

APPENDIX 1

ABBREVIATIONS AND DEFINITIONS

1. ABBREVIATIONS

The following abbreviations, when used in the Contract Documents, represent the full text shown:

ACDBE	Airport Concession Disadvantaged Business Enterprise
ADA	Americans with Disabilities Act
AGTS	Automated Guideway Transit System
AOB	Administrative Office Building
AOR	Architect of Record
ATO	Airline Ticketing Office
BIDS	Baggage Information Display System
BIM DSM	Building Information Model Design Standards Manual
BMSP	Base Monthly Supplemental Payment
CBRA	Checked Bag Resolution Area
CDMP	Concessions Development and Management Plan
CPA	Certified Public Accountant
CPI	Consumer Price Index
CRS	Colorado Revised Statutes
CxA	Commissioning Agent
D&C	Design and Construction
DBC	Denver Building Code
DBE	Disadvantaged Business Enterprise
DEN	Denver International Airport
DPD	Denver Police Department
DQM	Design Quality Manager
DRMC	Denver Revised Municipal Code
DSBO	Division of Small Business Opportunity
DSM	Design Standards Manual
EOR	Engineer of Record
F&B	Food and Beverage
FAA	Federal Aviation Administration
FEMA	Federal Emergency Management Agency
FF&E	Furniture, Fixtures and Equipment
FIDS	Flight Information Display System
GAAP	Generally Accepted Accounting Principles
GVW	Gross Vehicle Weight
IFC	Issued for Construction
ITA	Independent Testing Agency
ITP	Instructions to Proposers
LEED	Leadership in Energy and Environmental Design
M/WBE	Minority/Women Business Enterprise
MAPF	Minimum Annual Privilege Fee

MASP	Maximum Annual Supplemental Payment
MPPA	Maximum Progress Payment Amount
MEP	Mechanical, Electrical and Plumbing
MSP	Monthly Supplemental Payment
MSRP	Manufacturer's Suggested Retail Price
O&D	Originating and Deplaning
O&M	Operations and Maintenance
OCIP	Owner-Controlled Insurance Program
OFAC	Office of Foreign Assets Control, US Department of the Treasury
PAB	Private Activity Bond
PDA	Predevelopment Agreement
PFC	Passenger Facility Charge
PMP	Project Management Plan
POS	Point of Sale
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
SBE	Small Business Enterprise
SF	Square Foot
STO	Service Task Order
STOP	Service Task Order Program
TCO	Temporary Certificate of Occupancy
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982
TRIPRA	Terrorism Risk Insurance Program Reauthorization Act
TSA	Transportation Security Administration
USC	United States Code
USDOT	United States Department of Transportation
USGBC	The U.S. Green Building Council

Each of the above abbreviations, when followed by a number or letter designation, or combination of numbers and letters, designates a specification, test method, or other code or recommendation of the particular authority or organization shown.

2. DEFINITIONS

The following capitalized terms, when used in the Contract Documents, have the meanings set forth below:

A Bridge means the bridge from the AOB Corridor to Concourse A of the Airport.

Account Balances means all amounts standing to the credit of any bank account held by or on behalf of Developer (including the Renewal Work Reserve Account), or the value of any letter of credit issued in lieu of any bank account held or required to be held by or on behalf of Developer the reimbursement of which is not an obligation of Developer (including the Renewal Work Reserve Account), at the Early Termination Date.

ACDBE Change means any change in ACDBE participation under the Concessions Program that occurs during the Term, except as contemplated in the ACDBE Plan, and includes (a) any transfer or assignment of a Concession Agreement by a Concessionaire that is a certified ACDBE to a non-ACDBE certified transferee or assignee, (b) if the Concessionaire is a joint venture, a change in any joint venture member, (c) any change in the list of subcontractors or sub-concessionaires originally accepted as the Concessionaire for any given location, and (d) a change in a certified DBE supplier or service provider if the replacement supplier or service provider is not a certified DBE.

ACDBE Commitment Form means the form attached as Appendix 5-C-2 of the Agreement.

ACDBE Plan has the meaning set forth in Section 2.7 of Appendix 5-A of the Agreement.

ACDBE Program has the means an Airport Concession Disadvantaged Business Enterprise policy and program developed and implemented by the Owner, through its Division of Small Business Opportunity, in accordance with USDOT's Final Rule 49 CFR Part 23 as a condition of eligibility for financial assistance from the FAA.

Activation and Training Plan means the plan prepared and updated by Developer, and approved by the Owner to the extent required in the Technical Requirements, in accordance with Section I.10.20 of the Technical Requirements.

Actual Developer-Provided Insurance Policies has the meaning set forth in Section 18.1.2.12.1(a)(ii) of the Agreement.

Adjacent Projects means projects that may impact, or may be impacted by, the Project, as identified in Appendix 6-A of the Agreement, and as such list may be further amended by the Owner by written notice to Developer in accordance with Section 3.5.2 of the Agreement.

Adjusted Base Case Developer Concessions Revenue means, with respect to an Affected Concession in a given period: (a) the Base Case Developer Concessions Revenue; multiplied by (b) the Passenger Growth Ratio.

Adjusted Deduction Amount means, with respect to any given month, the amount, if any, by which the sum of the Deduction Amount for such Month plus any Excess Deduction Amount for the immediately preceding month exceeds the Developer Commercial Revenue amount for such month.

Administrative Office Building or **AOB** means the Airport's Administrative Office Building, 8500 Pena Boulevard, Denver, Colorado 80249-6340.

