

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. CB12-0944
COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Standard Agreement between the City and County of Denver and Alclear, LLC for queue and line management services at the security screening checkpoints at Denver International Airport.

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

Section 1. The proposed Standard Agreement between the City and County of Denver and Alclear, LLC in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2012-0992, is hereby approved.

COMMITTEE APPROVAL DATE: December 21, 2012

MAYOR-COUNCIL DATE: December 25, 2012

PASSED BY THE COUNCIL: _____, 2013
_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2013

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

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

PREPARED BY: John M Redmond, Assistant City Attorney ^{AKL for JR} DATE: December 27, 2012

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

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

BY: _____, Assistant City Attorney DATE: December 27, 2012

STANDARD AGREEMENT

BETWEEN

CITY AND COUNTY OF DENVER

AND

ALCLEAR, LLC

AT

DENVER INTERNATIONAL AIRPORT

**STANDARD AGREEMENT
DENVER INTERNATIONAL AIRPORT
SUMMARY PAGE
ALCLEAR, LLC**

This Summary Page, consisting of two pages, is attached to and made a part of that certain Agreement made and entered into as of the date stated on the signature page, between the City and County of Denver and the Contractor listed below.

CONTRACTOR: Name	<u>ALCLEAR, LLC</u>
Address for Notice	<u>595 Madison Ave., 39th Floor,</u>
City, State and Zip	<u>New York, NY 10022</u>
Contact	<u>Ken Cornick</u>
Trade Name	<u>CLEAR</u>
State of Incorporation	<u>New York</u>

CONCESSION LOCATION and RENT (Initial)						
Loca. Num.	Concourse /Terminal	Address	Square Feet	Initial MAG	Initial Monthly MAG	Minimum Investment PSF
	Main Terminal	See Exhibit A and Exhibit B		\$ 250,000.00	\$ 20,833.33	\$NA

PERCENTAGE RENT: of Gross Revenues as defined in Section 5.02

INTERIM RENT AMOUNT: \$ (based on projected annual sales)

PERFORMANCE SURETY AMOUNT: \$ 40,000.00 or as provided in Section 9.03

STORAGE SPACE LEASE: n/a

TERM: 3 years with two 1 year options

Effective Date: Date of Execution

Expiration Date: 5 years from the Required Opening Date, which is January 28, 2018 (if both one year options are taken)

PERMITTED USE:

Operation of a high-quality Service at DIA, offering for sale the following Products: Provide expedited security screening services at security checkpoints and as approved by the City.

Major Concession Category

Service

Minor Concession Category

Service

Brand(s)

CLEAR

HOURS OF OPERATION:

See Exhibit A Scope of Work

TARGET POSSESSION DATE:

Estimated to be January 29, 2013

REQUIRED OPENING DATE:

January 29, 2013

RENT COMMENCEMENT DATE

January 29, 2013

INSURANCE POLICY AMOUNTS:

Comprehensive General Liability:

See Exhibit C

Automobile/Delivery Vehicle Liability:

See Exhibit C

Workers Compensation:

Statutory requirements

ACDBE GOAL:

0%

DESCRIPTION OF EXHIBITS AND ADDENDA:

Exhibit A	Scope of Work
Exhibit B	Space Exhibit
Exhibit C	Insurance Certificate
Exhibit L	Monthly Revenue Report
Appendix 1	Standard Federal Assurances
Appendix 2	Standard Federal Assurances, Nondiscrimination

AGREEMENT

THIS AGREEMENT is entered into as of the date indicated on the signature page, 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 (the "City"), Party of the First Part, and **ALCLEAR LLC (d/b/a CLEAR)** a limited liability company authorized to conduct business in the State of Colorado ("Contractor"), Party of the Second Part.

RECITALS

WHEREAS, the City owns, operates and maintains Denver International Airport, Denver International Airport; and

WHEREAS, the City desires to seek a service provider to provide Trusted Traveler Program ("TT Program") at DIA; and

WHEREAS, the Contractor is ready, willing, and able to provide and perform the TT Program services called for hereunder subject to the following conditions;

NOW THEREFORE, for good and valuable consideration the sufficiency of which hereby is acknowledged, the City and Contractor (collectively, the "Parties") intending to be legally bound by the terms and conditions of this Agreement, agree as follows:

SECTION 1 - DEFINITIONS

As used in this Contract, unless the context requires otherwise:

1.01 AIRPORT; DIA

"Airport" or "DIA" means Denver International Airport.

1.02 CONTRACT ADMINISTRATOR

The City's Manager of Aviation, his or her designee or successor in function (hereinafter referred to as the "Manager of Aviation" or the "Manager") authorizes all work performed under this Agreement. Until otherwise notified by the Manager, the City's Deputy Manager of Aviation for Operations ("Deputy Manager") or his designee, is designated as the authorized representative of the Manager through whom services performed under this Agreement shall be directed and coordinated. The Deputy Manager's authorized representative for day-to-day administration of the Contractor's services under this Agreement is the Contract Administrator. The Manager and the Deputy Manager may rescind or amend any such designation of representatives or delegation of authority and the Deputy Manager may from time to time designate a different individual to act as Contract Administrator, upon notice to the Contractor.

1.03 CONTRACTOR EMPLOYEE; CONTRACTOR PERSONNEL

"Contractor employee" or "Contractor personnel" shall include employees and personnel of the Contractor and subcontractors, if any.

1.04 MANAGER

"Manager" means the Manager of Aviation.

SECTION 2 – SCOPE OF WORK

2.01 SCOPE OF WORK

The Contractor shall be responsible for providing the services more fully described in the Scope of Work, which is attached hereto as **Exhibit A**. The Contractor shall furnish all necessary labor, tools, equipment, and supplies to perform the required services, including escort for its subcontractors if needed, except for the equipment and facilities which are specified in this Contract as being the responsibility of the City.

2.02 MANNER OF WORK

A. **Scope of Work:** The Contractor will furnish all of the technical, administrative, professional and consulting services and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources required to perform and complete the work all in accordance with the attached **Exhibit A**, hereinafter referred to in this Agreement as the Contractor's "Scope of Work." Contractor shall not be authorized to proceed with work described herein and the City shall not be obligated to fund any work performed by the Contractor, until the City has provided written notification to the Contractor that the work is to be performed.

B. **Professional Responsibility:** The Contractor shall faithfully perform the Scope of Work required under this Agreement in accordance with standards of care, skill, expertise, training, diligence and judgment customarily exercised by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

C. **Diligence:** The Contractor acknowledges that time is of the essence in the performance of its services under this agreement and that the City of Denver may suffer damages if the Project is delayed as a result of the Contractor's failure to provide its services in a timely and diligent manner. Contractor shall perform the work described herein in a timely manner and as directed by the Deputy Manager or his or her authorized representatives.

D. Neither the Contractor nor any of its employees shall perform any work at the Airport other than that which is defined herein, except as permitted in writing by the Director of Airport Maintenance. When such other work is approved, it is expressly understood that the needs of the Department of Aviation are to have precedence over any such work.

E. This is a non-exclusive Contract. In the City's best interests, the City reserves the right to purchase the same materials and services through other procurements. The City also reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the vendor.

F. **Lease Agreement:** A lease of space to the Contractor to conduct its operations under this agreement shall be separately negotiated.

SECTION 3 - TERM

3.01 TERM

The term of this Contract shall commence on January 29, 2013 and shall terminate Midnight January 28, 2016, unless terminated earlier in accordance with this Contract. It is also a specific provision of this Contract that the Manager in his or her discretion (or his or her designee) may renew and continue the Contract under the same terms and conditions as the original contract for up to two (2) additional years in increments of one or two years. Though multiple extensions may be granted, in no event shall the total extensions total more than two years. In addition, the term of this Contract may be extended in the Manager's discretion, by written notice from the City to the Contractor, to allow the completion of any work which has been commenced prior to the date upon which this Agreement otherwise would terminate.

SECTION 4 - COMPENSATION

4.01 COMPENSATION FOR REGISTERED TRAVELER PROGRAM:

A. Minimum Annual Guarantee:

Minimum Annual Guarantee. The MAG for the first year shall be Two Hundred and Fifty Thousand Dollars (\$250,000) or 85% of the first year MAG subject to the addition of the Local Adjusted Revenue Share (defined below) plus National Adjusted Revenue Share (defined below), whichever is greater.

The MAG is an annual obligation and shall be due in monthly installments on the first day of each month as minimum monthly installments "Minimum Monthly Guarantees" or "MMGs." The first MMG payment shall be due and payable on the Term Commencement Date and thereafter the MMG shall be paid on the first day of each month through the Term (or any extended term) hereof, as well as any holding over period. The MMG for a partial month during the Term of this Agreement shall be prorated on a per diem basis.

After the first full year and for each subsequent year of this Agreement, the MAG will be adjusted annually on a common annual date to be established by the City to an amount equal to the prior year MAG or 85% of the total amount owed in the prior 12 months subject to the addition of the Local Adjusted Revenue Share (defined below) plus National Adjusted Revenue Share (defined below) whichever is greater. Notwithstanding the foregoing, the MAG will never be less than the first year MAG.

If this Agreement is terminated due to the default of Alclear then the MAG for the year in which termination occurs shall be pro-rated in accordance with the number odd days left in the year at the time of termination and any future MAG obligations shall terminate. If the Agreement is terminated as a result of Alclear's default, the total MAG liability (excluding amounts already accrued) shall be limited to 30% of the total MAG for the year in which such termination occurs.

Alclear shall provide the City with monthly reports of Local Adjusted Revenue and National Adjusted Revenue in a format containing sufficient detail satisfactory to the City.

For each full or partial calendar year by February 28 of the following year, Alclear shall provide a report calculating any true up of the Local Adjusted Revenue Share, National Adjusted Revenue Share and MAG for the prior calendar year. Alclear shall include payment for any amount owed to the City with the true up report.

a) **Local Adjusted Revenue:** "Local Adjusted Revenue" shall mean customer subscription revenue (this includes enrollment and renewal fees), determined on a cash basis, derived from DIA Customers (defined below) excluding only the following "pass through" revenue sources: TSA/HS screening fees, State and local sales taxes collected, and federal excise taxes or lost card replacement fees. "Local Adjusted Revenue Share" is equal to Twelve and Five Tenths Percent (12.5%) of Local Adjusted Revenue.

