory to City. To comply with these requirements, Concessionaire must regularly review or cause to be reviewed the Premises, its operations at DEN, and the maintenance obligations in the Concessions Handbook.

B. **Preventive and Routine Cleaning and Maintenance Obligation**. Concessionaire shall be responsible for preventive and routine cleaning and maintenance of all assets within the Premises, whether built by Concessionaire or City, from the Date of Possession through the expiration of the Term and any holdover period. Consistent with the schedule stated in the Concessions Handbook, Concessionaire shall establish a preventive and routine cleaning and maintenance program for the Premises including, but not limited to, all the items identified in the Concessions Handbook. See Concessions Handbook Section 13.08 and Concessions Handbook Section 15.05. The provisions of the program shall be subject to the initial written approval of and periodic review by City. Upon request by City, Concessionaire shall provide City a written schedule of Concessionaire's cleaning and maintenance program.

C. **Pest Control**. Concessionaire is responsible for pest control on and within the Premises.

D. **Routine Refurbishment**. Concessionaire shall be responsible for Routine Refurbishment. "**Routine Refurbishment**" shall mean the routine repainting or redecoration of public areas within the Premises including, but not limited to, the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes. If Concessionaire and City cannot jointly agree upon the type and extent of Routine Refurbishment, City may determine, in its sole discretion, any Routine Refurbishment required. Routine Refurbishment shall be in addition to the required Mid-term Refurbishment.

E. **Maintenance Personnel and Program**. Concessionaire covenants to employ or contract with sufficient personnel to provide necessary equipment to keep the Premises and all furniture, furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition at all times pursuant to the maintenance requirements of this Agreement.

F. **City Sole Judge of Maintenance**. City shall be the sole and absolute judge of the quality of Concessionaire's maintenance of the Premises. City may at any time, without notice, enter the Premises to determine if maintenance satisfactory to City is being performed. Performance by Concessionaire of maintenance pursuant to a written maintenance plan previously approved by City shall be conclusive evidence of satisfactory maintenance unless City determines that there is a present danger or safety hazard within the Premises. If City determines that maintenance is not satisfactory, City shall notify Concessionaire in writing. Concessionaire will perform the required maintenance, to City's satisfaction, and so notify City within the time frame stated in Section 13.09 of the Concessions Handbook, or else City or its representative shall have the right to enter upon the Premises and perform the maintenance. However, where unsatisfactory maintenance threatens the safety, health, or welfare of the traveling public and/or DEN's facilities, Concessionaire shall immediately perform the maintenance. Where City or its representative performs maintenance, Concessionaire agrees to reimburse City for the cost thereof, plus an administrative fee, the amount of which will be in accordance with the Concessions Handbook.

G. **Emergency Repairs**. In the event of an emergency repair is required, Concessionaire shall notify City of the repair situation as soon as possible. Following such notice, City may inspect the repair work and require alterations if the repair is not satisfactory to City. In the event of an after-hours emergency repair, Concessionaire agrees City shall have the right to enter any affected portion of the Premises and perform the emergency repair. Concessionaire covenants to pay to City the costs associated with any after-hours emergency repair. All emergency repairs requiring shutdown of any DEN system or utility require prior written approval of City. If any emergency repair affects other tenants at DEN, City may, at in its sole discretion, fix the problem immediately and invoice Concessionaire. Concessionaire covenants to pay to City any proportional costs of emergency repairs completed by City, which Concessionaire may have contributed to the cause of the incident.

6.15 PAGING, AUDIO, VIDEO SYSTEMS, AND FREQUENCY PROTECTION

If Concessionaire installs, in accordance with applicable Concessions Handbook procedures and only after City's approval, any type of radio transceiver, beacon technology, or other wireless equipment, Concessionaire will provide frequency protection in accordance with restrictions promulgated by the FAA for the vicinity of FAA Transmitter or Receiver facilities. See Concessions Handbook Section 14.35. Frequency protection will also be provided for all other frequency bands operating near Concessionaire's equipment. If frequency interference occurs because of Concessionaire's installation, City reserves the right to shut down Concessionaire's installation until appropriate remedies to the frequency interference are made by Concessionaire. Remedies may include relocation of Concessionaire's equipment to another site. The cost to remedy the frequency interference will be solely at Concessionaire's expense. Concessionaire acknowledges and accepts that any paging, audio, or communications systems installed by Concessionaire may be used by City to announce any notification or emergency at DEN. City shall not be liable to Concessionaire for any such use of the paging or audio systems installed by Concessionaire.

6.16 SUBMITTALS

City shall have the right at any time to require that reports, plans, and any other submittals required under this Article VI be delivered electronically using technology and procedures designated by City in the Concessions Handbook. If City instructs Concessionaire to deliver any submittals required hereunder by computer, e-mail, internet website, or transmission, City shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

6.17 PROHIBITED ACTS

Concessionaire is prohibited from performing any prohibited acts listed in Section 14.43 of the Concessions Handbook. Additionally, Concessionaire will not engage in any activity prohibited by DEN Rules and any City operating directives, including as they may be modified. In the event Concessionaire fails to adhere to DEN Rules and any operating directives or fails to prevent any other of the prohibited acts set forth in this Section, City may collect liquidated damages as set forth in Article VIII until such prohibited act is ended. Moreover, if the prohibited act is not corrected as directed by City, City or its representative shall have the right to enter upon the Premises and take corrective action, and Concessionaire agrees to promptly reimburse City for any related costs, and an administrative fee equal calculated as a percent of the corrective action costs, calculated as stated in the Concessions Handbook. See Concessions Handbook Section 12.02.

6.18 DELIVERY TECHNOLOGY

City reserves the right to implement universal food, beverage, and merchandise delivery technology and services at DEN. Additionally, City reserves the right to contract, at its discretion, with a third party to develop, service, and operate any delivery services and/or technology at DEN. If established, City will place procedures for deployment and usage in the Concessions Handbook. Concessionaire agrees to use, at its own cost and expense, the delivery services and/or technology for the Concession, except where delivery by a third party is prohibited by law or as otherwise approved in writing by City, in accordance with any procedures described in the Concessions Handbook.

6.19 CITY'S RIGHT TO MONITOR PERFORMANCE

A. **First Class Requirement**. It is City's intention Concessionaire's business be conducted in a manner so as to meet the needs of DEN patrons and employees and in a manner that will reflect positively upon the Concessionaire and City. The Concessionaire shall equip, organize, and efficiently manage the Concession to provide First Class goods and services in a clean, attractive, sustainable, and pleasant atmosphere.

B. **Objections**. City in its sole discretion shall have the right to raise reasonable objections to the condition of the Premises, the quality and quantity of goods and services, the character of the service, the hours of operation, the sustainability practices of Concessionaire, and/or the appearance and performance of service personnel, and to require any such conditions or practices objectionable to City to be remedied by Concessionaire.

C. **Performance Audits**. City reserves the right to conduct periodic performance audits of the Premises to assure Concessionaire consistently performs all of the operational, safety, sustainability, and compliance standards of this Agreement. Concessionaire acknowledges performance audits will be conducted by City, or its representative, and hereby covenants to cooperate with all performance audits. Repeated violations and deficiencies in performance by Concessionaire may be cause, at City's sole discretion, to terminate this Agreement.