Administrative Record means all filings, motions, briefs, and orders related to a Dispute that is referred to the Dispute Resolution Panel, together with any exhibits attached to such documents or that may be admitted during a hearing of the Dispute

Resolution Panel, and the recordings of any hearings held during the Dispute Resolution Procedures.

Advance Construction Activities means Construction Work that the Owner authorizes Developer to perform prior to NTP 2.

Adverse Weather Event means any weather event that causes a shutdown of I-70, E-470 or Pena Boulevard by a Governmental Entity for more than four (4) consecutive hours and prohibits traffic to the Project Site. **Affected Concession** means any Concession within a Functional Area, to the extent (1) a Compensation Event Delay delays achievement of Functional Area Readiness of such Functional Area, or (2) a Compensation Event (Type 1) or a Compensation Event (Type 2), as applicable, occurs during the Concessions Operating Period and Developer suffers a loss of Developer Concessions Revenue directly attributable to such occurrence with respect to such Concession already in operation.

Affected Concession Period means the period during which Developer's operation of Concessions is prevented, in whole or in part, by the occurrence and persistence of a Compensation Event (Type 1) or a Compensation Event (Type 2).

Affected Operating Period means the period during which Developer's performance of the O&M Services or Concessions operations, as applicable, is prevented, in whole or in part, by the occurrence and persistence of a Compensation Event (Type 1) or a Compensation Event (Type 2), as applicable.

Affected Revenue Per Square Footage Ratio means, with respect to any Concession of a given Concession Type, in a given Concession Location and a given year, the annual Concessions Revenues per square foot for such Concession Type in such Concession Location in such year, as indicated in the Financial Model at the tab "sqft ratios by Concession Type," multiplied by the Applicable Indexing Factor.

Affiliate means, with respect to any Person (the "**Subject Person**"):

- (a) Any Person in which the Subject Person holds directly or indirectly a Controlling Interest;
- (b) Any Person which holds directly or indirectly a Controlling Interest in the Subject Person;
- (c) Any Person in which the Person described in clause (b) of this definition holds directly or indirectly a Controlling Interest.

Aggregate Allowance Amount means the aggregate amount of all of the Allowances, as set forth in Section 13.4.1 of the Agreement.

Agreement means that certain Development Agreement, to which this Appendix 1 is attached, executed by the Owner and Developer, including any and all Appendices and amendments thereto.

Airline means a signatory airline to an Airline Lease and Use Agreement.

Airline Exclusive Use means the use of spaces within the Project Site that are designated in any Airline Lease and Use Agreement for the exclusive use by an Airline.

Airline Lease and Use Agreement means a lease agreement between the Owner and an Airline, setting forth the respective rights and obligations of the Owner and the Airline regarding use of the Airport facilities.

Airline Shared Use means the use of spaces within the Project Site designated in any Airline Lease and Use Agreement for shared or joint use with other Airlines and associated adjacent Public Circulation Space, including ticketing kiosks and lobby and shared service counters.

Airport or **DEN** means the Denver Municipal Airport System of Denver, Colorado, as defined in the Denver Revised Municipal Code, and specifically the Denver International Airport, including the passenger transportation facilities at the Denver International Airport, existing or under construction from time to time, known individually as the Jeppesen Terminal and its appurtenant Concourses A, B, and C, including all user movement areas, areas leased exclusively or preferentially to any third party or parties, common areas and baggage claim areas there in, and interconnecting hallways, concourses, and bridges, and any future improvements.

Airport Activities means all Airport commercial activities, Core Airport Operations, and any other traditional airport functions provided or served by the Owner.

Airport Concession Disadvantaged Business Enterprise or **ACDBE** means an entity certified as such by the Denver Office of Economic Development in accordance with Chapter 28 of the DRMC.

Airport Concession Policy means the Owner's concession policy entitled "DEN Concession Policy," dated December 17, 2014, as such policy may be amended, supplemented or replaced from time to time.

Airport Rules and Regulations means the Denver Municipal Airport System's Rules and Regulations adopted January 11, 1994 for an effective date of March 9, 1994 and modified from time to time by the Chief Executive Officer, or his/her successor in function or title, pursuant to the authority granted in the Denver Revised Municipal Code.

Airside Area means the secure, bounded area used to control access to areas of the Airport relating to airline operations (including runway, taxiway, airfield apron, support facilities and concourses).

Airside Concession Space means concession space within the Airside Area that is accessible by the traveling public, excluding lounges operated by Airlines and common use lounges operated by or on behalf of the Owner.

Airspace means any and all real property, including the surface of the ground: (a) that is within the vertical column extending above and below the surface boundaries of the Work Site; (b) title of which is held in fee simple by the Owner; and (c) that is not necessary or required for the Project (including Upgrades) or for developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Project (including Upgrades).

Allowance has the meaning set forth in Section 13.4.1 of the Agreement.

Allowance Item means an item that may be charged against an Allowance, as set forth in Section 13.4.1 of the Agreement.

Ancillary Site means the real property within the outside limits (both horizontal and vertical) delineated in the Ancillary Site Plan for use by Developer solely for purposes of construction staging and storage and Contractor parking, as applicable, as such limits may be adjusted from time to time in accordance with the Contract Documents.

Ancillary Site Plan means the plan attached as Appendix 4-D of the Agreement.

Annual Report means an audit report prepared annually by an Independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards, expressing an opinion on whether the Schedule of Gross Receipts and all other fees and charges payable under the Agreement have been completely and accurately all presented, calculated, reported and paid according to the terms of the Agreement.