To the extent revenue is excluded from Local Adjusted Revenue or National Adjusted Revenue, Alclear shall provide documentation to the City justifying any such exclusion. Any card replacement fees excluded from Local Adjusted or National Adjusted Revenue shall reflect Alclear's actual cost of replacement.

b) **National Adjusted Revenue:** "National Adjusted Revenue" shall mean all revenue, determined on a cash basis, of Alclear and its affiliates, parents and subsidiaries generated through airport business either directly or indirectly including, but not limited to, Trusted Traveler or similar programs, marketing revenues, tolling fees and client lists but excluding "pass through" revenue such as TSA/HS screening fees, State and local sales taxes collected, federal excise taxes or lost card replacement fees. "National Adjusted Revenue Share" is equal to the greater of 20% or DIA's pro rata share of annual Alclear Total Verifications multiplied by 2.5%.

As an example, if 100,000 members are verified at an Alclear verification lane in a given year and 30,000 of those verifications occur at DIA, then DIA would be entitled to 30% of 2.5% of the National Adjusted Revenue and in turn DIA's National Adjusted Revenue Share would equal 0.75% of the National Adjusted Revenue Share for that year.

c) **DIA Customer:** "DIA Customer" is defined as follows:

1. Approximately 21,000 or more DIA coded customers formerly enrolled in CLEAR through Verified Identity Pass's Registered Traveler program and whose subscription had not expired as of May 31, 2009;

2. New enrollees residing in Colorado, Wyoming, Kansas, North Dakota, South Dakota, Nebraska, and New Mexico ("DIA Catchment Area"), subject to (4) below. If a DIA Customer in the DIA Catchment Area changes his/her enrollment Residence to a location falling outside of the DIA Catchment Area, such customer will remain a DIA Customer ONLY if such customer's new Enrollment Residence does not fall within the catchment area of another municipality or airport authority that contracts with Alclear to provide the Trusted Traveler, or similar program. "Enrollment Residence" as used in this Agreement means the address listed by the subscriber as his/her current address in the enrollment form. "Catchment area of another municipality or airport authority" means the municipality or airport and all adjoining counties, or as otherwise defined in the applicable agreement between Alclear and that airport authority or municipality.

3. Contractor agrees it will not divert or allow to be diverted any material business pertaining to Contractor's operations under this Agreement from the DIA Customer catchment area.

4. All new enrollees who physically enroll at DIA except those that Alclear demonstrates have an Enrollment Residence address that falls within the catchment area of

another municipality or airport authority operating a Trusted Traveler or similar program contracted through Alclear or its subcontractor(s).

d) **Potential Future Revenue:** The parties agree that there may be potential for future sources of revenue not contemplated by this Agreement. Alclear agrees that in the event that Alclear is able to generate additional revenue derived, directly or indirectly, from any Customers, registered through the Trusted Traveler program or similar program, the parties will work to establish a revenue sharing model similar to the Local Adjusted Revenue and/or National Revenue Share models described herein (as is applicable based on the Enrollment Residence of such customers). Possible future revenue opportunities include, but are not limited to, sale of wholesale seat licenses to Federal Government entities that result in additional use of the Trusted Traveler program at DIA, or interoperability "tolling" fees derived from expansion of the Trusted Traveler to other airports by other providers.

4.02 MONTHLY REVENUE STATEMENTS AND PAYMENTS

A. Revenue Statements. Each month, Contractor shall furnish a true and accurate verified statement of Contractor's reports of Local Adjusted Revenue and National Adjusted Revenue for the preceding month in a format containing sufficient detail satisfactory to the City ("Revenue Statement"). Monthly Revenue Statements are due by the 10th day of the second month following the first MMG payment and then by the 10th day of each succeeding month of the Term (or any extended term or holding over period). Monthly Revenue Statements are to be submitted to the Airport's Finance Section and the Concessions Management Section by mail at the address shown below in Section 5.04. Monthly Revenue Statements shall be submitted using either a form provided to the Contractor, an example of which is attached hereto as *Exhibit L, Monthly Revenue Report*, or one approved by the Manager's authorized representative and shall indicate where noted on the form Contractor's calculation of Rent due to the City. At any time upon 30 days advance written notice to Contractor, the Manager's authorized representative may require Contractor to submit its monthly Revenue Statements in electronic form, may change the timing of the submittal of the monthly Revenue Statements, or may otherwise modify the form of the monthly Revenue Statement and Contractor agrees to use the new form commencing with the report for the month following receipt of the new format. The Parties agree that these changes may be made without the formality of amendment this Agreement.

B. Revenue Statements to be Certified. Revenue Statements shall be signed by the chief financial or executive officer or other officer of Contractor charged with such responsibility (the "Certifying Officer") certifying that to the best knowledge of the officer submitting the Statement, the Gross Revenue reported and the amounts paid by Contractor for the preceding month, was correct and properly calculated in accordance with the terms of this Agreement.

C. Performance Surety may be Drawn. If the City has not received the monthly Revenue Statement on the date due, the City reserves the right, in addition to all of its other rights as stated herein, to immediately thereafter invoice Percentage Payment to Contractor based on the City's estimate of Contractor's Gross Revenues and, after notice, to draw on the Performance Surety, based on the City's estimate of what is due. Any such draw against the Performance Surety by the City shall not release Contractor from the obligation of providing the actual Monthly Revenue Statement.

D. Contractor's Payment Obligations. Contractor covenants to pay all charges under this Agreement independent of any obligation of the City. No breach of this Agreement by the City shall relieve Contractor of its obligation and duty to pay all such charges when due under the terms of this Contract.

4.03 TITLE TO CITY'S COMPENSATION

Immediately upon Contractor's receipt of monies from doing business under this Agreement, including the sale of merchandise and/or services that it is authorized to sell under the terms of this Agreement, the percentages of said monies belonging to City shall immediately vest in and become the property of the City. Contractor shall be responsible as trustee for said monies until the same are delivered to City.

4.04 INTEREST ON PAST DUE AMOUNTS

Any payments not made to City when due shall accrue interest at the Past Due Interest Rate, as herein defined.

4.05 PLACE AND MANNER OF PAYMENTS

All sums payable to City hereunder shall be made payable to "Airport Revenue Fund" and paid without notice at the following address:

Airport Revenue Fund
Denver International Airport
P.O. Box 492065
Denver, CO 80249-2065

or, at such other place as the Manager's authorized representative may hereafter designate by notice in writing to Contractor. All sums shall be made in legal tender of the United States. Any check given to the City shall be received by it subject to collection, and Contractor agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorney's fees, costs and expenses.

4.06 APPLICATION OF PAYMENTS

The City is entitled to accept, receive and cash, or deposit, any payment made by Contractor for any reason or purpose or in any amount whatsoever, and apply the same, in the City's sole option, to any obligation of Contractor. Such payment or application shall not constitute payment of any amount owed, except that to which the City has applied the payment. No designation of any payment by Contractor for application to a specific portion of Contractor's financial obligations hereunder shall be binding upon the City. No endorsements or statement on any check or any letter accompanying any check or payment as compensation or other charges shall be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such check, payment or partial payment, shall be without prejudice to the City's right to recover the balance of any and all compensation or other charges due from Contractor to the City and the City's right to pursue any other remedy provided in this Agreement or at law or in equity.

4.07 BOOKS OF ACCOUNT AND AUDITING

A. Revenue Statement Required Annually. Not later than February 28 of each and every year during the Term (or any extended term) hereof, Contractor shall furnish to City a true and accurate statement of the total of all Gross Revenues for the preceding calendar year listing the authorized deductions or exclusions in computing the amount of such Gross Revenues and including a breakdown of Gross Revenues on a month-by-month basis. Such statement shall be furnished for every calendar year in which business was transacted under this Agreement during the whole or any part of the year.

B. *Form of the Statement.* Statements of annual Gross Revenues shall be submitted in a form acceptable to the Manager's Authorized Representative, and shall contain a complete, itemized statement of Contractor's: (a) annual total Gross Revenues broken out monthly, as shown on the books and records of Contractor, with detail used to compute any Percentage Rents during the period covered by the Annual Statement; (b) the total Rent due under each category of sales reported on the Revenue Statements; and (c) the total Rent paid.

C. *Certified Annual Statements.* Except for the option described below, statements of annual Gross Revenues are to be prepared and certified by an independent certified public accountant ("CPA"), who has audited the Gross Revenues in accordance with generally accepted accounting principles for special reports applying certain estimates and informed judgments. These statements are referred to in this Agreement as "Certified Annual Statements."

D. *The Annual / Bi-Annual Statement Option.* In any year of the Term (or any extended term) that a Certified Annual Statement is not required by other provisions of this Agreement, Contractor may elect to submit an "Annual Statement" for one year, followed by a "Bi-Annual Statement" for the next year. An "Annual Statement" is a statement of annual Gross Revenues for the preceding calendar year that is prepared by Contractor's Certifying Officer. The Annual Statement is due February 28th and Contractor's officer must certify that the Gross Revenue reported and Rent paid by Contractor during the preceding year was properly calculated and reported, that the monthly Revenue Statements were free of material misstatement and that payment was made in accordance with the terms of this Agreement. A "Bi-Annual Statement" is a CPA prepared statement of annual Gross Revenues for the preceding calendar year, which is accompanied by a letter from the CPA. The Bi-Annual Statement is due February 28th of the year following submission of an Annual Statement. If Contractor elects this option, the City agrees to accept the Annual and Bi-Annual Statements in lieu of Certified Annual Statements for the period covered by the Annual and Bi-Annual Statements. Contractor may submit Certified Annual Statements in any year of the Term (or any extension of the term).

E. *Late Statements.* Any annually required statement furnished to the City late, meaning submitted after the date such statement is due, shall be a Certified Annual Statement. In such case the Certified Annual Statement shall be submitted to the City no later than 90 days from the date the late statement was due, unless upon good cause shown by Contractor, the due date of the annually required statement is extended, in writing for no more than 90 days, by the Manager's authorized representative.

F. *Manager's Discretion.* The above requirements for annually furnishing to the City true and accurate statements of Gross Revenues may be modified by the Manager at any time during the Term (or any extended term) of this Agreement if, in the Manager's sole and absolute discretion, such modification is in the best interest of the City.

G. *Bookkeeping System.* Contractor agrees to establish and maintain an accounting system of bookkeeping in conformity with generally accepted accounting principles and satisfactory to the City's Auditor. Such system shall be kept in a manner as to allow each location of the Contractor's operations hereunder to be distinguished from all other locations or operations of Contractor.