D. **Annual Review**. No later than ninety (90) days after the end of each Contract Year, Concessionaire and City will meet to review and evaluate the financial, customer service, and operational performance of the Concession; ownership; the physical condition of the Premises; and Concessionaire's compliance with any applicable ACDBE requirements. Before the review meeting, Concessionaire shall provide the information required in the Concessions Handbook. See Concessions Handbook Article XV. During the review, City may determine, in its sole discretion, that the performance of the Concession is unsatisfactory in one or more categories listed in the Concessions Handbook. See Concessions Handbook Section 15.01.

E. **Remediation Plan**. If City determines, based on the performance criteria specified for the Annual Review in the Concession Handbook, a Concession performed unsatisfactorily during the prior Contract Year, City will provide written notice to Concessionaire. Within thirty (30) days of receipt of such written notice, Concessionaire shall prepare and submit to City, for its approval, a Remediation Plan, as described in the Concession Handbook. See Concessions Handbook Section 15.04.

F. If after six (6) months of implementation of a Remediation Plan, City determines that the Concession is still performing in an unsatisfactory manner, City reserves the right to require Concessionaire to replace the underperforming concept or brand, if not already replaced by the Remediation Plan, at Concessionaire's expense. Within ninety (90) days of receipt of written notice from City requiring a replacement, Concessionaire shall submit to City a proposal for a brand or concept replacement plan, as described in the Concession Handbook. City, in its sole discretion, reserves the right to approve or deny the proposed replacement plan and require Concessionaire to submit another replacement plan.

6.20 QUALITY OF GOODS AND SERVICES

A. Concessionaire shall ensure that all customers are provided First Class goods and services, and Concessionaire shall keep in stock and have ready for sale, at all times of operation, a sufficient supply and variety of goods and services offered for sale at the Premises, consistent with the Price List, to meet the demand of customers at DEN.

B. If City identifies any deficiencies with respect to the operations, including, without limitation, quality, variety, and quantity of goods or services offered, Concessionaire shall be notified in writing by City and shall correct, or cause to be corrected, such problem or problems within the cure period stated in the Concessions Handbook. If Concessionaire fails to correct within the allowed cure period, City may collect liquidated damages as described in Article VII.

C. If Concession is a franchise concept, then every Contract Year during the Term, Concessionaire shall certify all franchise standards applicable to the Concession are met or exceeded.

D. If City approves and accepts a Concessionaire's Proposal that includes a local, regional, or national brand, branded item, or branded concept that Concessionaire is authorized to use at DEN, such brand, branded item, or concept shall be listed or described in the Summary of Contract Provisions and referred to in this Agreement as "**Concessionaire's Brand(s)**." Concessionaire acknowledges and agrees that the use of Concessionaire's Brands stated in the Concessionaire's Proposal is of critical importance in meeting City's purpose for the concessions program at DEN. Therefore, Concessionaire's Brand(s) is(are) a material part of the consideration for this Agreement and may not be unilaterally discontinued or changed by Concessionaire. Any proposed new brand, branded item, concept, or change in use shall be submitted to City for written approval prior to implementing such change.

6.21 PRICING

A. **Pricing**. Concessionaire acknowledges City's objective to provide DEN patrons and employees high quality goods and services at reasonable prices. Accordingly, Concessionaire covenants that all goods and services sold by Concessionaire shall meet DEN's 's Pricing Policy, Price Benchmark Establishment(s), and Price Survey requirements as set forth in Article XIV of the Concessions Handbook.

B. **DEN Employee Discount**. Concessionaire shall offer a minimum ten percent (10%) discount on all food and non-alcoholic beverages purchased by DEN employees who have been issued (and show at the time the discount is requested) appropriate identification badges. The discount shall be based on Concessionaire's normal non-sale or non-promotional prices. No discount shall be given on food and non-alcoholic beverages with a manufacturer pre-printed price.

C. **Price Conformance**. At any time during the Term, City may survey or cause to be surveyed, prices being charged for goods or services offered by Concessionaire. City shall have the right to monitor and test all of Concessionaire's goods and services prices by a shopping service or City personnel. If City concludes, based on the results of the survey, any prices being charged by Concessionaire do not comply with the Pricing Policy; City will require Concessionaire to adjust prices to the amounts permitted. Upon written notice from City, Concessionaire will, within the cure period stated in the Concessions Handbook, adjust any prices that City determines, in its sole discretion, to be inconsistent with the Pricing policy. See Concessions Handbook Section 14.03. Failure to rectify any pricing discrepancies within the cure period shall constitute a material breach by Concessionaire of this Agreement and City may collect liquidated damages as set forth in Article VIII, invoke any other remedies available to City by law, or City may, in its sole discretion, terminate this Agreement.

6.22 HOURS OF OPERATION

A. **Store Hours**. Concessionaire shall ensure the Concession is open to the public, without interruption, during the Store Hours as described in Section 14.05 of the Concessions Handbook. City may, in its sole discretion and upon notice to the Concessionaire, require Store Hours to change during the Term. Concessionaire acknowledges and agrees that it may be required, if requested by City, to operate the Concession up to twenty- four (24) hours per day seven (7) days per week, including all holidays.

B. **Extension of Store Hours**. Concessionaire agrees to remain open beyond Store Hours for certain events as described in the Concessions Handbook.

C. **Failure to Open**. Unless previously authorized by City in writing, failing to open for business by the required opening time, or closing early, shall constitute a violation of this Section for which City may collect liquidated damages as set forth in Article VII.

6.23 DELIVERY OF GOODS

A. **Procedures**. Concessionaire shall make all deliveries of money, coin, supplies, goods, products, and food and beverage items in such manner as specified in Section 14.07 of the Concessions Handbook.

B. **Central Receiving and Distribution**. City may implement a Central Receiving and Distribution Center ("**CRDC**") and may contract, at its discretion, with a third-party logistics manager to operate the CRDC and provide distribution and delivery services to DEN. If a CRDC is established, Concessionaire agrees to use, at its own cost and expense, the CRDC and have all deliveries made to the CRDC, except where delivery to a third party is prohibited by law or as otherwise approved in writing by City. Concessionaire agrees to pay Concessionaire's share of the costs of the operation of the CRDC and said distribution and delivery services, as determined by City. Concessionaire agrees to comply with the rules and procedures for implementation and utilization of the CRDC as described in Section 14.08 of the Concessions Handbook.

6.24 PERSONNEL

A. **Staffing**. Concessionaire shall hire, train, supervise, and deploy a sufficient number of Personnel to service customers in a timely and efficient manner and to meet Concessionaire's obligations herein and as specified in Section 13.14 of the Concessions Handbook.

B. **General Manager**. Concessionaire shall appoint at least one General Manager to oversee and manage the performance of the Concession, and represent and act on behalf of Concessionaire, as further described in the Concessions Handbook. The General Manager shall be full-time and work onsite. The General Manager must be a qualified, competent, and experienced employee of Concessionaire who oversees and manages the performance of the Concession and represents and acts on behalf of Concessionaire.