AOB Corridor means the Level 6 corridor between the Terminal and the Administrative Office Building and adjacent space to be built out as part of the D&C Work.

Applicable Indexing Factor means, when calculating the Affected Revenue Per Square Footage Ratio in connection with: (a) a Compensation Event (Type 1), the index CPI_y/CPI_{base} as defined in Appendix 10 of the Agreement, 'y' being the impacted year; or b) a Compensation Event (Type 2), the CPI indicated in the Financial Model at the tab "sqft ratios by Concession Type."

Approved Traffic Forecast means the Terminal Area Forecast in effect at the time the ratio described in clause (j) of the definition of Compensation Event (Type 1) is being measured, or such other passenger traffic forecast as may be mutually agreed upon by the Parties.

Architect(s) of Record or **AORs** means the architect or architectural firm licensed in the State whose name appears on a building permit issued for the Project.

Area Space Program means the agreed upon use and occupancy space list and associated net square foot requirements (as may be varied by mutual written agreement as the Design Work Progresses) described in Appendix 1-B of the Technical

Requirements to meet the operational needs of each Functional Area, as set forth in the Scope Documents.

Auditor means the City Auditor.

Authorized Representative has the meaning set forth in Section 27.6.1 of the Agreement.

Automated Guideway Transit System or **AGTS** means the underground guideway system used to move Users to and from the Terminal and concourses of the Airport.

Avoidable O&M Costs means, in connection with a Relief Event, any operation and maintenance expenses and other amounts that Developer may avoid through the exercise of reasonable diligence and would otherwise have incurred during the relevant period had the Relief Event not occurred.

Baggage Claim Area means the areas within the Project Site from which passengers may claim their baggage upon arrival and the associated support areas and adjacent Public Circulation Areas.

Baggage Handling System means the equipment providing for conveyance of baggage within the Terminal.

Base Case Developer Concessions Revenue means, with respect to an Affected Concession in a given period: (a) the number of square feet of such Concession that is prevented from operating as a direct result of the occurrence and persistence of a Compensation Event (Type 1) or a Compensation Event (Type 2), as applicable; multiplied by (b) the applicable Affected Revenue Per Square Footage Ratio; multiplied by (c) 0.2.

Base Monthly Supplemental Payment or **BMSP** means the Maximum Annual Supplemental Payment divided by twelve (12).

Base Project Property Insurance Cost means the annual cost of the Owner-Provided Property Policy that is attributed to the Project pursuant to an independent actuarial analysis commissioned by the Owner, which analysis will compare such cost against the claims and loss experience for the Project.

Base Tax Liability means, at any given point in time, the present value of the cumulative federal and State income tax liability of the Equity Members that would be incurred over the remainder of the Term absent a termination under Section 21.2 of the Agreement during the Project Operating Period, determined by (a) calculating the anticipated income tax liability for each year of the remaining Term (as if such termination had not occurred) by applying the assumption regarding the combined federal and State income tax rate of the Equity Members reflected in the Initial Financial Model (Financial Close); and (b) applying to such cumulative federal and State income tax liability a discount rate equal to the Initial Equity IRR (Financial Close).

Baseline Developer TSA Screening Area Handover Date means the date shown in the Baseline Project Schedule for Developer to hand over the TSA Screening Area to the Owner in accordance with Section I.2.4 of the Technical Requirements for the performance of the TSA Work.

Baseline Functional Area Readiness Date means, with respect to any Functional Area, the date on which Developer is expected to achieve Functional Area Readiness with respect to such Functional Area, as indicated in the List of Key Turnover and Delivery Dates.

Baseline Level 5.5 Completion Deadline means the date by which the Owner is expected to complete the Level 5.5 Project, as indicated in the List of Key Turnover and Delivery Dates.

Baseline Owner TSA Screening Area Handback Deadline means the date shown in the Baseline Project Schedule for the Owner to hand back the TSA Screening Area to Developer, which is 90 days following the Baseline Developer TSA Screening Area Handover Date.

Baseline Project Schedule means the Project Schedule as of the Developer Execution Date, a copy of which is attached as Appendix 3-A of the Agreement, as updated as of the Effective Date, then as of the Financial Close Date, in accordance with Section I.6 of the Technical Requirements.

Baseline Project Substantial Completion Date means the date on which Developer is expected to achieve Project Substantial Completion, as indicated in the List of Key Turnover and Delivery Dates.

Baseline Project Utilities Services Capacity means the capacity of Project Utilities Services in the Terminal, as set forth in the Baseline Utilities Study.

Baseline Structural Documents means the record documents of the Terminal as of the Developer Execution Date, a copy of which is attached hereto as Appendix 7-A of the Agreement.

Baseline Utilities Study means the Utilities capacity study attached as Appendix 11 of the Technical Requirements, setting forth the capacity of the Project Utilities Services in the Terminal and identifying the location of Utilities located outside of the Terminal but within the Project Site.

Benchmark Interest Rate means the publicly-documented interest rates of each maturity included in the following indices:

- (a) LIBOR swap spot curve as provided by Bloomberg;
- (b) U.S. Spot Treasury Yield Curve;

- (c) Municipal Market Data (MMD) Benchmark, supplied by Thomson Reuters; and
- (d) Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index (formerly known as the Bond Market Association (BMA) Municipal Swap Index).

The Benchmark Interest Rates do not include any additional credit spread, margin or fee components.

Benchmark Interest Rate Fluctuation means any change in the Benchmark Interest Rate during the Bond Rate Protection Period, as compared to the Benchmark Interest Rate reflected in the Initial Financial Model (Developer Execution).