H. *Financial Accountability.* Contractor shall keep and make available upon request true and complete records and accounts of all Gross Revenues and business transacted, including daily bank deposits. Contractor shall keep and preserve for at least three (3) years after expiration or termination of this Agreement, or until sooner audited by the City, all sales slips, cash register tapes, sales books, bank books or duplicate deposit slips, and all other evidence of Gross Revenues and business transacted for such period.

I. *Audit of Records.* The City's Auditor, the Manager, the Federal Aviation Administration, the Comptroller General of the United States and any of their duly authorized representatives, shall each have access within the Denver metropolitan area to any books, documents, papers and records of the Contractor, which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Each shall have the right at any time to inspect, copy, examine or audit all of the books of account, bank statements, documents, records, returns, papers and files of Contractor relating to the Gross Revenues and business transacted to verify compliance with this Agreement.

J. *Audit Request.* Contractor, upon the written request, as set forth in the preceding paragraph, of a duly authorized representative, shall make all such documents available for examination within the Denver metropolitan area; or shall pay in full, in advance, travel and related expenses of a duly authorized representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual travel and related expenses shall be paid by or refunded to Contractor, as appropriate. Such documents shall be available to the duly authorized representative within 14 calendar days of the date of the written request.

K. *Contractor to pay for Revenue Audits.* At its discretion, the City may use its own staff to perform audits of Contractor's books and records or the City may employ an outside party or firm to audit on behalf of the City the books and records of the Contractor pursuant to this Section 5.08. If, after a risk analysis of Contractor's operations at the Airport, the City employs an outside party or firm to conduct a revenue audit of sufficient scope to ensure compliance with this Agreement regarding the reporting of Gross Revenues and the resulting payment of Rent, Contractor agrees to pay the reasonable expense of either (i) one such audit if the Term is five years or less, or (ii) two such audits, if the Term of this Agreement, including any extension of the Term, is greater than five years.

L. *Understated Revenues.* The foregoing requirement of Contractor to pay for certain audits notwithstanding, if, after any audit by any duly authorized representative, including any outside party or firm engaged by the City to conduct audits on its behalf, it is determined for any year that the Gross Revenues and business transacted shown by Contractor's statement for such year were understated, Contractor forthwith shall pay the amount of the deficiency plus interest at the Past Due Interest Rate. If an audit reveals that Contractor has understated its Gross Revenues by more than 1% in two of any six months of an audited period of no more than twelve months prior to the date of the audit, the entire expense of the audit shall be paid for by Contractor; Contractor shall pay the Past Due Amount to City, plus interest at the Past Due Interest Rate, plus the cost of the audit all within 30 calendar days of the City's invoice. In addition, for the most current year in which gross revenues were understated, Contractor shall have a CPA prepare and submit a Certified Annual Statement to the City.

M. *Audit Delay.* The Parties agree that, after execution of this Agreement, any delay in furnishing such records to the duly authorized representative requesting such records will cause damages to the City, which the Parties agree are liquidated in the amount of \$350.00 per day for each day the records are unavailable beyond fourteen (14) days following the date of the City's request. Liquidated damages will continue to accrue until the records become available or other arrangements to produce documents for examination satisfactory to the duly authorized representative are made.

N. *Time for Performing an Audit.* Books and records shall be kept for a period of three (3) years even if this period extends after expiration or termination of this Agreement. The City's right to perform an audit shall expire three (3) years after expiration or termination of this Agreement.

O. City's Sales Taxes. Contractor agrees that the Manager, the Auditor and their authorized representatives, may inspect any documents, returns, data or reports filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Contractor with the City's Manager of Revenue and any related reports, documents, data or other information generated by the City's Manager of Revenue or employees under the control of such Manager of Revenue in connection with any investigation or audit of Contractor by the City's Department of Revenue. Contractor authorizes and permits the inspection of such documents, data, returns, reports and information by the Manager, the Auditor and their authorized representatives, and, further, waives any claim of confidentiality that it may have in connection with such inspection of documents, returns, data, reports and information.

4.08 RECOVERY OF CITY EXPENSE TO FULFILL CONTRACTOR'S OBLIGATIONS

A. City's Right to Cure. If Contractor fails to perform any of Contractor's obligations under this Agreement, the City, without waiving any of its remedies pursuant to this Agreement, may, but shall not be obligated to, perform the same for the account of, and at the expense of Contractor, without notice in a case of emergency, and in any other cases, only if such failure continues after the expiration of thirty (30) days from the date the City gives Contractor written notice of the failure specifying the details. The City may elect to perform work at the City's standard rates or have work performed by a contractor hired by the City. The City shall not be liable to Contractor for any claim for damages resulting from such remedial action by the City.

B. Contractor to Reimburse City. If the City has paid any sum or sums or has incurred any obligations or expense for which the Contractor has agreed to pay or reimburse the City, or if the City is required or elects to pay any sum or sums or insure any obligations or expense (a) by reason of failure, neglect, or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Agreement beyond any applicable notice or cure period; or (b) as a result of an act of omission of the Contractor contrary to the conditions, covenants, and agreements contained in this Agreement for which City has provided Contractor written notice and an opportunity to cure as provided herein, then, within five (5) business days after written notice thereof by the City, the Contractor agrees to pay to the City the sum or sums so paid or the expenses so incurred, including all interest, costs, damages, and penalties, plus a twenty percent (20%) administrative fee, and each and every part of the same shall be and become Additional Rent, recoverable by the City in the same manner and with like remedies as if it were originally a part of the Rent as set forth herein.

C. Evidence of Reasonable Expense. For all purposes under this Section, and in any suit, action, or proceeding of any kind between the Parties hereto, any receipt showing the payment of any sum or sums by the City for any work done or material furnished shall be prima facie evidence against the Contractor that the amount of such payment was necessary and reasonable. In the event the City sues to collect any delinquent payments due it by the Contractor, the City shall be entitled to recover all court costs and its reasonable attorney's fees. Should the City elect to use its own operating and maintenance staff in making any repairs, replacements, and/or alterations and to charge the Contractor with the cost of same, any timesheet of any employee of the City showing hour of labor or work allocated to any such repair, replacement, and/or alteration, or any stock requisition of the City showing the issuance of materials for use in the performance thereof, shall be prima facie evidence against the Contractor that the amount of such charge was necessary and reasonable.

4.09 REMEDIES NON-EXCLUSIVE

The remedies provided in this Section are in addition to all other rights and remedies that the City may have for a breach or violation of this Agreement. Nothing in this Section shall be deemed to be a waiver by the City of any breach or violation, nor shall it be deemed to stop the City from terminating this

Agreement or from asserting any other of its other rights or remedies under this Agreement, or at law or in equity. Nothing contained herein shall be construed to require the City to accept delinquent Rent, or delinquent Additional Rent. Acceptance of full or partial payment of delinquent Rent, or delinquent Additional Rent, shall not constitute a waiver of any of the City's other rights and remedies stated in this Contract.

SECTION 5 – CONTRACTOR’S PERFORMANCE

5.01 CONTRACTOR PERSONNEL – GENERAL REQUIREMENTS

A. The Contractor shall at all times provide properly trained and competent personnel in the number and classifications necessary to perform its services in an efficient manner and in accordance with the Contract. The Contractor shall be responsible for the conduct of all the Contractor’s personnel at all times.

B. The Contractor shall remove from the Airport work site any Contractor employee on, or invited by it onto, the Airport, when the Manager of Aviation notifies the Contractor in writing that such person: (a) is, in the sole opinion of the Manager of Aviation or his/her designee, incompetent, unfit or disorderly; or (b) has used profane or abusive language or behavior toward any person at the Airport. Such person shall not be reassigned to Airport work by the Contractor, except with the express written consent of the Manager of Aviation or his/her designee.

5.02 EMPLOYEE DRIVER LICENSES AND RECORDS

A. Contractor employees driving either City or Contractor provided vehicles under this Contract are required to maintain an excellent driving record. Drivers with a driving record unacceptable to the City's insurance underwriter will be assigned by the Contractor to a non-driving job if available.

B. All Contractor personnel assigned to the Airport will carry Airport Identification Badges at all times during their employment at the Airport.

5.03 THE CONTRACTOR’S PROJECT MANAGER

A. The Contractor shall provide an on-site Supervisor, trained, qualified, and acceptable to the Airport’s Contract Administrator, exclusively for this Contract. The Supervisor shall have full authority to act for the Contractor at all times to carry out the provisions of this Contract.

B. The Supervisor shall make sufficient daily inspections to ensure the work is performed as specified. The supervisor shall provide a copy of all inspection reports to the Contract Administrator each day.

5.04 AIRPORT SECURITY

A. It is a material requirement of this Contract that the Contractor shall comply with all rules, regulations, written policies and authorized directives from the City and/or the Transportation Security Administration and the Department of Homeland Security with respect to Airport security. The

Contractor shall conduct all of its activities at the Airport in compliance with the Airport security program, which is administered by the Security Section of the Airport Operations Division, Department of Aviation. Violation by the Contractor or any of its employees, subcontractors or vendors of any rule, regulation or authorized directive from the City or the Transportation Security Administration with respect to Airport Security shall be grounds for immediate termination by the City of this Contract for cause.

The Contractor's employees are responsible for having the proper identification at all times. The Contractor and any subcontractors are responsible for obtaining DIA badges for site personnel at no expense to the City. In addition, if badges are lost or misplaced the Contractor or subcontractor is responsible for replacement. Proper ID is to be worn on the outside garment or in compliance with DIA Badge requirements. Failure to do so may result in the Contractor being prohibited from performing the required services.

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

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

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

5.05 CERTIFICATION REQUIREMENTS

IT IS A MATERIAL PROVISION OF THIS Agreement that the Service Provider ("Contractor") have the designation, certification and conformity described below. Failure to maintain these designations, certifications and conformity may result, at the manager's sole discretion, in termination under Section 10 below:

- A. The Service Provider's technology shall be **Designated and Certified** as a Qualified Antiterrorist Technology and as an Approved Product for Homeland Security pursuant to the SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES ACT OF 2002 (U.S. SAFETY ACT)(6 U.S.C. 441-444), and the REGULATIONS TO SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES, 6 CFR Part 25 for the full term of this Agreement.