C. **Customer Service Training**. Concessionaires are expected to abide by DEN's Service Values, Service Standards, and Image Standards set forth in Sections 14.11, 14.12, and 14.13 of the Concessions Handbook. If City establishes a customer service-training program for the employees of all concessionaires at DEN, City, after first giving 90 days prior written notice to Concessionaire, will require all of Concessionaire's employees to complete the training program, in accordance with the procedures outlined in Section 13.14 of the Concessions Handbook.

D. **City's Right to Object**. City reserves the right to object to unprofessional behavior, conduct, or appearance of any Personnel of Concessionaire or those doing business with it, in accordance with the procedures outlined in Section 13.14 of the Concessions Handbook.

ARTICLE VII: TERMINATION, DEFAULT, AND CASUALTY

7.01 CITY'S REMEDIES IN LIEU OF TERMINATION

A. Upon any of the foregoing events listed in Section 7.02 and following fifteen (15) days' notice by City and Concessionaire's failure to cure, City may, in lieu of termination for cause, exercise one or more of the following remedies, the exercise of which will not preclude the exercise of other remedies herein listed or otherwise provided by Law. City Remedies are as follows:

1. Allow this Agreement to continue in full force and effect and enforce City's right to collect compensation as it becomes due together with past due interest and draw upon the Surety in any amount necessary to satisfy the damages sustained or reasonably expected from Concessionaire's material breach; or

2. Treat this Agreement as remaining in existence, and reenter and take possession of the Premises and expel Concessionaire and those claiming through or under Concessionaire and remove the effects of as may be

necessary with or without process of law, without liability for trespass, using such force as may be necessary, and without waiving any remedies for damages or breach. No such reentry shall be construed as an election on City's part to terminate this Agreement. City reserves the right to terminate the Agreement at any time after reentry. Following reentry, City may relicense the Premises, and make alterations, repairs, or improvements as City deems appropriate for relicensing. City shall not be responsible for any failure to relicense the Premises or any failure to collect compensation due for such relicensing. City shall not be liable to Concessionaire for any claim for damages resulting from remedial action by City. Concessionaire shall continue to be liable for all amounts due as under this Agreement on the dates specified plus interest thereon at the Past Due Interest Rate together with such amounts as would be payable, including costs, attorney's fees, repairs, and improvements.

B. No delay, failure, or omission of City to re-enter the Premises or to exercise any right, power, privilege, or option arising from a material breach nor subsequent acceptance of fees or charges then or thereafter accrued will impair any such right, power, privilege, or option, or be construed to be a waiver of any such breach or relinquishment, or acquiescence of the Premises. No option, right, power, remedy, or privilege of City will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed each and all of the rights, powers, options, or remedies given to City by this Agreement are cumulative and that the exercise of one right, power, option, or remedy by City will not impair its rights to any other right, power, option, or remedy available under this Agreement or provided by law. In the event City terminates this Agreement or reclaims the Premises, City has no liability to Concessionaire for any of Concessionaire's unamortized investment in the Concession or Premises, or any other costs or expenses incurred by Concessionaire.

7.02 TERMINATION FOR CAUSE

A. City may terminate this Agreement for cause due to the actions or inactions of the Concessionaire upon fifteen (15) days' written notice to Concessionaire. Concessionaire will remain liable for all payments or other sums due under this Agreement, and for all damages suffered by City because of Concessionaire's breach of the covenants of this Agreement including, but not limited to, all cost of relicensing, reasonable attorney's fees, repairs, and improvements. Cause for termination includes, but is not limited to the following:

1. Concessionaire's failure or omission to perform any material obligations under this Agreement or the material breach of any terms, conditions, and covenants required herein.

2. Concessionaire's failure to pay all fees, costs, expenses, damages, or other charges applicable hereunder to City within five (5) days of payment due

date, and where such failure is not cured within ten (10) days after written notice by City of Concessionaire’s failure to pay.

3. Concessionaire’s material breach under any other agreement with City at DEN that is not cured within any applicable cure period set forth therein.

4. The appointment of a trustee, custodian, or receiver of all or a substantial portion of Concessionaire’s assets.

5. The divestiture of Concessionaire’s estate herein by operation of law, by dissolution, or by liquidation, not including a merger or sale of assets.

6. The insolvency of Concessionaire; or if Concessionaire will take the benefit of any present or future insolvency statute, will make a general assignment for the benefit of creditors, or will seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Concessionaire of a voluntary petition of bankruptcy or the institution of proceedings against Concessionaire for the adjudication of Concessionaire as bankrupt pursuant thereto.

7. Concessionaire’s cancellation or other expiration of the Surety without City’s prior written consent, and not reestablished promptly after written notice by City.

8. An assignment, sublicense, or transfer of Concessionaire’s interest under this Agreement by reason of death, operation of law, assignment, sublease, sale in bulk of any of its assets, or otherwise to any other person or business entity other than in compliance with the provisions of this Agreement.

9. If Concessionaire abandons, deserts, vacates, or ceases operations under this Agreement for five (5) consecutive business days, unless undergoing repairs or renovations first approved by City.

10. Concessionaire’s failure to maintain any type of insurance or level of insurance coverage required hereunder (and in the event Concessionaire has failed to remedy such failure within ten (10) days after notice thereof from City, City may affect such coverage and recover the cost thereof immediately from the Surety or from Concessionaire.)

11. Any lien or attachment to be filed against the Premises, DEN, or other City property because of any act or omission of Concessionaire, and such lien or attachment is not discharged or contested by Concessionaire in good faith by proper legal proceedings within fifteen (15) days after receipt of notice thereof by Concessionaire.

12. Concessionaire's use, permission to use, or failure to prevent use of any portion of DEN made available to Concessionaire for its use under this Agreement for any illegal purpose.

13. Concessionaire's license or franchise agreement related to the Concession it is authorized to operate at DEN is terminated, expires, or is amended so that compliance with the amended provisions will cause Concessionaire to be in breach of this Agreement.

14. The conduct of any business or performance of any acts at DEN not specifically authorized in this Agreement or by any other agreement between City and Concessionaire, and Concessionaire's failure to discontinue that business or those acts within thirty (30) days of receipt by Concessionaire of City's written notice to cease said business or acts.

15. Any other breach of this Agreement by Concessionaire that is not cured within thirty (30) days of receipt by Concessionaire of City's written notice.

B. Nothing in this Section shall be construed to grant a right to Concessionaire to cure a material breach, which by its nature is not capable of being cured. City reserves the right, in its sole discretion, to treat each Concessions Location individually for the purpose of declaring a material breach and terminating this Agreement for Cause.

7.03 PROTECTION OF INFRASTRUCTURE

Concessionaire agrees that nothing shall be done or kept on the Premises that might impair the structural soundness of the building; result in an overload of utility, plumbing, or HVAC systems serving the Terminal and/or Concourses; or interfere with electric, electronic, or other equipment at DEN. In the event of violations hereof, Concessionaire agrees immediately to remedy the violation at Concessionaire's own cost and expense.