Benchmarking Date has the meaning set forth in Section 18.1.2.12.1(a) of the Agreement.

BIM DSM means the Building Information Model Design Standards Manual attached as Appendix 3 of the Technical Requirements.

Bond Ordinance means the Airport System General Bond Ordinance passed by the City on November 26, 1984, as amended or supplemented as of the Developer Execution Date.

Bond Pricing Date means date on which the final pricing of the Bonds is determined.

Bond Purchase Agreement means an agreement between Developer, the underwriters and the Conduit Issuer regarding the purchase of the Bonds.

Bond Rate Protection Period means the period commencing on the Developer Execution Date and ending on the Bond Pricing Date.

Bond Rate Protection Period Adjustment Protocol means the protocol attached as Appendix 2-C of the Agreement.

Bonds means Initial Project Debt in the form of bonds (including issuances under Rule 144A and Regulation S of the Securities Act of 1933, but excluding privately placed bonds) without committed credit spreads, to the extent incorporated in Developer's financial plan as reflected in the Initial Financial Model (Developer Execution) and the Initial Financial Model (Financial Close).

Bonus Payment means any bonus payment made by the Owner to Developer pursuant to Section 13.2.1 or Section 13.2.2 of the Agreement.

Brand means an established trade name that is doing business offering a standardized Merchandize assortment and trade design in at least two (2) locations in

the Greater Denver area, at least ten (10) locations in the United States, or an establishment with a well-known reputation both locally and nationally.

Building Information Model or **BIM** means an integrated process, and its output in the form of an aggregate of files, developed by Developer using coordinated information about the Project.

Building Official means one or more individuals designated from time to time to perform the “Building Official” functions with respect to this Project as required by the DBC.

Building System Demarcation Point means, with respect to any Building System, the location, connection point, or asset, as applicable, specified in Table III.1 of the Technical Requirements that marks the separation of the applicable O&M Services, on the one hand, from the applicable Excluded O&M Services or Owner O&M Obligations, on the other hand.

Building Systems means a collection of specific components that work together to perform one or more specific functions in the Terminal, including any fire protection system, smoke control system, energy management system, conveyance or airport specialty system, as more particularly described in Table III.1 the Technical Requirements, but excluding Utilities.

Business Day means any weekday except any weekday on which banks are not required or authorized by Law to be open in the State.

Business Opportunities has the meaning set forth in Section 22.2.1 of the Agreement.

Calendar Year means the consecutive 12-month period starting on January 1 and ending on December 31.

Capital Payment means the capital component of the Supplemental Payment.

CBRA Project means a project to construct two standard bag CBRA rooms and two oversized bag CBRA rooms on Levels 3 and 4 of the Terminal and a baggage handling system that interconnects all of the Terminal modules to replace the nine CBRA rooms existing as of the Effective Date that are used by TSA to reconcile suspect bags that are checked prior to delivery to the Airlines.

CEO has the meaning set forth in Appendix 20 of the Agreement.

Certificate of Functional Area Readiness has the meaning given to such term in Section 5.9.2.1 of the Agreement.

Certificate of Occupancy means a certificate issued by the Building Official pursuant to the DBC, certifying that a building or structure has met all applicable building code standards and requirements under the DBC.

Certificate of Project Final Acceptance has the meaning given to such term in Section 5.10.3.1 of the Agreement.

Certificate of Project Substantial Completion has the meaning given to such term in Section 5.10.2.1 of the Agreement.

Certification Ordinance means DRMC §§ 20-90 through 20-90.5, as amended from time to time.

Certified Monthly Concession Report means a report in the form attached as Appendix 5-A-2 of the Agreement.

Chairperson has the meaning set forth in Section 4.d of Appendix 20 of the Agreement.

Change Delay means a Delay that is solely and directly attributable to an Owner Change and is not concurrent with any other delay which is not caused by the Owner Change.

Change Directive has the meaning set forth in Section 1.8(a) of Appendix 12 of the Agreement.

Change in Law means (a) the adoption of any federal, State or local Law at any point after the Effective Date, or (b) any change in any federal, State or local Law or in the interpretation or application thereof by any federal, State or local Governmental Entity, as applicable, after the Effective Date, in each case that is materially inconsistent with Laws in effect on the Effective Date; excluding, however, (i) any change in or new federal, State or local Law passed or adopted but not yet effective as of the Effective Date, (ii) any change in federal, State or local labor Laws on or prior to the Project Substantial Completion Date; (iii) any change in federal, State or local tax Laws of general application (it being understood that any change in federal, State or local tax Laws shall not be deemed of general application if it is solely directed at, and the effect of which is solely borne by, Developer or developers of airport development or revitalization projects); (iv) any change in the Federal Provisions; and (v) any change by the TSA in the aviation threat level and/or associated operational requirements.

Change of Control means any Equity Transfer, transfer of an interest, direct or indirect, in an Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that, in each case, results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Developer or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of an Equity Member will constitute a Change of Control of Developer if such Equity Member possesses, immediately prior to such Change of Control, the power to direct or control or cause the direction or control

of the management of Developer. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(b) An upstream reorganization or transfer of indirect interests in Developer so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer;

(c) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interest in a parent organization of an Equity Member whose references, experience or financial statements, and any other Qualified Investor's references, experience or financial statements, were not considered or evaluated in the Statement of Qualifications or Proposal, provided, however, that this exception shall not apply if the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;

(d) An Equity Transfer, where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;

(e) The exercise of minority veto or voting rights (whether provided by applicable Law, by Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Developer, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, the Owner received copies of such agreements as of the Effective Date; and

(f) The grant of Security Documents, including the Initial Security Documents, in strict compliance with Section 4 of the Direct Agreement or the exercise of Lender remedies thereunder, including foreclosure.