- B. The Service Provider must provide to the City any copies of any such applicable technology designations by Homeland Security and/or the TSA.
- C. If during the term of this Agreement the Contractor desires to use new technologies in operating the Registered Traveler program as it is offered as of the date hereof, it must obtain and provide to the City appropriate designations under the Safety Act prior to implementation. If any of the Contractor's designations are modified during the term of this agreement, it shall provide copies of such written, modified designations/certifications.
- D. The RT Provider must be Certified to provide enrollment and verification in a Registered Traveler Program by the TSA, as set forth in TSA Registered Traveler, Registered Traveler Security, Privacy, and Compliance Standards for Sponsoring Entities and Service Providers, Version 3.0, May 2007 and any other. All Registered Traveler services and functions must conform to the Interoperability standards as listed in TSA Registered Traveler, Registered Traveler Security, Privacy, and Compliance Standards for Sponsoring Entities and Service Providers, Version 3.0, May 2007 and any other applicable TSA Rules or Regulations that are promulgated during the term of this agreement.

5.06 SAFETY

- A. The Contractor shall operate at all times under this Contract in compliance with the Occupational Safety and Health Act.
- B. For all operations requiring the placement and movement of the Contractor's equipment, Contractor shall observe and exercise and compel its employees to observe and exercise all necessary caution and discretion so as to avoid injury to persons, damage to property of any and all kinds, and annoyance to or undue interference with the movement of the public and City personnel.

5.07 LAWS, REGULATIONS, TAXES AND PERMITS

- A. The Contractor, at all times, shall observe and comply with all applicable federal, state, county, city, Airport, and other laws, codes, ordinances, rules and regulations in any manner affecting the conduct of the work, including without limitation the Williams-Steiger Occupational Safety and Health Act of 1970 (Public Law 91-596).
- B. The Contractor shall procure all federal, state, local, and airport permits, licenses, or approvals necessary to perform the Scope of Work, and shall comply with all requirements of the same. Contractor shall pay all required charges, taxes, and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. All costs thereof shall be deemed to be included in the prices proposed for the work.
- C. Without limiting the foregoing, the Contractor shall establish appropriate procedures and controls so that services under this Contract will not be performed by using any alien or non-U.S. citizen. Failure to satisfactorily comply with this condition may cause the City to terminate this Contract.
- D. Contractor agrees that he, or any subcontractor under him, will pay all sales and use taxes levied by the City and County of Denver on any tangible personal property built into the work. These materials are exempt from Colorado State Taxes per CRS 1973 39-26-114 Rev. It shall be the responsibility of the Contractor to obtain a Certification of Exemption from the State of Colorado Department of Revenue prior to the purchase of any materials to be built into the work. A copy of the certificate shall be furnished the City prior to final payment.

E. **Americans with Disabilities Act.** Without limiting the foregoing, the Contractor shall determine and assess the requirements to design, construct, operate and shall at all times maintain their space in accordance with and in compliance with the requirements of the Americans with Disabilities Act, 42 USC §12,000 et seq., including the ADA Accessibility Guidelines and all federal regulations adopted pursuant to the ADA. In the event that compliance cannot be achieved, Contractor shall proceed formally to the federal agency having jurisdiction for a waiver of compliance. If, as a result of Contractor's use or occupancy of the space, or the making of any alterations, additions, or improvements therein, any additions, alterations, or improvements must be made by the City to any part of the Airport in order to comply with any requirements of the ADA, or any other laws, codes or regulations, Contractor shall reimburse the City, on demand, for the costs incurred by the City to effect such compliance.

5.08 EXISTING UTILITIES AND STRUCTURES

The Contractor shall adequately protect the work, Airport property, adjacent property and the public. In the event of damage to facilities and/or disruption in services at the facilities, as a result of the Contractor's operations or lack thereof when required, the Contractor shall take immediate steps to notify the Contract Administrator and subsequently repair or restore all services to the satisfactory approval of the Contract Administrator. The Contractor shall also provide temporary services to maintain uninterrupted use of the facilities.

All costs involved in making repairs and restoring disrupted service shall be borne by the Contractor, and the Contractor shall be fully responsible for any and all claims resulting from the damage.

The Contract Administrator, at her/his option, may elect to perform such repairs and deduct the cost of such repairs, replacements and outside services from the monthly charges by the Contractor.

SECTION 6 – INDEMNITY, IMMUNITY, INSURANCE, RECORDS, BONDS

6.01 DEFENSE AND INDEMNIFICATION

A. Contractor hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

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

6.02 COLORADO GOVERNMENTAL IMMUNITY ACT

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

6.03 INSURANCE

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

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

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

D. The City's acceptance of any submitted insurance certificate is subject to the approval of the City's Risk Management Administrator. All coverage requirements specified in the certificate shall

be enforced unless waived or otherwise modified in writing by the City's Risk Management Administrator.

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

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

6.04 INSPECTION OF RECORDS

A. During the term of this Agreement, upon request of the Contract Administrator or the City Auditor, the Contractor shall make available all payroll records, training records, books of account, and other relevant records pertinent to the Agreement for the purposes of inspection and audit of such records at the Contractor's office. The Contractor agrees that the City's duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to audit, examine and copy any directly pertinent books, documents, papers and records of the Contractor related to work performed under this Agreement.

B. The Contractor agrees that it shall maintain a true and complete cost accounting system acceptable to the Federal Aviation Administration and the City and County of Denver, in accordance with generally accepted accounting principles which are acceptable to the City Auditor. Such system shall be kept in a manner as to allow Contractor's operations hereunder to be distinguishable from all other operations of Contractor. The City, the Federal Aviation Administration, the Comptroller General of the United States and any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees that such records will contain information concerning the personnel, hours and specific tasks performed, along with the federal project number, if applicable. The Contractor further agrees to maintain all books, records and reports required under this Agreement for a period of not less than three years after final payment is made and all pending matters are closed, and that the Auditor of the City or any of his duly authorized representatives shall, until the expiration of three (3) years after the final payment under this agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this agreement. Subject to the prior written approval of the City and County of Denver, upon termination of this Agreement, the Contractor may surrender to the City all records and documents relating to this Agreement.

In the event such records are not made available in the Denver metropolitan area, Contractor shall pay to the City in full, in advance, travel and related expenses of a City representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Contractor as appropriate. Such documents shall be available to the City representative within fourteen (14) calendar days of the date of the written request.

The parties agree that any delay in furnishing such records to the City will cause damages to the City which the parties agree are liquidated in the amount of Three Hundred and Fifty Dollars (\$350.00) per day for each day the records are unavailable beyond the date established as the City's notice.

6.05 PERFORMANCE SURETY

A. Standard Surety Requirements. On or before the Date of this Agreement the Contractor shall deliver to the Manager, and maintain in effect at all times throughout the Term, including a period of six (6) months after expiration of the Term (or any extended term) or earlier termination of this Agreement, an irrevocable letter of credit or such other acceptable surety as first approved in writing by City, in the amount of **Forty Thousand Dollars (\$40,000.00)**. Such irrevocable letter of credit or other acceptable surety, sometimes referred to herein as "Standard Surety," shall be subject to claim in full or in part by the City, payable without condition to the City with surety acceptable to and approved by the City's Manager, and if a letter of credit, upon presentation of the letter of credit and a sight draft. All irrevocable letters of credit shall be in a form, and issued by a bank, acceptable to the City and shall be subject to claim in full or in part by the City as provided herein. The performance surety shall guarantee to the City full and faithful performance of (i) all of the terms and provisions of this Agreement to be performed by Contractor, as said Agreement may be amended, substituted, supplemented or extended, and (ii) all obligations and duties of Contractor under all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Airport as amended or supplemented.

Any provision herein to the contrary, notwithstanding, if at any time during the Term (or any extended term) hereof, the Manager deems the amount of the surety insufficient to properly protect the City from loss hereunder because Contractor is or has been in arrears with respect to such obligations or because Contractor has, in the opinion of the Manager, violated other terms of this Agreement, Contractor agrees that it will, after receipt of notice and an opportunity to cure, increase the surety to an amount required by the Manager; provided however, the percentage increase in the amount of surety shall not exceed the annual percentage increase that has occurred with respect to Contractor's Minimum Annual Guarantees in effect under this Agreement.

Whether in the form of a surety bond or Irrevocable Letter of Credit, the surety may be issued for a one (1) year period, provided, however, that evidence of renewal or replacement of the surety must be submitted annually by Contractor to the City at least sixty (60) days prior to the Expiration Date of the instrument. The surety shall contain language that the surety company shall notify the City in writing within forty-five (45) days of a determination that the surety is to be terminated, or is not going to be renewed. The surety bond must be executed by Contractor and by a surety meeting the qualifications set forth below.

If the City chooses to draw upon the Performance Surety as provided by this contract; it shall be the obligation of Contractor to replenish the Performance Surety to the originally contracted level within 30 days of such draw down by the City. Failure to maintain or replenish the Performance Surety shall constitute a material breach of this Agreement.

SECTION 7 - SUBCONTRACTING

7.01 SUBCONTRACTING ALLOWED

The Contractor may sublet portions of the Work. No subcontractor shall in turn subcontract any portion of its work; there shall only be one tier of subcontracting.

7.02 OBLIGATIONS OF CONTRACTOR

The Contractor shall be responsible for any acts or omissions of its employees, agents, suppliers, materialmen and subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract. In addition, all work performed for the Contractor by a subcontractor shall be pursuant to an agreement between the Contractor and the subcontractor which shall contain provisions that:

A. Preserve and protect the rights of the City and its funding agencies under the Contract with respect to the work to be performed so that the subcontracting thereof will not prejudice those rights; and

B. Require that the Subcontractor be bound to the Contractor by the terms of the Contract, that its work be performed in accordance with the requirements of the Contract, and with respect to the work it performs, that it assume toward the Contractor all the obligations and responsibilities which the Contractor assumes toward the City.

7.03 APPROVAL OF SUBCONTRACTORS

All subcontractors which the Contractor expects to perform Work under this Contract must be approved in writing by the Manager of Aviation before the subcontractor begins work. The Manager may refuse to approve a subcontractor for reasons which include, but are not limited to, the following:

- A. Default on a contract within the last five (5) years.
- B. Default on a contract which required that a surety complete the contract under payment or performance bonds issued by the surety.
- C. Debarment within the last five (5) years by a public entity or any organization which has formal debarment proceedings.
- D. Significant or repeated violations of Federal Safety Regulations (OSHA).
- E. Failure to have the specific qualifications listed in the Contract for the work that the subcontractor will perform.
- F. Failure to have the required City or Colorado licenses to perform the work described in the subcontract.
- G. Failure to pay workers the proper wage and benefits or to pay suppliers or subcontractors with reasonable promptness within the last five (5) years.
- H. The Subcontractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, obstruction of justice, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with the Subcontractor's business.