7.04 DAMAGE CAUSED BY OPERATIONS

Concessionaire shall be responsible for any damage caused by Concessionaire to the Premises, other DEN property or operations, other City property or operations, or the property of any other concessionaire, person, or entity, either by act, omission, or because of the operations of Concessionaire. In the event of such damage, Concessionaire will give City immediate notice thereof, and Concessionaire will immediately make the necessary repairs at its own cost and expense. Concessionaire shall be required to comply with the obligations set forth in Article VII with respect to all work required to be performed in accordance with this Section. City reserves the right, if in the best interest of City, to perform the necessary repairs immediately. Concessionaire covenants to reimburse City, for the costs and expenses associated with necessary repairs plus an administrative fee of fifteen percent (15%). If Concessionaire causes the same type of damage, such as a water leakage, electrical service interruption, or other damage, more than once in a twelve (12) month period, then Concessionaire shall submit a Remediation Plan, as set forth in Section 6.19.

7.05 COMPLETE DESTRUCTION

A. If Premises, the Concourse in which the Premises is located, or any portion thereof is destroyed or damaged to an extent that renders it unusable, City may rebuild or repair any portions of the building structure destroyed or damaged, and if the cause was beyond the control of Concessionaire, Concessionaire's obligation to pay the Compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within ninety (90) days after the destruction or damage. At its option, Concessionaire may then terminate this Agreement effective as of the date of such event.

B. If City elects to rebuild, Concessionaire must replace all Premises Improvements at its sole cost and in accordance with the Capital Investment, subject to increase for inflation. Such replacements must be in accordance with the performance standards set forth herein. City and Concessionaire shall cooperate with each other in the collection of any insurance proceeds that may be payable in the event of any loss or damage.

7.06 DAMAGE TO CONCESSION

Concessionaire shall defend and hold City harmless from and hereby waives any claims arising out of damage to the same or damage to Concessionaire's business, including subrogation claims by Concessionaire's insurance carrier. Concessionaire shall give immediate telephone notice to City in case of fire, casualty, or accidents in the Premises or in the building of which the Premises is a part, of defects therein, or in any fixtures or equipment. Concessionaire shall promptly thereafter confirm such notice in writing. Redecoration, replacement, and refurbishment of furniture, fixtures, equipment, and supplies will be the responsibility of, paid for by Concessionaire, and will be of equivalent quality to that originally installed hereunder. City will not be responsible to Concessionaire for any claims related to loss of use, loss of profits, or loss of business resulting from any partial, extensive, or complete destruction of the Premises regardless of the cause of damage.

7.07 ALTERNATE SPACE

City will use its best efforts to provide Concessionaire with alternate areas acceptable to Concessionaire to continue its operation while City makes repairs to the Premises, in accordance with the terms of this Article, except for damages caused by Concessionaire's acts, omissions, or negligence.

7.08 LIQUIDATED DAMAGES

A. **Violations**. Concessionaire acknowledges City's objective to provide the public and air travelers with the level and quality of service as described herein, and that Concessionaire's failure to meet these standards will result in financial loss to City. Concessionaire also acknowledges it can be difficult to measure the harm suffered by the City when these standards are not met or when Concessionaire violates certain provisions of this Agreement, the Concessions Handbook, and/or DEN Rules. Accordingly, the Parties have agreed upon a series of liquidated damages, as set forth in the table below, that the City may assess for certain breaches or violations. Concessionaire and City agree that the damages set forth herein are reasonable estimates of the significant but difficult to predict harm to the City, and Concessionaire further agrees to pay to City such liquidated damages in accordance with the rates or in the amounts specified herein upon each occurrence of the specified violation, upon written demand by City. Concessionaire further acknowledges that the liquidated damages are not exclusive remedies, and City may therefore pursue other remedies as allowed in this Agreement and/or as may be available at law, in City's sole discretion and option. City's waiver of any payment provided for in this Section shall not be construed as a waiver of the violation or Concessionaire's obligation to remedy the violation. Further, City's assessment of liquidated damages for past violations does not preclude City from opting for and pursuing other available remedies for future violations.

B. **Payment**. Payment of liquidated damages will be due within fifteen (15) days from the date of invoice.

C. **Table**. The following table lists the liquidated damages assessable under this Agreement. References to Sections are for convenience only. Any discrepancy in such reference does not affect the validity or enforceability of said damages.

LIQUIDATED DAMAGES		
Types of Infractions	**Section**	**Liquidated Damages**
Deficient Goods or Services	Contract § 7.02; Handbook § 13.10	If not cured within seven-day cure period, then $100 per day dating back to the date of Notice, for each day until corrected.
Pricing Policy	Contract § 7.03; Handbook § 14.01; Handbook § 14.03	$100 per day until corrected.
Late Open or Early Close	Contract § 7.04; Handbook § 14.05	$100 per hour or fraction thereof.
Prohibited Acts	Contract § 7.19; Handbook § 14.43	$100 per day until corrected.
Security Violation	Contract § 7.08; Handbook § 14.29	$500 per occurrence for violations not otherwise addressed in TSA or DEN Rules.
Late Daily Gross Receipts Report	Handbook § 12.03	$100 per day until corrected.
Late Monthly Concession Report	Handbook § 12.03	$100 per day until corrected.
Late Annual Statement	Handbook § 12.03	$350 per day until corrected.

Offering Goods or Services Outside Premises	Handbook § 13.02	$100 per day until ceased.
Failure to Remove or Modify Merchandise Display	Handbook § 13.11	$100 per day until compliant.
Failure to Address City Objections for Unprofessional Personnel	Handbook § 13.14	$100 per day until cured.
Failure to Provide Records for Performance Audit	Handbook § 15.01	$100 per day until provided.
Failure of Performance Audit	Handbook § 15.01	$100 per day after cure time until corrected.
Violation of Handbook Not Otherwise Specified	Handbook § 15.06	First Violation: $100 per day; if a cure period applies but violation is not cured within allowed time, then LDs will be calculated from date of violation, and continue until corrected. Second Violation: $150 per day until corrected. Third Violation: $200 per day until corrected.
Closure Due to Operational Deficiency or Failure to Maintain	Contract § 7.15; § 7.16	$1000 per day for each full or partial day Concession is closed.
Failure to Meet Required Opening Date	Contract § 10.07(D)	$1,000 per day until Actual Opening Date.
Improper Transport, Disposal, or Cleanup of Fry Oil	Handbook § 13.04	$300 per event.
Violation of Sustainability program requirements	Handbook § 13.06	$100 per day until cured.

D. Liquidated damages are subject to escalation of damages for continued violations. Such liquidated damages may increase by a multiple of two (x2) after ten (10) days of uncured violations, and thereafter increase by an additional multiple every ten (10) days until corrected (e.g., x3 after 20 days, etc.). However, in no event will liquidated damages escalate higher than a multiple of five (x5).

E. At the sole discretion of the CEO or the CEO's representative, a reasonable cure period may be granted as set forth in the Concessions Handbook. No cure period shall constitute a waiver of City's right to collect liquidated damages as accrued from date of violation.

F. If any or all of the provisions of this Article VII are found to be unenforceable, any affected violation shall then be immediately covered by Article VII, and City shall have a right to all remedies available at law, including but not limited to the remedies provided in Article VII.