Change Order has the meaning set forth in Section 1.6(a) of Appendix 12 of the Agreement.

Change Request has the meaning set forth in Section 1.2 of Appendix 12 of the Agreement.

City means the City and County of Denver, a municipal corporation of the State of Colorado, except in its capacity as "Owner" of the Project. "City" excludes the Owner.

City Council means Denver City Council.

City General and Special Conditions means the City's General Conditions and Special Conditions attached as Appendix 5 of the Technical Requirements.

Claim means a written demand submitted by Developer pursuant to the Contract Documents, which is or potentially could be disputed by the Owner, for a time extension, payment of money or damages or other relief from the Owner to Developer, and includes any Relief Event Claim. Claim also means a written demand submitted by the Owner pursuant to the Contract Documents, which is or potentially could be disputed by Developer, for payment of money or damages from Developer to the Owner.

Collateral Agent means the financial institution listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the Lenders in the Security Documents or intercreditor agreement or similar document with respect to the Project Debt, a copy of which shall be delivered by Developer to the Owner.

Combined Office Space has the meaning set forth in the Interim Office Lease Agreement.

Commercial Close Conditions means the following conditions: (a) the Owner and Developer shall have executed and delivered the Agreement (with the necessary approval/signature of the City Auditor) no later than September 1, 2017; and (b) Developer shall have delivered the Financial Close Security to the Owner.

Commercial Close Provisions means Sections 13.8, 17.1, 17.2, 18.4, Articles 1-4, 9, 11, 12, 16, 19 (except with respect to the Direct Agreement), 20, 21, 23, 25-27, and Appendices 1-4, 8, 11-14, 19-26 of the Agreement.

Commercial Revenue means, collectively, the Concessions Revenue, the Non-Concessions Revenue, and the revenues from the Developer Marketing Fund.

Commissioning Agent or **CxA** means an independent third party appointed by the Owner to perform commissioning activities with respect to the Functional Areas; provided, however, that such agent shall not be entitled to alter any of the requirements or obligations set forth in the Contract Documents and shall not have any independent rights to those of the Owner hereunder (which shall be exercised by the Owner).

Commissioning Plan means a plan prepared by the Commissioning Agent for the performance of commissioning activities including LEED commissioning with respect to each Functional Area.

Commissioning Report means, with respect to any Functional Area, a final report produced by the Commissioning Agent pursuant to the completion of all commissioning activities with respect to the Functional Area, and which shall include all reports, data and documentation relating to such commissioning activities and tests.

Committed Equity Investment means, in the aggregate and without double-counting: (a) any Equity Investment; and (b) any Deferred Equity Amounts.

Compensable Non-Discriminatory O&M Change means a Non-Discriminatory O&M Change, to the extent that such change requires additional capital expenditures, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element, in excess of what would have otherwise been required as part of Developer's Renewal Work obligations under the Contract Documents.

Compensation Event means Compensation Event (Type 1), Compensation Event (Type 2) or Compensation Event (Type 3), except as otherwise expressly provided in the Agreement.

Compensation Event Delay means a Delay that is solely and directly attributable to a Compensation Event (excluding Compensation Event (Type 3)) and is not concurrent with any other delay which is not caused by such Compensation Event; provided that for purposes of calculating the applicable length of Compensation Event Delay with respect to an Affected Concession under Section 11.4.2.1.1 of the Agreement, such period shall not exceed the number of days by which operation of the Affected Concession is actually delayed solely and directly due to the such Compensation Event and not due to any other concurrent delay which is not caused by such Compensation Event.

Compensation Event (Type 1) means any of the following events, subject to other limitations and requirements that may be set forth in the Agreement for such events:

- (a) Owner Change (including any Compensable Non-Discriminatory O&M Change but excluding any Non-Compensable Non-Discriminatory O&M Change) or any Discriminatory O&M Change;
- (b) Safety Compliance Orders;
- (c) The Owner's failure to perform or observe any of its material covenants or obligations under the Agreement or other Contract Documents;
- (d) Owner-Caused Delays;
- (e) Violation of applicable Law by the Owner that materially adversely impacts Developer's performance of the Work or the Developer Concessions Revenue;
- (f) Except as contemplated in the Agreement, the development, use or operation by the Owner of, or the development or operation of a Business Opportunity in, the Work Site or corresponding Airspace that materially prevents Developer from performing its fundamental obligations under the Agreement or materially adversely affects its costs;
- (g) Performance of work by the Owner (including its employees, contractors or consultants) in or adjacent to the Work Site (including in Adjacent

Projects) that materially disrupts or materially interferes with Developer's Work within the relevant Construction Work Areas or the Ancillary Site;