Before the Manager approves any such subcontractor, the Contractor shall submit to the Manager a statement signed by an officer or principal of the Contractor certifying that the Contractor has investigated the qualifications and background of its proposed subcontractors and identifying the

existence of any of the problems listed above or certifying that to the best of his or her knowledge the problems listed do not exist.

7.04 NO CONTRACTUAL RELATIONSHIP

The City does not intend that this Section 7, or any other provision of this Contract, be interpreted as creating any contractual relationship between the City and any subcontractor. The City does not intend that its approval of a subcontractor will create in that subcontractor a right to any subcontract. The City's approval of a subcontractor does not relieve the Contractor of its responsibilities to the City for the work to be performed by the subcontractor.

SECTION 8 – RESERVED

SECTION 9 - CONTRACT ADMINISTRATION

9.01 AUTHORITY OF THE CONTRACT ADMINISTRATOR

A. The day to day administration of this Contract is vested in the Airport's Contract Administrator. The Contract Administrator or other City representative is to have free access to the Contractor's work areas at the Airport. The Contract Administrator or other City representative shall have the right to inspect facilities and equipment to ensure compliance with the Contract. The Contract Administrator will decide any and all questions which may arise as to the quality and acceptability of supplies and equipment furnished and work performed, and as to the manner of performance and rate of progress of the work.

B. The Contract Administrator may make changes in the specifications of work performed by the Contractor, if such changes do not alter the general nature of the work being performed. Notice to the Contractor of such changes will be made orally if the duration of such changes is less than one week; otherwise, notice will be given in writing.

9.02 CONTRACTOR'S UNSATISFACTORY PERFORMANCE

If, in the opinion of the Manager, the Contractor's performance under this Contract becomes unsatisfactory, the City shall notify the Contractor in writing, specifying the instances of unsatisfactory performance. The Contractor must correct any specific instances of unsatisfactory performance within a reasonable time, or by such time as may be specified by the Contract Administrator. In the event the unsatisfactory performance is not corrected within such time, the City shall have the immediate right at the Contractor's sole expense to complete the work to its satisfaction and the City shall deduct the cost to cover same from any balances due or to become due the Contractor.

9.03 DISPUTE RESOLUTION

All disputes arising out of this Agreement shall be resolved by administrative hearing before the Manager of Aviation following the procedures outlined in Denver Revised Municipal Code Section 5-17. It is further agreed that no cause of action shall be brought against the City until there has been full compliance with the terms of this Section.

9.04 CONTRACT; ORDER OF PRECEDENCE

This Contract consists of Sections 1 through 11 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Exhibit A	Scope of Work
Exhibit B	Space Exhibit
Exhibit C	City and County of Denver Insurance Certificate
Exhibit L	Monthly Revenue Report
Appendix No. 1	Standard Federal Assurances
Appendix No. 2	Nondiscrimination in Airport Employment Opportunities

In the event of an irreconcilable conflict between (i) a provision of Sections 1 through 11 and any of the listed attachments or (ii) between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Appendices No. 1 and 2
- Sections 1 through 11 hereof
- Exhibit A
- Exhibit B
- Exhibit C
- Exhibit L

SECTION 10 – DEFAULT, REMEDIES, TERMINATION

10.01 TERMINATION FOR CONVENIENCE OF THE CITY

The Manager, upon giving a minimum of thirty (30) days written notice may terminate this contract, in whole or in part, for the convenience of the City.

Upon termination of this Agreement by the City, the Contractor shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto.

10.02 DEFAULT

The following are events of default under this Contract:

- A. In the opinion of the Manager, the Contractor fails to perform adequately the services required in the contract.
- B. An Event of Default shall occur if Contractor fails to pay timely any compensation when due and such failure or violation is not cured within ten (10) days after written notice by the City describing the nature of the breach or Default.

C. In the opinion of the Manager, the Contractor provides material that does not meet the requirements of the Contractual Agreement including, but not limited to, the Security requirements in Section 5 of this Agreement.

D. In the opinion of the Manager, the Contractor attempts to impose on the City and County of Denver materials, products, service or workmanship which is of an unacceptable quality.

E. In the opinion of the Manager, the Contractor fails to make progress in the performance of the requirements of the contract and/or gives the City and County of Denver a positive indication that the Contractor will not or cannot perform to the requirements of the Contractual Agreement.

F. An Event of Default shall occur if insurance or Performance Surety is canceled without City consent and not reestablished promptly after written notice by City to Concessionaire.

G. The Contractor becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property.

H. The Contractor transfers its interest under this Contract, without the prior written approval of the City, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation.

I. The Contractor gives its permission to any person to use for any illegal purpose any portion of the Airport made available to Contractor for its use under this Agreement.

J. The Contractor fails to comply with any of the provisions of this Contract concerning Airport security.

K. The Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, obstruction of justice, undue influence, theft, racketeering, extortion, or any offense of a similar nature, in connection with Contractor's business.

L. An Event of Default, for which no notice or opportunity to cure need be given, may be declared, at the City's option, if the City discovers that Concessionaire has abandoned, deserted or vacated the Concession Space.

M. The Contractor fails to keep, perform and observe any other promise, covenant or agreement set forth in this Contract, and such failure continues for a period of more than 30 days after delivery by the City of a written notice from the Manager of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Contractor within 10 days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control.

10.03 REMEDIES

A. The Contractor will have 24 hours from the time it is informed, whether verbally or in writing, that its performance is unsatisfactory to correct any specific instances of unsatisfactory

performance. In the event the unsatisfactory performance is not corrected within 24 hours, the City shall have the immediate right to complete the work to its satisfaction and shall deduct the cost to cover from any balances due or to become due the vendor. Repeated incidences of unsatisfactory performance will result in cancellation of the agreement for default.

B. If Contractor commits an Event of Default, as described in Section 10.02, the City may exercise any one or more of the following remedies:

1. The City may elect to allow this Contract to continue in full force and effect and to enforce all of City's rights and remedies hereunder.
2. The City may cancel and terminate this Contract upon giving 10 days written notice to Contractor of its intention to terminate; provided, however, that if the Contractor has committed an Event of Default as defined in Subsections 10.02(H), (I), (J) or (K), termination may be effective either immediately upon notice, or within a stated period after notice, as determined by the Manager in her discretion.
3. The City may obtain necessary services in the open market, or otherwise perform or obtain performance of the services covered by this Contract, at the Expense of the Contractor. The City may recover any actual excess costs by: (1) deduction from an unpaid balance; (2) collection against the Contractor's performance bond; or (3) any combination of the two foregoing methods. Nothing herein shall prevent the City from using any other method of collection available to it.
4. ***Right to Draw on Performance Surety.*** In an Event of Default, in the case of failure to pay Compensation or in the case of breach or violation of any other provision, including Contractor's obligations and duties under all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Airport, after written notice by the City describing and giving Contractor an opportunity to cure the default, failure, breach or violation, the City may immediately, and without further notice to Contractor, draw upon the Performance Surety in any amount necessary to satisfy the damages sustained or reasonably expected to be sustained.

10.04 REMEDIES CUMULATIVE

The remedies provided in this Contract shall be cumulative and shall in no way affect any other remedy available to the City under law or in equity.

SECTION 11- GENERAL CONDITIONS

11.01 BOND ORDINANCES; GOVERNING LAW; VENUE; SERVICE OF PROCESS

This Agreement shall be deemed to have been made in, and shall be construed in accordance with the laws of, the State of Colorado and the Charter and Ordinances of the City and County of Denver. This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement or replace such bond ordinances. Venue for any action hereunder shall be in the City and County of Denver, State of Colorado. The Contractor agrees that any and all notices, pleadings and process may be made by serving two copies of the same upon the Colorado Secretary of State, State Capitol, Denver, Colorado,

and by mailing by return mail an additional copy of the same to the Contractor at the address shown herein; that said service shall be considered as valid personal service, and judgment may be taken if, within the time prescribed by Colorado law or Rules of Civil Procedure, appearance, pleading or answer is not made.

11.02 NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this agreement, the Contractor agrees not to refuse to hire, nor to discharge, promote or demote, nor to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

11.03 ASSIGNMENT OF CONTRACT

The Contractor may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written approval of the Manager. If the Contractor attempts to assign or transfer any of its rights or obligations hereunder without obtaining the prior written consent of the Manager, the Manager may elect to terminate this Agreement. The Manager has the sole and absolute discretion to grant or deny any transfer or assignment request.

11.04 RIGHTS NOT EXCLUSIVE

The City reserves the right to allow others to conduct the operations and/or sell goods and services in other locations at the Airport that are the same or similar or even identical to those described on the Summary Page. Contractor understands and agrees that its right to conduct operations and/or sell any goods or services at the Airport is not exclusive and that the use of the property subject to this Agreement is restricted by all applicable rules, regulations, statutes, or ordinances promulgated by any federal, state, or municipality having jurisdiction over the Airport.

11.05 NO THIRD PARTY BENEFICIARIES

This Contract does not, and shall not be deemed or construed to confer upon or grant to any third party or parties any right to claim damages or to bring any suit, action or other proceeding against either the City or the Contractor because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein contained. Any person other than the City or the Contractor receiving any benefit hereunder shall be deemed to be an incidental beneficiary only.

11.06 RISK OF LOSS

Contractor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered as a result of this Proposal which occur prior to delivery to the City and County of Denver; and such loss, injury or destruction shall not release Contractor from any obligation hereunder.

11.07 PATENTS AND TRADEMARKS

A. The Contractor covenants that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans to be used by it in its operations under or in any way connected with this Contract. The Contractor agrees to save and hold the City, its officers, employees, agents and representatives free and harmless of and from any loss, liability, expenses, cost, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices.

11.11 NO WAIVER OF RIGHTS

No assent, expressed or implied, to any breach of any one or more of the covenants, provisions and agreements of this Contract shall be deemed or taken to be by the City a waiver of any succeeding or other breach.

11.12 FEDERAL PROVISIONS

This contract is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, and the expenditure of federal funds for the extension, expansion or development of Denver International Airport. The provisions of the attached Appendices Nos. 1 and 3 are incorporated herein by reference.

11.13 PROVISION FOR PROFESSIONAL/TECHNICAL SERVICES AGREEMENTS (CONTRACTORS) UNDER §8-17.5-101 – 102, C.R.S. AND D.R.M.C. §20-90

No Employment of Illegal Aliens or Non-U.S. citizens to Perform Work Under the Agreement.