ARTICLE VIII: INSURANCE, SURETY, AND INDEMNITY

8.01 INSURANCE REQUIREMENTS

A. Concessionaire shall obtain and keep in force all the minimum insurance coverage forms and amounts set forth in ***Exhibit D*** ("**Insurance Requirements**") during the Term of this Agreement, including any holdover periods, extensions of the Agreement, or other extended period stipulations stated in ***Exhibit D***. All certificates of insurance must be received and accepted by the City before any airport access or work commences.

B. Concessionaire shall ensure and document that all subcontractors performing services or providing goods hereunder procure and maintain insurance coverage that is appropriate to the primary business risks for their respective scopes of performance. At minimum, such insurance must conform to all applicable requirements of DEN Rules Part 230 and all other applicable laws and regulations.

C. City reserves the right to modify any Insurance Requirements stated herein. The Parties agree to modify ***Exhibit D*** by written notice executed by DEN to reflect any such modifications, without need for formal amendment to this Agreement.

D. In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Concessionaire; (ii) damage, theft, or destruction of Concessionaire's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

E. The City in no way warrants or represents that the minimum limits contained herein are sufficient to protect Concessionaire from liabilities arising out of the performance of the terms and conditions of this Agreement by Concessionaire, its agents, representatives, employees, or subcontractors. Concessionaire shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Concessionaire is not relieved of any liability or other obligations assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

F. To the extent insurance permits, and then only to the extent collected or collectable by Concessionaire under its property insurance coverage, Concessionaire waives any and all claims against City and its directors, officers, agents, servants, and employees for loss or damage to property.

8.02 SURETY

A. **Form of Surety.**

1. To secure payment for compensation, fees, charges, and other payments required hereunder, Concessionaire will post with City a Surety in the form specified in and the amount calculated in accordance with Section 12.04 of the Concessions Handbook. The Surety will be maintained throughout the Term of this Agreement and any holdover or extension until released by City in accordance with Article IV.

2. Notwithstanding any provision herein to the contrary, if at any time City deems the amount of Surety insufficient to properly protect City from loss hereunder because Concessionaire is or has been in arrears with respect to such monetary obligations or because Concessionaire has, in the opinion of City, violated other terms of this Agreement, Concessionaire covenants that after receiving notice, it will increase the Surety to the amount required by City, provided however, the percentage increase shall not exceed five percent (5%) of the annual percentage increase that has occurred with respect to Concessionaire's compensation, fees, and charges.

3. Concessionaire shall furnish the Surety at least thirty (30) days prior to the Required Opening Date as security for the full performance of every provision of this Agreement by Concessionaire. Failure to maintain the Surety as set forth herein shall be a material breach of this Agreement.

B. **Application Of Surety.**

In the event Concessionaire fails to perform the payment terms and conditions of this Agreement, City, in addition to any other rights and remedies available by law or in equity, may, at any time, apply the Surety or any part thereof toward the payment of Concessionaire's obligations under this Agreement. In such an event, within thirty (30) days after notice, Concessionaire will restore the Surety to its original amount. City will not be required to pay Concessionaire any interest on the Surety. Concessionaire understands and agrees that failure to maintain or replenish the Surety shall constitute a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

C. **Release Of Surety.**

The release of the Surety will be subject to the satisfactory performance by Concessionaire of all terms, conditions, and covenants contained herein. Concessionaire acknowledges and agrees release of the Surety shall be in accordance with the procedures identified in Section 12.04 of the Concessions Handbook. In the event of a dispute between the Parties, only the amount in dispute will be retained for remedy.

8.03 DEFENSE AND INDEMNIFICATION

A. To the fullest extent permitted by law, the Concessionaire agrees to defend, indemnify, reimburse, and hold harmless City, its appointed and elected officials, agents, and employees for, from, and against all liabilities, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are attributable to the negligence or fault of the Concessionaire or the Concessionaire agents, representatives, subcontractors, or suppliers ("**Claims**"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City for any acts or omissions of Concessionaire or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

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

C. Concessionaire will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation, including but not limited to time expended by the City Attorney staff, whose costs shall be computed at the rate of two hundred dollars and no cents ($200.00) per hour of City Attorney time. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Concessionaire under the terms of this indemnification obligation. The Concessionaire 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.

ARTICLE IX: GENERAL PROVISIONS

9.01 ATTORNEY'S FEES AND COSTS

In the event legal action is required by City to enforce this Agreement, City will be entitled to recover costs and attorneys' fees, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents

($200.00) per hour of City Attorney time. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

9.02 RIGHT TO AMEND

In the event that the FAA or its successors agency requires amendments, modifications, revisions, supplements, or deletions in this Agreement as a condition precedent to granting or lending federal funds to the City for use at DEN, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions to this Agreement as may be required to obtain such funds.

9.03 NOTICES AND COMMUNICATIONS

A. All notices or communication, whether to City or to Concessionaire pursuant hereto, will be deemed validly given, served, or delivered upon receipt by the party by three (3) days after depositing such notice or communication in a postal receptacle, return receipt requested, or one (1) day after depositing such notice or communication with a reputable overnight courier service, and addressed as follows:

TO CITY (MAIL DELIVERY):

Attn: Chief Executive Officer
Denver International Airport
8500 Peña Boulevard
Denver, CO 80249-6340

cc: Senior Vice President Concessions
Denver International Airport
8500 Peña Boulevard
Denver, CO 80249-6340

TO CONCESSIONAIRE (MAIL DELIVERY):

[Address]
[Address]

or to such other address or parties within the State of Colorado as either party may designate in writing by notice to the other Party delivered in accordance with the provisions of this Article.

B. If the notice is sent through a mail system, a verifiable tracking documentation, such as a certified return receipt or overnight mail tracking receipt, is encouraged.

9.04 BOND ORDINANCES

A. This Agreement is in all respects subject and subordinate to any City bond ordinances applicable to the DEN, and to any other bond ordinances, which should amend, supplement, or replace such bond ordinances. The Parties to this Agreement acknowledge and agree that all property subject to this Agreement that was financed by the net proceeds of tax-exempt bonds is owned by City. Concessionaire agrees not to take any action that would impair or omit to take any action required to confirm the treatment of such property as owned by City for purposes of § 142(b) of the Internal Revenue Code of 1986, as amended. In particular, Concessionaire agrees to make and hereby makes an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement that was financed by the net proceeds of tax-exempt bonds. Concessionaire shall execute such forms and take such other action as City may request in order to implement such election.

B. At City's sole discretion, through its CEO, City may from time to time reestablish the compensation, fees, and charges provided for herein at intervals of not more than five (5) years and are subject to the requirements of any outstanding bond ordinance pertaining to DEN. City agrees that such reestablished schedule of compensation, fees, and charges shall be reasonable in relation to the cost of providing, operating, and maintaining property, services, and facilities of DEN. If City proposes any changes in the schedule of compensation, fees, and charges, City will give notice thereof to Concessionaire no less than ninety (90) days before the same is to become effective. Concessionaire may decline to pay Compensation at the new rate(s) if such proposed compensation, fees, and charges result in an increase of more than five percent (5%) in the dollar amount of Compensation paid by Concessionaire under Article III of this Agreement for the previous calendar year. In such a case, Concessionaire shall promptly advise the CEO of its intention to cancel and terminate this Agreement at least sixty (60) days prior to the proposed effective date of such schedule of compensation, fees, and charges. Upon such notice of intent to cancel and terminate, Concessionaire shall surrender the Premises upon a date specified by City within at least one hundred twenty (120) days after Concessionaire advised City. Should Concessionaire fail to give such notice of cancellation and termination, then Concessionaire shall be deemed to have accepted the new rate(s) of compensation as promulgated by City. Failure by City to reestablish the compensation, fees, and charges at a five (5) year interval date shall not waive City's right to reestablish the compensation, fees, and charges at any time thereafter.