- (h) Failure by the Owner to substantially complete the Level 5.5 Project on or prior to the Level 5.5 Completion Deadline, provided that Developer shall have complied with the Transition and Phasing Plan;
- (i) The operation by the Owner for use by the public of a new terminal unless the Passenger Capacity Threshold has been achieved;
- (j) Any expansion of, changes in or improvements of concession offerings in the Airside Concession Space that represents a ratio of total Airside Concession Space (measured on a square foot basis of retail (including duty free), food and beverage and passenger services) to Total Enplanements (measured per 1,000 enplanements) in excess of the Concessions Growth Ratio when calculated, but excluding any instance where such ratio is exceeded due to actual passenger traffic being less than the Approved Traffic Forecast for the relevant twelve-month period; the ratio contemplated in this clause (j) and in the definition of Concessions Growth Ratio shall be calculated as of the end of each calendar month during the Project Operating Period, using the square footage of total Airside Concession Space as of such calculation date and the number of Total Enplanements during the twelve (12)-month period ending on such calculation date;
- (k) The impositions of any limitations, restrictions or other measures by the Owner (or on its behalf) to limit, reduce or divert any access or passenger or vehicular traffic from the Terminal or diversion of passengers within the Terminal away from the Terminal, in any such case except due to a Compensation Event (Type 2) or a Delay Event, for an aggregate amount of 160 hours per year;
- (l) Suspension by the Owner of train services between the Terminal and any of the Airport concourses (except due to a Compensation Event (Type 2) or a Delay Event) or failure to repair or remedy any operational failure of the train providing such services in a diligent manner, in any such case except to the extent reasonably necessary to address emergencies, operational disruptions caused by any third party operator of such train services, or scheduled shutdowns outside of regular operating hours, for an aggregate period in excess of 160 hours per year;
- (m) Release of Contaminated Materials by the Owner, but only to the extent such release (i) occurs after the Effective Date; (ii) is required to be reported to a Governmental Entity; and (iii) renders use of the Work Site unsafe or in breach of applicable Law absent assessment, containment and/or remediation;

- (n) Discovery of Pre-existing Contaminated Materials;
- (o) Discovery of Unknown Structural Conditions;
- (p) Discovery of Unknown Utilities that materially adversely affects the Infrastructure D&C Work outside of the Terminal but within the Project Site;
- (q) Revocation of, or any amendment to, or the failure by the Building Official to comply with, the terms of (i) the Existing DBC Administrative Modifications on or after the Developer Execution Date, or (ii) the Formal DBC Administrative Modification, once obtained, in each case in connection with the D&C Work;
- (r) Discovery in connection with the D&C Work of any noncompliance of the Terminal as of the Effective Date with applicable DBC requirements, to the extent such noncompliance (i) is not addressed in the Existing DBC Administrative Modifications or the Formal DBC Administrative Modification, once obtained, (ii) was not known by Developer or any Developer-Related Entity as of the Developer Execution Date, and (iii) could not have reasonably been known by Developer or any Developer-Related Entity as of the Developer Execution Date with the exercise of reasonable due diligence;
- (s) Discovery of archaeological, paleontological or cultural resources at or on the Work Site;
- (t) Discovery at or on the Work Site of threatened or endangered species under the federal or State endangered species act;
- (u) Issuance of a temporary restraining order or other form of injunction or legal order by a court that prohibits prosecution of any portion of the Work as a direct result of an act or omission of any Owner-Related Governmental Entity;
- (v) Denial by the Owner of Developer's request for a Required Design Exception/Deviation in breach of Section 12.3.2 of the Agreement; and
- (w) Any modification, amendment, change or supplement to: (i) the General Junior Lien Bond Ordinance or the Supplemental Junior Lien Bond Ordinance following the Effective Date or the Bond Ordinance following the Developer Execution Date, in either case that adversely affects the Owner's ability to pay the Supplemental Payments in accordance with the Agreement; or (ii) the rate coverage covenant included in the General Junior Lien Bond Ordinance or incorporated by reference in the Supplemental Junior Lien Bond Ordinance.

Notwithstanding the foregoing, a “Compensation Event (Type 1)” excludes any event or circumstance to the extent caused by the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity.

Compensation Event (Type 2) means any of the following events, subject to other limitations and requirements that may be set forth in the Agreement for such events:

- (a) Qualifying Change in Law;
- (b) Release of Contaminated Materials by a third party who is not a Developer-Related Entity, but only to the extent such release (i) occurs after the Effective Date; (ii) is required to be reported to a Governmental Entity; and (iii) renders use of the Work Site unsafe or in breach of applicable Law absent assessment, containment and/or remediation;
- (c) Issuance of a rule, order or directive from the U.S. Department of Homeland Security, TSA, FAA or any other Governmental Entity to the extent such rule, order or directive requires specific changes in Developer’s normal design or construction procedures in order to comply;
- (d) Issuance of a temporary restraining order or other form of injunction or legal order by a court that prohibits prosecution of any portion of the Work other than as a direct result of an act or omission of any Owner-Related Governmental Entity; and
- (e) TSA Change/Delay.

Notwithstanding the foregoing, a “Compensation Event (Type 2)” excludes any event or circumstance to the extent caused by the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity.

Compensation Event (Type 3) means, subject to any other applicable limitations and requirements set forth in the Agreement, any losses, expenses, damages, costs, claims, fees (including reasonable attorneys’ fees) or any other liability of Developer or any Developer-Related Entity to any third party (other than any Developer-Related Entity) for any claim, cause of action or fine asserted by such third party against Developer or any Developer-Related Entity with respect to Contaminated Materials for which the Owner is deemed to be the generator or arranger pursuant to Section 5.13.2 of the Agreement, provided that Developer strictly complies with its obligations under Section 5.13.3 of the Agreement. Notwithstanding the foregoing, “Compensation Event (Type 3)” excludes any event or circumstance to the extent caused by the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity.

Completion Deadline means the Construction Commencement Deadline, each Scheduled Functional Area Readiness Date, the Scheduled Project Substantial

Completion Date, the Project Final Acceptance Deadline and the Project Substantial Completion Long Stop Date, as applicable.