(a) The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes and Den. Rev. Mun. Code 20-90 and the Contractor is liable for any violations as provided in said statute and ordinance.

(b) The Contractor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien or non-U.S. citizen who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(c) The Contractor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three days. The Contractor will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such

three day period the subcontractor or subcontractor provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.

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

11.14 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS

The Contractor and Contractor's agents shall cooperate and comply with the provisions of the City and County of Denver Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Contractor and Contractor's agents from City facilities or participating in City operations.

11.15 CITY SMOKING POLICY

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

11.16 SOLICITING

No soliciting for any purpose is allowed on Airport premises by the Contractor's employees. The Contractor shall inform its employees of this Agreement requirement prior to the time each such employee shall begin work for the Contractor at Denver International Airport.

11.17 GRATUITIES

Neither the Contractor nor its employees, officers and agents shall solicit or accept gratuities for any reason whatsoever from any employee of the City or the General Public.

11.18 ADVERTISING AND PUBLIC DISCLOSURES

The Contractor shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Manager, which will not be unreasonably withheld. Nothing herein, however, shall preclude the transmittal of any information to officials of the City, including without limitation, the Mayor, the Manager of Aviation, member or members of City Council, or the Auditor.

11.19 GREENPRINT DENVER POLICY AND GUIDANCE:

Contractor shall, when applicable and practicable, follow standards and recommendations of the United States Environmental Protection Agency EPP program, the Green Seal organization, and standards and practices specified by the U.S. Green Building Council, including the Leadership in Energy and Environmental Design (LEED) program. Contractor shall fully implement all appropriate LEED-EB principals to minimize negative economic, environmental, and public health impacts of its operations and

maintenance. Services must meet any directly applicable LEED-EB standards, and otherwise help the City realize the goals of Greenprint Denver.

11.20 ESTIMATED QUANTITIES

The approximate service needs outlined herein are estimated as closely as possible. However, the City neither states nor implies any guarantee that actual service utilization will equal the estimate. It is the intent of this Contract that the City will be supplied with more or less of the services outlined herein according to actual needs.

11.21 TIME IS OF THE ESSENCE

In the performance of this contract by the Contractor, time is of the essence.

11.22 CONFLICT OF INTEREST

The Contractor represents and warrants that it is under no obligation or restriction, nor will the Contractor assume any obligation, which would in any way interfere with or be inconsistent with the services to be furnished by the Contractor under this Contract.

11.23 SEVERABILITY

If any of the provisions of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, the remaining provisions herein which are severable shall not be affected.

11.24 SURVIVAL OF CERTAIN CONTRACT PROVISIONS

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

11.25 COLORADO OPEN RECORDS ACT

The Contractor acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., and all documents prepared or provided by Contractor 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 the Contractor to the City shall be considered confidential by the City only to the extent provided in the Open Records Act and the Contractor agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City. The Contractor agrees that it will fully cooperate with the City in the event of a request for disclosure of such documents or a lawsuit arising under such act for the disclosure of any documents or information, which the Contractor asserts, is confidential and exempt from disclosure.

In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of material the Contractor may consider confidential, proprietary or otherwise exempt from disclosure. In the event of the filing of a lawsuit to

compel disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees it will either intervene in such lawsuit to protect materials the Contractor does not wish disclosed, or waive any claim of privilege or confidentiality. If the Contractor chooses to intervene in such a lawsuit and oppose disclosure of any materials, the Contractor agrees to defend, indemnify, and save and hold harmless the City, its officers, agents, and employees, from any claim, damages, expense, loss or costs arising out of the Contractor's intervention including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

11.26 TAXES AND COSTS:

The Consultant shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City. If the City is exempt from the payment of such sales or use taxes, the City shall promptly, upon the execution of this Agreement, notify and provide to Consultant a tax-exempt certificate.

11.27 INFORMATION FURNISHED BY CITY:

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

11.28 COMPLIANCE WITH ALL LAWS AND REGULATIONS

All of the work performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the charter, ordinances, and rules and regulations of the City and County of Denver.

11.29 ENTIRE AGREEMENT

The parties acknowledge and agree that the provisions contained herein constitute the entire agreement between the parties as to the subject matter hereof, and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Contract, except those which are expressly reserved herein to the Manager, shall be valid unless they are contained in an instrument which is executed by all the parties with the same formality as this Contract.

11.30 FEDERAL PROVISIONS

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Airport. The provisions of the attached Appendix 1 are incorporated herein by reference.

11.31 COUNTERPARTS OF THIS AGREEMENT:

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

11.32 ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

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

11.33 HEADINGS

The heading contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

11.34 CITY EXECUTION OF CONTRACT


This Contract is expressly subject to, and shall not become effective or binding on the City, until it is fully executed by all signatories of the City and County of Denver.

END OF PAGE

SIGNATURE PAGE FOLLOWS

Contract Control Number: PLANE-201208853-00

Contractor Name: Alclear, LLC

By: 

Name: Kenneth Cornick
(please print)

Title: President + CFO
(please print)

ATTEST: [if required]

By: 

Name: Matthew Lewis
(please print)

Title: GC + CFO
(please print)



Contract Control Number: PLANE-201208853-00

Contractor Name: Alclear, LLC

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

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

By _____

By _____

By _____



EXHIBIT A

Denver International Airport (DIA) Registered Traveler (RT) Program Scope of Work

The City of Denver ("City") at Denver International Airport (DIA) currently has three (3) separate security checkpoints in the Jeppesen Terminal. These checkpoints are used by passengers, employees, and airline crew members to gain access to the secured Concourses and Gates. The Transportation Security Administration (TSA) performs the security screening at these checkpoints.

The Service Provider (SP) shall be responsible for Registered Traveler (RT) services at Denver International Airport (DIA) as described herein. The SP shall furnish all necessary labor, tools, equipment and supplies to perform the required services except for the equipment and facilities to be provided by the City of Denver (City) under the provisions of this Agreement.

The RT program at DIA is managed by a DIA Program Manager. The Program Manager is responsible for ensuring SP compliance with this agreement

1. RT Area, Hours of Operations, and Staffing

- 1.1. The RT Area includes the Dedicated RT Line at the security checkpoints and the RT Enrollment Centers which are established and approved by the DIA Program Manager
- 1.2. The SP will be required to maintain adequate staffing during the established hours of operation for the RT lane at the security screening checkpoints
- 1.3. The SP hours of operation must be approved by the DIA Program Manager

2. RT Metrics

- 2.1. The following measures and metrics shall be captured and collected by the SP and provided to the City upon request. Metrics data and reports shall be collected for all Registered Travelers in the RT Program, including interoperable RT participation Metrics to be collected are outlined in the following tables. When this information is requested by the City, SP shall provide the most current information available as soon as reasonably possible. The City requires metrics to be provided in mean average times and all categories shall include the associated range indicating highs and lows. RT Metrics may include, but are not

limited to the following:

ENROLLMENT OPERATIONS

ENROLLMENT OPERATIONS	
<u>Evaluation Topic</u>	<u>Metric (Averages and the range)</u>
Total Enrollment Time	Length of time required to enroll (Biometrics and Personal information collection)
Time to capture/store biometric	Time to fill out application (in minutes)
	Biometric capture time - Iris (in seconds)
	Biometric capture time - Fingerprint (In seconds)
Success Rate in capturing Biometrics	Total Enrollment Process - from entering the enrollment station until kiosk verification
Number of attempts per biometric to be captured	Applicants w/ enrollable fingerprints (# or % of applicants)
	Applicants w/ enrollable iris images (# or % of applicants)
	Machine time Out duration before a print is captured (in seconds)
	Applicants requiring secondary fingerprint images (# or % of applicants)
	Special case applicants - handicap or disabled (# or % of applicants)
Applicant Demographics	Breakdown by age
	Breakdown by gender
	Number of enrollments in DIA revenue recognition region
Periods of Enrollment	Hours of operation
	Peak periods of enrollment (# of applicants per hour)

CHECKPOINT OPERATIONS

CHECKPOINT OPERATIONS	
<u>Evaluation Topic</u>	<u>Metric (Averages and the range)</u>
Throughput	Passengers per hour
	Passengers per day
	Mean time through RT line
Wait time to checkpoint	Mean time through RT line

Verification time	Verification time at kiosk - Fingerprint (in seconds)
	Verification time at kiosk – Iris (in seconds)
	Verification time at kiosk – Dual biometrics (in seconds)
Failures at biometric kiosk	# of Card read failures
	Primary biometric failure (Iris and fingerprint)
	Dual biometric failure (both can't be read for dual kiosk) Machine down time
Human intervention to aid traveler	Normal staffing of RT line/kiosk
	Peak staffing of RT line/kiosk (hours of peak time)
Flow time through lane	Normal traffic hours time from kiosk exit to screening area exit
	Peak traffic hours time from kiosk exit to screening area exit
	Number participants de-selected for Selectee screening (if allowed in the future)

CUSTOMER SERVICE

CUSTOMER SERVICE	
<u>Evaluation Topic</u>	<u>Metric</u>
Customer Satisfaction (Airport/Age/Gender/Frequency)	Enrollment satisfaction
	Lane satisfaction
	Line satisfaction
	Kiosk use satisfaction
	Failure resolution satisfaction
Card issues	Card lost per number of enrollees
	Card Issues Card replacements per number of enrollees
	Multiple card replacements for same enrollee
	Cards reported stolen per number of enrollees
	Cards failure at kiosk per number of enrollees

Project Management / Stakeholder Satisfaction	Lane satisfaction within overall security footprint
	Line satisfaction within overall security footprint

BIOMETRICS

BIOMETRICS	
<u>Evaluation Topic</u>	<u>Metric</u>
False Reject Rate	Should be less than 1%
Time to Authenticate a Passenger	Time to authenticate card RT Passenger
Equipment	Fingerprint equipment make and model and software version identification
	Iris equipment make and model/type and software version identification
	Mean time between failures (in hours)
	Mean time to restore operations (in minutes)
	User acceptance
	Footprint (area of kiosk) — in square feet
	Ease of use (survey)
	Proven biometric productions systems
Quality	Lane and Line designation type
	Quality Score per RT at Enrollment
	Quality Score per RT at Crossing/ Verification
	RT ID labeled on all RT enrollment and crossing activities