9.05 FORCE MAJEURE

Neither Party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants, understandings, or conditions of this Agreement due to causes beyond the control of that Party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstance for which such Party is not responsible or which is not in its power to control. A lack of funds, however, will never be deemed beyond a Party's power to control, and in no event shall this paragraph be construed to allow Concessionaire to reduce or abate its obligation to pay the any obligation due herein.

9.06 RELATIONSHIP OF THE PARTIES

Concessionaire is and will be deemed an independent Contractor and operator responsible to all parties for its respective acts or omissions, and City will in no way be responsible therefore. It is further expressly understood and agreed that City shall not be construed by a third party or held by Concessionaire to be a partner, associate, or joint venture partner of Concessionaire in the conduct of its business.

9.07 CITY APPROVALS

Except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given or received by City, it is understood that the CEO, or the CEO's representative, is hereby empowered to act on behalf of City. Further, except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given by the CEO, it is understood that the CEO may delegate such authority.

9.08 INVALIDITY OF CLAUSES

The invalidity of any part, portion, article, paragraph, provision, or clause of this Agreement will not have the effect of invalidating any other part, portion, article, paragraph, provision, or clause thereof, and the remainder of this Agreement will be valid and enforced to the fullest extent permitted by law.

9.09 TIME IS OF THE ESSENCE

Time is of the essence of this Agreement.

9.10 TAXES

Concessionaire will bear, at its own expense, all costs of operating its business including all applicable sales, use, intangible and possessory interest taxes of any kind, against Concessionaire's Premises, the real property and any improvements thereto, Trade Fixtures and other personal property used in the performance of the Concession or estate which are created herein, or which result from Concessionaire's occupancy or use of the Premises or assessed on any payments made by Concessionaire hereunder, whether levied against Concessionaire or City. Concessionaire will also pay any other taxes, fees, or assessments against the Premises or estate created herein. Concessionaire will pay the taxes, fees, or assessments reflected in a notice Concessionaire receives from City within thirty (30) days after Concessionaire's receipt of that notice or within the period prescribed in the tax bill. City will attempt to cause the taxing authority to send the applicable tax bills directly to Concessionaire and Concessionaire will remit payment directly to the taxing authority, in such instance. Concessionaire may reserve the right to contest such taxes, fees, or assessments and withhold payment upon written notice to City of its intent to do so, so long as the nonpayment does not result in a lien against the real property or any improvements thereon or a direct liability on the part of City. Concessionaire shall pay to City, with each payment of Premises Compensation, Support Space Compensation, Privilege Fee, and Concession Services Fees to City, all sales or other taxes which may be due with respect to such payments, and upon receipt, City shall remit such taxes to the applicable taxing authorities.

9.11 PATENTS AND TRADEMARKS

Concessionaire covenants, warrants, and represents that it is the owner of, or fully authorized to use, any services, processes, machines, articles, marks, names, or slogans used by it in its operations under this Agreement. Concessionaire will not utilize any protected patent, trademark, or copyright, including any patents, trademarks, or copyrights owned by City, in its operations under this Agreement, unless it has obtained prior proper permission, all releases, and other necessary documents. Concessionaire agrees to indemnify, defend, and hold harmless City, its officers, employees, agents, and representatives from any loss, liability, expense, suit, or claim for damages in connection with any actual or alleged infringement of any patent, trademark, or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Concessionaire under this Agreement.

9.12 AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if Concessionaire is not a resident of the State of Colorado, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Concessionaire does designate an agent for the service of process with the Secretary of State, State of Colorado, in any court action between it and City arising out of or based upon this Agreement, service will be made as provided by the laws of the State of Colorado for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that if for any reason service of such process is not possible, and Concessionaire does not have a duly noted resident agent for service of process, as an alternative method of service of process, Concessionaire may be personally served with such process out of this State, by the registered mailing of such complaint and process to Concessionaire at the address set out in this Agreement. Such service will constitute valid service upon Concessionaire as of the date of mailing. Concessionaire will have thirty (30) days from date of mailing to respond thereto. It is further expressly understood that Concessionaire hereby agrees to the process so served, submits to the jurisdiction of the court, and waives any and all obligation and protest thereto, any laws to the contrary notwithstanding.

9.13 COMPLIANCE WITH PUBLIC RECORDS LAW

A. **Agreement Subject to Colorado Open Records Act**. Concessionaire acknowledges, understands, and accepts that City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes § 24-72-201 *et seq.* Concessionaire agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Concessionaire asserts is confidential or otherwise exempt from disclosure. Concessionaire acknowledges all documents prepared or provided by Concessionaire under this Agreement may be subject to the provisions of the Colorado Open Records Act. 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 Concessionaire to City shall be considered confidential by City only to the extent provided in the Open Records Act, and Concessionaire agrees that any disclosure of information by City consistent with the provisions of the Open Records Act shall result in no liability of City. Concessionaire agrees to defend, indemnify, hold harmless, and fully cooperate with City in the event of a request for disclosure or legal process arising under such act for the disclosure of any documents or information, which Concessionaire asserts is confidential and exempt from disclosure.

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

9.14 USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS

Concessionaire, its officers, agents, and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession, or sale of alcohol or drugs. Except as may be otherwise authorized by this Agreement, Concessionaire shall also prohibit consumption of alcohol within the Concession Space. Violation of these provisions or refusal to cooperate with implementing this alcohol and drug policy can result in City barring Concessionaire from City facilities or participating in City operations.

9.15 CITY'S SMOKING POLICY

Concessionaire agrees that it will prohibit smoking by its employees and the public in the Premises. Concessionaire further agrees to not sell or advertise tobacco products. Concessionaire acknowledges that smoking is not permitted in DEN buildings and facilities except for designated areas. Concessionaire and its officers, agents, and employees shall cooperate and comply with the provisions of City's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of D.R.M.C., §§ 24-301 to 317 *et seq.*, and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 *et seq.*, and DEN Rules 30 and 40.

9.16 WAIVERS

No waiver by City at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, will be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by Concessionaire. No delay, failure or omission of City to exercise any right, power, privilege or option arising from any breach, material breach, nor subsequent payment of charges then or thereafter accrued, will impair any such right, power, privilege or option, or be construed to be a waiver of any such breach or material breach, or relinquishment thereof or acquiescence therein. No notice by City will be required to restore or revive time as being of the essence hereof after waiver by City or breach in one or more instances. No option, right, power, remedy, or privilege of City will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to City by this Agreement are cumulative and no one of them will be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by City will not impair its rights to any other right, power, option or remedy.