Compliance Work means any Work required as a direct result of a Compensation Event described in clauses (a) (if it occurs during the applicable O&M Segment Operating Period) or (b) of the definition of Compensation Event (Type 1) or clauses (a) or (c) of the definition of Compensation Event (Type 2).

Concentration of Ownership Policy means a policy regarding concentration of ownership for the Concessions Program to be developed, implemented and maintained by Developer, and approved by the Owner, in accordance with Section 2.3 of Appendix 5-A of the Agreement.

Concession means the right to develop and operate a business to sell any Merchandise within the Concessions Space at any time during the Concessions Operating Period, subject to the terms and conditions set forth in the applicable Concession Agreement and the Agreement.

Concession Agreement means, with respect to a Concession, a sub-concession agreement entered into by Developer and the relevant Concessionaire and approved by the Owner (to the extent required by the Technical Requirements) in accordance with Appendix 5-A of the Agreement, pursuant to which Developer sub-grants to the Concessionaire a right to develop and operate a Concession on the terms and conditions set forth therein.

Concession Location means (a) Level 6, (b) Airside Plaza, or (c) Meeters & Greeters Plazas, each to the extent within the Concessions Space. For the purposes of calculating the Affected Revenue per Square Footage Ratio, Affected Concessions located in the Airside Plaza prior to Project Substantial Completion shall be deemed to be located in Level 6.

Concession Operating Hours has the meaning given to such term in Section 2.9.1 of Appendix 5-A of the Agreement.

Concession Premises means, with respect to a Concession, the specific area(s) within the Concessions Space that the Concessionaire of the Concession is authorized to occupy and use for the purposes set forth in the applicable Concession Agreement.

Concession Type means any of the following types of Concessions: (a) Retail Concessions; (b) F&B Concessions; or (c) Passenger Services Concessions.

Concessionaire means a third party legal entity that enters into a Concession Agreement with Developer with respect to a Concession.

Concessionaire Brand has the meaning set forth in Section 2.2 of Appendix 5-A of the Agreement.

Concessionaires Office Lease Agreement means a lease agreement between the Parties in the form attached hereto as Appendix 4-G with respect to specified office space near the AOB Corridor (or such other location as may be agreed to by the Parties) for use by the Concessionaires as their Concessions office during the applicable Concession terms at the Owner's standard rates set forth in Rule 120 of the Airport Rules and Regulations as of the Developer Execution Date, subject to adjustment for inflation and abatement for vacancy as set forth in the lease agreement, and subject to such other terms and conditions as may be agreed to by the Parties.

Concessions means Retail Concessions, F&B Concessions and Passenger Services Concessions, but excludes the Non-Competing Activities.

Concessions Development and Management Plan or **CDMP** means the Concessions development and management plan for the Concessions Program, as developed, implemented and updated by Developer and approved by the Owner from time to time in accordance with Appendix 5-A of the Agreement. The initial CDMP, submitted by Developer and approved by the Owner as of the Effective Date, is attached as Appendix 5-A-1 of the Agreement.

Concessions Functional Area means a Functional Area that contains any portion of the Concessions Space.

Concessions Growth Ratio means 8.3 square feet per 1,000 Enplaned Passengers calculated as follows: total Airside Concession Space (measured on a square foot basis of retail (including duty free), food and beverage and passenger services) / Total Enplanements (measured per 1,000 enplanements).

Concessions Layout Plan means a plan to be developed and updated by Developer as part of the development of the CDMP and each update thereof (or more frequently, as required to keep current), describing in reasonable detail the proposed use of the Concessions Space, including a drawing delineating the outside limits of the space then being used or contemplated to be used for Concessions and setting forth the actual and contemplated tenant mix (or Concessions Types, to the extent specific tenants have not yet been determined) and the locations thereof, to the extent known;

Concessions Management, Operations and Maintenance Plan means the plan so titled in Section 3.1 of Appendix 5-A of the Agreement.

Concessions Operating Period means the period commencing on the Functional Area Readiness Date of the first Concessions Functional Area to achieve Functional Area Readiness and ending on the Termination Date.

Concessions Plans and Policies means the CDMP, the Permitted Use Policy, the Concessions Term Policy, the Concentration of Ownership Policy, the Concessions Procurement Plan, the Developer PVC Program, the ACDBE Plan, the Concessions Promotion Program, the Pricing Policy, the Concessions Training Program, and any other plans, policies or programs developed, implemented, or updated from time to time by Developer and approved by the Owner in accordance with Appendix 5-A of the

Agreement, whether as part of the CDMP or otherwise in connection with the Concessions Program, and the Sustainability Policy; and “Concessions Policy” means any of them.

Concessions Program means the Concession program described in Section 1 of Appendix 5-A of the Agreement.

Concessions Program Supporting Analyses has the meaning set forth in Section 3.1 of Appendix 5-A of the Agreement.

Concessions Promotion Program means a program developed, implemented and maintained by Developer in accordance with Section 2.8.3 of Appendix 5-A of the Agreement.

Concessions Remedial Plan has the meaning set forth in Section 5.3(b) of Appendix 5-A of the Agreement.

Concessions Revenue means, with respect to any given period, the sum of (a) the Privilege Fee for each Concession, pro-rated for such period, and (b) liquidated damages assessed against Concessionaires pursuant to the Mandatory Provisions during such period, in each case, to the extent received by Developer, and aggregated for all Concessions.

Concessions Space means the areas within the outside limits (both horizontal and vertical) delineated in the Concessions Space Map attached as Appendix 4-C of the Agreement, as such limits may be adjusted from time to time in accordance with the Contract Documents. The Concessions Space excludes all Public Circulation Spaces and areas where Non-Competing Activities are performed as of the Developer Execution Date except to the extent taken over by Developer pursuant to Section 6.1.1.5 of the Agreement, but includes storage areas, goods delivery areas and Concessionaires Offices.