CUSTOMER SERVICE HOTLINE

CUSTOMER SERVICE HOTLINE	
<u>Evaluation Topic</u>	<u>Metric</u>
Time to answer calls	Time to answer calls
Number of calls	Number of calls
Call duration	Call duration
Abandoned call rates	Abandoned call rates
Resolution rate	Resolution rate
Types of calls	RT Program directed from other locations vs. direct calls
	Non-RT Program calls to be directed to

	other location
	Enrollment process
	Approval process

SYSTEM INTEGRATION

SYSTEM INTEGRATION	
<u>Evaluation Topic</u>	<u>Metric</u>
Upload errors at kiosks	Card error rate
	# of errors per day of program
Interoperability	Kiosk hardware at various airports
	Kiosk software at various airports
Airport Pairs	# of RTs flying through multiple RT airports, if applicable

RT IDENTIFICATION CARDS

RT IDENTIFICATION CARDS	
<u>Evaluation Topic</u>	<u>Metric</u>
Data	Type of data storage device
	Content of data stored / size of chip capacity
Data Accuracy	Corruption rates
Security	Threat threshold level capability
	Card corruption with regards to threat threshold
Authentication Time	Card authentication times
	Card iris vs. card fingerprint authentication times
Consumer Satisfaction	Common consumer questions — FAQs

2.2. The DIA Program Manager will determine the various RT metrics to be captured at the beginning of each calendar quarter

3. SP Personnel and Customer Service

3.1. The SP is solely responsible for all customer service inquiries concerning the RT Program. The SP will promptly respond to all customer service inquiries from individuals interested in, or who are participating in the RT Program. These inquiries may include, but are not limited to, inquiries regarding: enrollment, participant status, SP membership card issues, and general program issues, inquiries, comments, and SP responses.

- 3.2. The SP shall provide exceptional customer service to all other customer service inquiries regarding general airport information which may not necessarily relate to the RT Program. These inquiries may include, but are not limited to, inquiries regarding: general airport way finding information, security checkpoint queue information, divesting, and other general customer service inquiries.
- 3.3. SP uniforms must be professional and consistent among SP personnel. Any changes to the SP uniform must be communicated to the DIA Program Manager. The DIA Program Manager reserves the right to approve all changes to uniform designs.

4. Communication and Reporting

- 4.1. The SP shall participate in regular meetings as scheduled and facilitated by the DIA Program Manager. These meetings are designed to continuously improve the RT Program through regular communication of operational performance, security protocols, general airport updates, and other RT information
- 4.2. The SP will ensure that the DIA Program Manager is advised of information related to the RT program that may affect operational and revenue performance which may include, but is not limited to, promotions and discounts offered by the SP.
- 4.3. The SP shall immediately report any violation of the Airport Security Program to the DIA Program Manager or designee
- 4.4. The SP shall cooperate and comply with any investigation related to the RT program and shall provide documentation and reports as requested by the DIA Program Manager, Airport Security, or the Transportation Security Administration.

5. Safety and Security Penalties

- 5.1. The SP further agrees that if a prohibited incursion into the Security Screening Checkpoint occurs or other sterile area safety or security area is breached by or due to any act or omission of any of SP's employees, agents, or contractors and such incursion or breach results in a civil penalty action being brought against the City by the U.S. Government, SP agrees to reimburse the City for all expenses, including attorney fees, incurred by the City in defending against the civil penalty action and for any civil penalty or settlement amount paid by the City as a result of such incursion or breach of airfield or sterile area security. The City shall notify SP of any allegation, investigation, or proposed or actual civil penalty sought by the U.S. Government for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this Paragraph include but are not limited to those paid or incurred as a result of violation of Federal Aviation Administration (FAA) regulations or

Transportation Security Administration (TSA) regulations, as they may be amended, or any similar law or regulations intended to replace or compliment such regulations.

6. Airport Rules and Regulations

6.1. The SP and its officers, employees, guests, invitees, subcontractors and partners, and those doing business with the SP shall observe and obey all rules and regulations of the City and County of Denver as may be promulgated from time to time, including the Airport Rules and Regulations and Standard Operating Procedures. The SP will not use or permit Airport property or facilities to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the Charter and Ordinances of the City and County of Denver. The SP shall use the roadways and other areas of Denver International Airport in accordance with all City rules and regulations.

7. Airport Security

7.1. The SP shall comply with all rules, regulations, written policies and authorized procedures from the City and/or the TSA and/or the Federal Aviation Administration with respect to security. The SP shall conduct all of its activities at the Airport in compliance with the Airport security program, which is administered by the Security Section of the Airport Operations, Public Safety, and Security Division, Department of Aviation.

7.2. The SP shall obtain the proper access authorizations for all of its employees, subcontractors and suppliers who will enter the Airport to perform work or make deliveries, and shall be responsible for each such person's compliance with all Airport Rules and Regulations, including without limitation those pertaining to security. The SP shall be responsible for all costs relating to the security check and preparation of identification badges for each employee, subcontractor, partner and supplier. The SP shall be billed by DIA for such costs, which shall not be Reimbursable Expenses. Any person who violates Airport Rules and Regulations may be subject to revocation of his/her access authorization. The failure of the SP or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

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

8. RT Area Soliciting, Advertising, Checkpoint Design

- 8.1. No soliciting for any purpose, other than RT program solicitation within the RT Area, is allowed on Airport premises by the SP's employees. The SP shall inform its employees of this Agreement requirement prior to the time each such employee shall begin work for the SP at Denver International Airport.
- 8.2. Any posted advertising of the RT program within the RT Area must be approved by the DIA Program Manager.
- 8.3. Any changes to the RT Area which include, but are not limited to, design, color scheme, or layout, must be approved by the DIA Program Manager

9. RT Inspections and Observations

- 9.1. Authorized representatives of the City or TSA may conduct RT Inspections and observations within the RT Area to ensure compliance with the Airport Security Program (ASP) and this Scope of Work.
- 9.2. RT Inspections may include observations and tests of the RT Enrollment process, RT Verification units, Dedicated RT Line, RT personnel, and other activities within the RT Area.
- 9.3. The SP must provide access for these inspections and observations by authorized representatives.
- 9.4. The DIA Program Manager will provide the SP with the RT Inspection Checklist Form.
- 9.5. The SP shall supply the DIA Program Manager and up to five (5) additional authorized City representatives with a gratis RT Card for RT Inspections and Observations. These authorized City representatives must comply with all aspects of the the RT Enrollment process as outlined in the ASP. City representatives may use the RT cards at any of the RT verification units under this program as part of RT Inspections and observations.

10. Gratuities

- 10.1. Neither the SP nor its employees, officers and agents shall solicit or accept gratuities for any reason whatsoever from any employee of the City or the General Public.

11. SP Performance

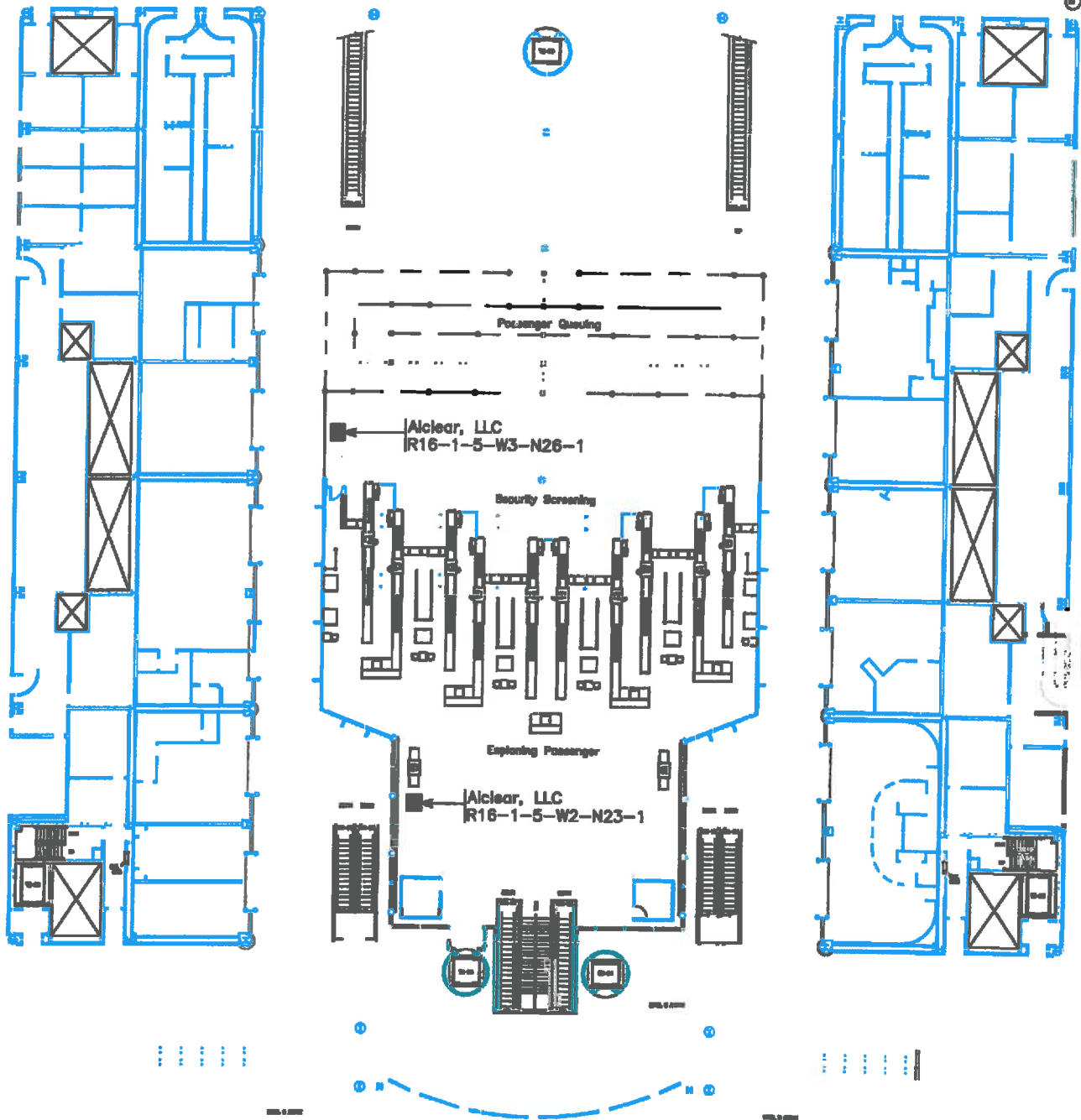
- 11.1. If in the opinion of the DIA Program Manager, the SP's performance under this Agreement becomes unsatisfactory, the City shall notify the SP in writing, specifying the instances of unsatisfactory performance. The SP shall have twenty-four (24) hours from the time of such notice to correct any specific instances of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, the City shall have the immediate right to complete the work to its satisfaction and shall deduct the cost to cover same from any balances due or to become due the SP.