9.17 COMPLETE CONTRACT

This Agreement, together with the Concession Handbook, as they may be amended, represents the complete understanding between the Parties, and any prior Contracts or representations, whether written or verbal, are hereby superseded. This Agreement may subsequently be amended only by written instrument signed by the Parties hereto, unless provided otherwise within the terms and conditions of this Agreement. In the event of any conflict between this Agreement and any other document incorporated herein, this Agreement will control.

9.18 BROKER'S COMMISSION

A. Concessionaire represents and warrants that it has not caused nor incurred any claims for brokerage commissions or finder's fees in connection with the execution of this Agreement. Concessionaire shall defend, indemnify, and hold City harmless against all liabilities arising from any such claims caused or incurred by it (including the cost of attorney fees in connection therewith).

B. This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any Third Party or parties (except parties to whom the Concessionaire may assign this Agreement in accordance with the terms hereof, and except any successor to City) any right to claim damages or to bring any suit, action or other proceeding against either City or the Concessionaire because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

9.19 NO LIMIT ON CITY'S POWERS

Nothing in this Agreement shall limit in any way the power and right of City to exercise its governmental rights and powers, including its powers of eminent domain.

9.20 SIGNATURES

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed one instrument. This Agreement is expressly subject to and shall not be or become effective or binding on City until approved by City Council, if so required by City's Charter, and fully executed by all signatories of City and County of Denver. The Parties, in the manner specified by City, may sign this Agreement electronically.

9.21 FEDERAL RIGHT TO RECLAIM

In the event a United States governmental agency demands and takes over the entire facilities of DEN or the portion thereof wherein the Premises are located, for public purposes, for a period in excess of ninety (90) consecutive days, then this Agreement will terminate and City will be released and fully discharged from any and all liability hereunder. In the event of such termination, Concessionaire's obligation to pay compensation will cease; however, nothing herein will be construed as relieving either Party from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

9.22 PROPERTY RIGHTS RESERVED

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between City and the United States, when the execution of such agreements has been or may be required as a condition precedent to the transfer of federal rights or property to City for DEN purposes and the expenditure of federal funds for the extension, expansion, or development of DEN. The provisions of the attached Appendices 1 and 2 are incorporated herein by reference and in the event that the FAA or its successors requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of DEN, or otherwise. Concessionaire understands, accepts, and agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to satisfy the FAA requirements.

9.23 ASSIGNMENT AND SUBCONTRACT

A. Concessionaire may not assign, subcontract, and/or sublease its privileges, interests, or obligations in whole or in part under this Agreement without the prior written consent of City in City's sole discretion. Concessionaire shall not grant any license or concession hereunder, or permit any other person or persons, company, or corporation to occupy the Premises without first obtaining written consent of City in City's sole discretion. Any attempt by Concessionaire to in any way directly transfer all or part of its interest in this Agreement (including any attempt to transfer ownership of the equity or voting interest in the stock of Concessionaire if Concessionaire is a corporate entity or the ownership interest in such other entity or control of Concessionaire or Concessionaire's operations through sale, exchange, merger, consolidation, or other such transfer) without prior written consent of City shall, at the option of the CEO, automatically terminate this

Agreement and all privileges of Concessionaire hereunder. Subject to the terms and conditions set forth in this Section, and only after it has received City's written approval and consent, Concessionaire shall be permitted to subcontract with respect to all or any portions of the Premises.

B. Each party to a subcontract and each subcontract, and any contemporaneous or subsequent addendum, amendment, modification, or other agreement relating to any such subcontract, must be approved in advance by City. The subcontract must contain substantially the same business terms and conditions as those found in this Agreement, and the subcontract must acknowledge the existence of this Agreement and that the subcontracting parties are jointly bound by the terms and conditions of this Agreement, and state that the subcontracting parties shall comply with the satisfy the requirements and obligations of Concessionaire hereunder. All compensation, fees, charges, or other monies due and payable hereunder which are, pursuant to any subcontract, to be paid by a subcontractor shall not be marked-up by Concessionaire. Sub-contractors must independently operate any subcontracted premises, adhere to, and comply with all of the terms, conditions, requirements, restrictions, obligations, and standards set forth herein, including without limitation, all audit standards incorporated herein. Subleasing parties shall be jointly bound by the terms and conditions of this Agreement, and the subcontracting parties shall comply with the requirements and obligations of Concessionaire hereunder.

9.24 CORPORATE TENANCY

A. If Concessionaire is a corporation, partnership, or limited liability business organization, the undersigned officer of Concessionaire hereby warrants and certifies to City that Concessionaire is a corporation in good standing, is authorized to do business in the State of Colorado, and the undersigned officer is authorized and empowered to bind the corporation to the terms of this Agreement by his or her signature thereto.

B. Further, if Concessionaire is a partnership or other business organization, each member shall be deemed to be jointly and severally liable if such members are subject to personal liability.

C. No director, officer, or employee of City shall be held personally liable under this Agreement because of its good faith execution or attempted execution.

9.25 COMPLIANCE

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, or those under its control, will at all times comply with all applicable existing and future federal, state, and local Laws, DEN Rules, Policies, Procedures and operating directives as are now or may hereinafter be prescribed by City, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or City including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of DEN, including as these authorities may be amended after the Effective Date. Concessionaire covenants to faithfully observe and comply with the standards, procedures, requirements, directives, delegations of authority, directions, and instructions governing the operations of concessions at DEN as identified in the Concessions Handbook. Concessionaire's failure to keep and observe said laws, regulations, ordinances, rules, and Handbook shall constitute a material breach of the terms of this Agreement in the same manner as if these were stated directly in this Agreement.

9.26 FAA AND TSA REQUIREMENTS

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Concessionaire or City by the FAA or TSA. If Concessionaire, its officers, authorized officials, employees, agents, subcontractors or those under its control fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Concessionaire covenants to fully reimburse City any fines or penalties levied against City, and any attorney fees or related costs paid by City as a result of any such violation. This amount must be paid by Concessionaire within fifteen (15) days from the date of the invoice or written notice.

9.27 CHANGES IN REQUIREMENTS

Concessionaire understands and acknowledges that its ability to remain open and conduct operations under this Agreement is subject to changes in alert status as determined by TSA, which is subject to change without notice. If the security status of DEN changes, Concessionaire shall take immediate steps to comply and assist its employees, agents, independent Contractors, invitees, successors, and assigns in complying with security modifications that occur as a result of the changed status. At any time, Concessionaire may obtain current information from DEN's Security Office regarding DEN's security status in relation to Concessionaire's operations at the DEN.

9.28 AMERICANS WITH DISABILITIES ACT

Concessionaire shall provide the services specified in this Agreement in a manner that complies with the Americans with Disabilities Act ("**ADA**"), 42 U.S.C. §§ 12101, *et seq.*, and other federal, state, and local accessibility requirements. Concessionaire shall not discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this provision on the part of Concessionaire, its employees, agents, or assigns may constitute a material breach of this Agreement. If requested by City, Concessionaire shall engage a qualified disability consultant to review Concessionaire's work for compliance with the ADA (and any subsequent amendments to the statute) and all other related federal, state, and local disability requirements, and Concessionaire shall remedy any noncompliance found by the qualified disability consultant as soon as practicable.

9.29 FAA APPROVAL

This Agreement may be subject to approval of the FAA. If the FAA disapproves this Agreement, it will become invalid, and both Parties will bear their own expenses relative to this Agreement, up to the date of disapproval.

9.30 NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under the Agreement, the Concessionaire may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Concessionaire shall insert the foregoing provision in all subcontracts.

9.31 COMPLIANCE WITH DENVER WAGE LAWS

Concessionaire will comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, D.R.M.C. Sections 58-1 through 58-26, including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Concessionaire expressly acknowledges that the Concessionaire is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Concessionaire, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

9.32 SECURITY REQUIREMENTS

Concessionaire shall be responsible for ensuring Personnel, vendor, and Contractor compliance with all security rules, regulations, and procedures including, but not limited to, those issued by the FAA, TSA, and City. The rules, regulations, and procedures of the FAA, TSA, and City regarding security matters may be modified at any time and Concessionaire covenants to comply with all changes and/or modifications. Additionally, Concessionaire shall adhere to the all procedures and security requirements identified in the Concessions Handbook. At least sixty (60) days prior to the Required Opening Date, Concessionaire shall submit to City a Security Plan, in accordance with Section 14.26 of the Concessions Handbook. Concession may not Open for Business without an approved Security Plan.

9.33 EMPLOYEE PARKING

Nothing in this Agreement shall be deemed to require City to provide parking to Concessionaire's Personnel. City may provide parking accommodations to Concessionaire's Personnel in common with employees of other concessionaires and users of DEN, subject to the payment of reasonable charges therefor as may be established from time to time by City. In such event, Concessionaire's Personnel shall be required to park within the designated areas.

9.34 CONTRACT CONSTRUCTION

A. **Exhibits and Appendices**. The following Exhibits and Appendixes are attached hereto and are hereby incorporated and made a part of this Agreement:

1. Exhibit A, Premises Description
2. Exhibit B, Permitted Uses
3. Exhibit C, Monthly Concession Report
4. Exhibit D, Insurance Requirements
5. Exhibit E, ACDBE Commitment Form
6. Exhibit F, EcoPass Program
7. Exhibit G, Equity, Diversity, and Inclusion Plan
8. Appendix A, General Civil Rights Provisions
9. Appendix B, Compliance with Nondiscrimination Requirements
10. Appendix C, Standard Federal Assurances and Nondiscrimination in Construction, Maintenance, Operation Of Facilities
11. Appendix D, Standard Federal Assurances and Nondiscrimination in Construction, Use, Or Access To Facilities
12. Appendix E, Title VI List of Pertinent Nondiscrimination Authorities
13. Appendix 1, Disadvantaged Business Enterprises- Required Statements
14. Appendix 2, ACDBE Nondiscrimination and Assurance Requirements

The Parties acknowledge and agree that certain provisions of the above Exhibits are subject to change in accordance with the provisions of this Agreement.

B. **Interpretations**.

As used herein, these terms mean as follows:

1. Day(s) shall mean calendar day(s).
2. Month(s) shall mean calendar month(s).
3. The use of any gender shall include all genders.

4. The use of any number(s) shall be construed as the singular or the plural, all as the context may require.

5. Section Headings are for the convenience and reference of the Parties, and do not define or limit the scope of any section or provision.

6. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either Party.

7. If any provision in this Agreement is capable of two or more constructions, some of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

9.35 ADMINISTRATIVE HEARING

Disputes arising under or related to this Agreement, including Concessionaire's disputes of all decisions, determinations, or other actions by City arising out of this Agreement, shall be resolved by administrative hearing initiated and conducted according to the procedures outlined in D.R.M.C. § 5-17 and DEN Rule 250, excepting that City shall retain its right to obtain an order of eviction in accordance with applicable state law. The parties agree that the determination resulting from said administrative hearing shall be final, subject only to any Party's right to appeal the determination under the Colorado Rules of Civil Procedure, Rule 106.

9.36 GOVERNING LAW AND VENUE

A. **Governing Law**. This Agreement is made under and shall be governed by the laws of Colorado. Each and every term, provision, or condition herein shall be construed, interpreted, and applied in accordance with, governed by, and enforced under the laws of the State of Colorado, as well as the Charter and Ordinances of the City and County of Denver.

B. **Venue for Disputes**. The Parties agree that venue for any action arising from this Agreement shall be in the District Court for the City and County of Denver.

C. **Governing Law and Venue for ACDBE and DSBO Contracts**. Concessionaire agrees that any contract upon which Concessionaire will rely to comply with ACDBE or the City's Division of Small Business Opportunity ("**DSBO**") goals or requirements stated infra in this Agreement, including e.g. joint venture or service agreements, will state that such contract is governed by Colorado law, and that venue for any action arising from such contract shall be in the District Court for the City and County of Denver, unless DEN approves in writing an alternate choice of law or venue.

[SIGNATURE PAGES, EXHIBITS, AND APPENDICES FOLLOW]

VII. ATTACHMENT 4, CONCESSIONS HANDBOOK

CONCESSIONS HANDBOOK

The contract that results from this RFP shall incorporate, where relevant, the DEN Concessions Handbook which is incorporated herein by this reference.

https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

VIII. APPENDIX A, ATM & BANKING SERVICES M3L5W1 CONCESSION DESIGN GUIDELINES

APPENDIX A, ATM & BANKING SERVICES M3L5W1 CONCESSION DESIGN GUIDELINES

The Appendix A, ATM & Banking Services M3L5W1 Concession Design Guidelines are located at the following website, which is incorporated herein by this reference:

https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

The Appendix A, ATM & Banking Services M3L5W1 Concession Design Guidelines are listed under the Documents column for this opportunity.

IX. APPENDIX B, DEN CONCESSION GROSS SALES 2016 – MAY 2025

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The Appendix B, DEN Concession Gross Sales 2016 – May 2025 is located at the following website, which is incorporated herein by this reference:

https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

The Appendix B, DEN Concession Gross Sales 2016 – May 2025 is listed under the Documents column for this opportunity.

X. APPENDIX C, ENPLANING PASSENGER FORECAST BY CONCOURSE

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The Appendix C, Enplaning Passenger Forecast By Concourse is located at the following website, which is incorporated herein by this reference:

https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

The Appendix C, Enplaning Passenger Forecast By Concourse is listed under the Documents column for this opportunity.

XI. APPENDIX D, CONCESSION OFFICE PLAN

APPENDIX D, CONCESSION OFFICE PLAN

The Appendix D, Concession Office Plan is located at the following website, which is incorporated herein by this reference:

https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

The Appendix D, Concession Office Plan is listed under the Documents column for this opportunity.

XII. APPENDIX E, DEN CONCESSIONS FOOTFALL STUDY RESULTS JULY 2025

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The Appendix G, DEN Concessions Footfall Study Results July 2025 is located at the following website, which is incorporated herein by this reference:

https://www.bidnetdirect.com/colorado/cityandcountyofdenverdepartmentofaviation

The Appendix G, DEN Concessions Footfall Study Results July 2025 is listed under the Documents column for this opportunity.