12. Operational and Technical Specifications

- 12.1. The SP shall comply with all elements of the RT program as outlined in Appendix L of the Airport Security Program
- 12.2. Due to changing security protocols, the Airport Security Program may be amended. The SP shall also comply with any changes to the Airport Security Program

EXHIBIT B

Tenant Initials



CONC. WALL (BY CITY)
 STUD/GYPSUM WALL (BY CITY)
 GLASS WALL (BY CITY)
 TENANT LEASE LINE

(H) (I) COLUMNS
 NIC = Not Included
 (In Lease or Sq. Ft. Calc.)

SCALE 1" = 40.00'



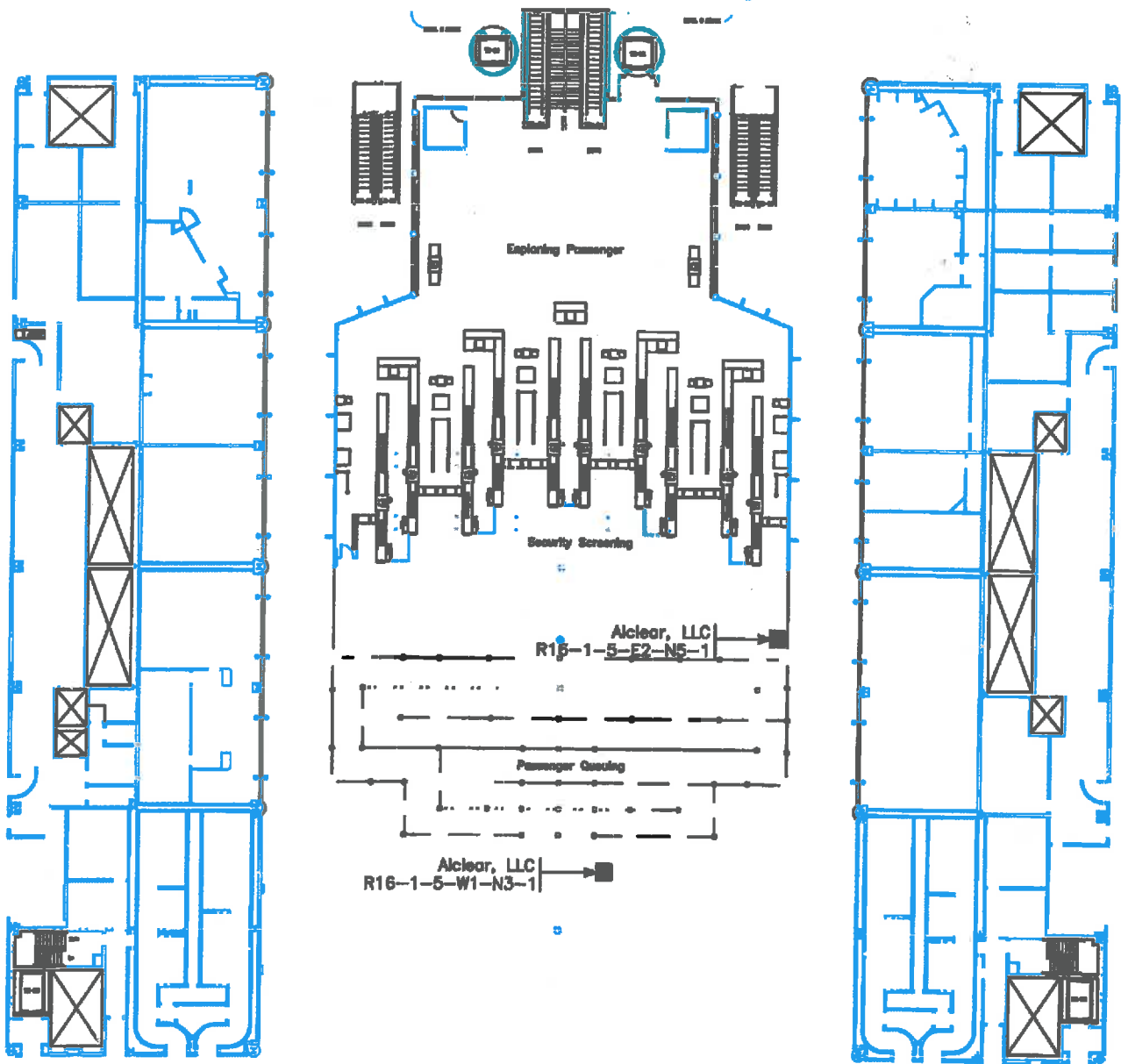
NOTE:
 This exhibit depicts only approximate dimensions and square footage of leased area based upon planning data and is not intended to show dimensions for construction details.

Ronald Horn
 MANAGER OF DESIGN

<p>KEY PLAN TERMINAL AREA</p>		REVISED	DENVER INTERNATIONAL AIRPORT
		Alclear, LLC Terminal Level 5 Registered Traveler Program	
		CC#: tbd	DATE: 11/29/12

R16-1-5-7-11

Tenant Initials



- CONC. WALL (BY CITY)
- STR./WYBRUM WALL (BY CITY)
- GLASS WALL (BY CITY)
- TEENY LEASE LINE

SCALE 1" = 40.00'



COLLUMS

NOTE: NIC = Not Included (In Lease or Sq. Ft. Calc.)

This exhibit depicts only approximate dimensions and square footage of leased area based upon planning data and is not intended to show dimensions for construction details.

Ronald Horn
 MANAGER OF DESIGN

<p>KEY PLAN TERMINAL AREA</p>		REVISED	DENVER INTERNATIONAL AIRPORT
			Alclear, LLC Terminal Level 5 Registered Traveler Program
		CC#: tbd	DATE: 11/29/12

R16-1-5-7-12

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

Original COI

Advice of Renewal

Change

Party to Whom this Certificate is Issued:

Name and Address of Insured:

CITY AND COUNTY OF DENVER
Attn: Risk Management, Suite 8810
Manager of Aviation
Denver International Airport
8500 Peña Boulevard, Room 8810
Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: Registered Traveler

I. MANDATORY COVERAGE

Colorado Workers' Compensation and Employer Liability Coverage

Coverage: COLORADO Workers' Compensation

Minimum Limits of Liability (In Thousands)

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

And Employer's Liability Limits:

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

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

Commercial General Liability Coverage

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

Minimum Limits of Liability (In Thousands):

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

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

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

Business Automobile Liability Coverage

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

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

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

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

II. ADDITIONAL COVERAGE

Umbrella Liability

Coverage:

Umbrella Liability, Non Restricted Area		
Minimum Limits of Liability (In Thousands)		
Umbrella Liability Restricted Area	Each Occurrence and aggregate	\$9,000

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

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

Professional Liability [professional services other than Information Technology]

Coverage: Professional Liability

Minimum Limits of Liability (In Thousands)	Per Claim	\$1,000
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Any Policy issued under this section must contain, include or provide for the following:

1. Policies written on a claims-made basis must remain in force for three years ERP in accordance with CRS 13-80-104.
2. If the coverage is written on a claims-made basis the Insured warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract.
3. Any cancellation notice required herein must be provided by Certified Mail. Coverage must extend, by endorsement or otherwise, to cover the full scope of all environmental services performed under the insured's contract with the City.

Crime: Money & Securities of Others / Employee Dishonesty/Computer Fraud

Coverage:

Minimum Limits of Liability	Maximum amount of funds in care, custody or control at any one time
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Money and Securities of Others Employee Dishonesty

Computer Fraud (if consultant will have access to financial documents on City computer systems)

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

1. Coverage must extend to cover all City funds in the care, custody and control of the Insured by endorsement; endorsement must apply coverage directly to City via third party endorsement.

III. ADDITIONAL CONDITIONS

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

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

NOTICE OF CANCELLATION

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

DENVER
INTERNATIONAL
AIRPORT

EXHIBIT L

CLEAR REVENUE MONTHLY REPORT

For the month: _____ (Mo. Year) Due on the 10TH DAY of the following month.

FROM: _____ Contract #: _____
(Company Name)

(Address)

Telephone # _____
email _____

Month	Local Adjusted Revenue	Revenue Share 12.5%	National Adjusted Revenue	DIA portion	Revenue Share 2.5%	Total DIA Revenue	Minimum Monthly (MMG)	Amount Due to DIA with report
January	0.00	0.00	0.00	-	0.00	0.00		
February	0.00	0.00	0.00	-	0.00	0.00		
March	0.00	0.00	0.00	-	0.00	0.00		
April	0.00	0.00	0.00	-	0.00	0.00		
May	0.00	0.00	0.00	-	0.00	0.00		
June	0.00	0.00	0.00	-	0.00	0.00		
July	0.00	0.00	0.00	-	0.00	0.00		
August	0.00	0.00	0.00	-	0.00	0.00		
September	0.00	0.00	0.00	-	0.00	0.00		
October	0.00	0.00	0.00	-	0.00	0.00		
November	0.00	0.00	0.00	-	0.00	0.00		
December	0.00	0.00	0.00	-	0.00	0.00		
TOTAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

NOTE: (MMG) IS DUE IN ADVANCE AND WITHOUT NOTICE ON THE 1ST DAY OF EVERY MONTH.

LATE PAYMENTS ARE ASSESSED INTEREST AND PENALTY CHARGES PER CONTRACT.

MAKE CHECK PAYABLE TO: **AIRPORT REVENUE FUND**

Mail check to: P.O. Box 492065
Denver, CO 80249-2065
Email report to: ARDEPT@flydenver.com
edreatta.curvin@flydenver.com

OATH OF CONCESSIONAIRE:

The undersigned states that the revenues, rent payments and calculations shown by this statement are true and correct to the best of his or her knowledge and belief, and the percentage shown is due the City and County of Denver in accordance with the Concession Agreement.

Signature--Authorized Officer

Title

Date

APPENDIX NO. 1

STANDARD FEDERAL ASSURANCES

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

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

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

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

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

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

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

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

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

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

APPENDIX NO. 2

NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

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

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