Concessions Term Policy means a policy relating to Concession term lengths to be developed, implemented and updated by Developer, confirmed by the Owner, as part of the CDMP in accordance with Appendix 5-A of the Agreement.

Concessions Training Program has the meaning set forth in Section 2.8.6 of Appendix 5-A of the Agreement.

Conduit Issuer means Public Finance Authority, the issuer of the Bonds.

Construction Commencement Deadline means the date, subject to adjustment pursuant to Section 11.3.2 of the Agreement, occurring 340 days after the Effective Date.

Construction Documents has the meaning set forth in Chapter 6 of Appendix 2 to the Technical Requirements; and “Construction Document” means any of them.

Construction Equity Ratio means at any time the ratio between: (a) the Committed Equity Investment at the time; and (b) the sum of Committed Equity Investment at the time and the amount of Project Debt scheduled to be outstanding at the time.

Construction Limits means the lines established as such in the Project Site Model to delineate the outside limits (both horizontal and vertical) for performance of the Construction Work, as such limits may be adjusted from time to time in accordance with the Contract Documents.

Construction Manager means the individual identified as such in Appendix 3-H of the Agreement who meets the applicable Key Personnel criteria set forth in Appendix 8-B of the Agreement, or any successor individual approved by the Owner in accordance with Section 9.7.1 of the Agreement.

Construction Quality Manager means the individual identified as such in Appendix 3-H of the Agreement who meets the applicable Key Personnel criteria set forth in Appendix 8-B of the Agreement, or any successor individual approved by the Owner in accordance with Section 9.7.1 of the Agreement.

Construction Risk Rating Agency Adjustment means any Rating Agency Adjustment that relates to or arises in connection with any Initial Key Contract relating to the D&C Work or any Key Contractor that is party to such contract, including with respect to associated schedule risks (except the allocation of such risks between the Owner and Developer under the Agreement), liquidated damages, any liquidity or security requirements in connection with any Key Contractor's obligations and liabilities under any Initial Key Contract relating to the D&C Work and any risk that relates to or arises in connection with any such entity's creditworthiness, capacity or past performance or the allocation of risk as between any of them.

Construction Staging Plan means, collectively, a graphic representation, accompanying narrative, and schedule submitted by Developer as part of the Transition and Phasing Plan, showing the location of the Staging Areas and the Haul Routes from time to time throughout the Project Construction Period.

Construction Submittals means shop drawings, material data, samples and product data, as required for the Owner, the AOR and the EOR to verify that the correct products and quantities will be installed on the Project, as contemplated in Part II of the Technical Requirements.

Construction Work means all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver, landscape, equip and commission the Terminal Improvements as provided in the Contract Documents, including the procurement, installation and commissioning of the FF&E.

Construction Work Area means a continuous area within the Project Site (Construction) within which Developer may perform Construction Work, the vertical and horizontal limits of which are delineated in the Transition and Phasing Plan.

Consumer Price Index or **CPI** means the “Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items” (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the CPI is changed so that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or substantially altered, the applicable substitute index will be that chosen by the Secretary of the Treasury for the Department of Treasury’s Inflation-Linked Treasuries as described at 62 Federal Register 846-847 (January 6, 1997), or if no such securities are outstanding, will be determined by the Parties in accordance with general market practice at the time.

Contaminated Materials means any element, chemical, compound, mixture, material or substance, whether solid, liquid or gaseous, which at any time is present in sufficient concentration such that it is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins, fungi or fecal material) which may create any unsafe or hazardous condition or pose any threat or harm to the environment or human health and safety. “Contaminated Materials” includes the following:

- (a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances, ignitable, corrosive and reactive substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of “hazardous substance”, “hazardous waste”, “hazardous material”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive waste”, “radioactive materials”, “bio-hazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substance”, “toxic waste”, “toxic material”, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP” toxicity” or “EP toxicity” or words of similar import under any applicable Environmental Laws);
- (b) Any petroleum product, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
- (c) Any solvent, solvent waste, including any refined solvent product, and any waste solvent or waste solvent byproduct, including any additive, byproduct or fraction of any of the foregoing;
- (d) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

- (e) Any flammable substances or explosives;
- (f) Any radioactive materials;
- (g) Any asbestos or asbestos-containing materials;
- (h) Silica;
- (i) Any lead, cadmium, or lead-based paint or any other heavy metal-based paint or material, or any metal listed in or regulated by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.);
- (j) Any radon or radon gas;
- (k) Any methane gas or similar or regulated gaseous materials;
- (l) Any urea formaldehyde foam insulation;
- (m) Electrical equipment and components which contain any oil or dielectric fluid containing polychlorinated biphenyls;
- (n) Pesticides, herbicides or fungicides;
- (o) Any other chemical, material, substance or pollution, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, Users or any Persons in the vicinity of the Project or to the indoor or outdoor Environment; and
- (p) Soil, or surface water or groundwater, containing any of the Contaminated Materials as defined above.

Contaminated Materials Management means procedures and requirements to address Contaminated Materials conditions and contamination encountered, impacted, caused by or occurring in connection with the Project, the Work Site or the Work, as well as investigation and remediation of such Contaminated Materials where required. Contaminated Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Contaminated Materials, whichever approach is effective, most cost-efficient and authorized under applicable Law and Governmental Approvals.

Contract means any agreement, and any supplement or amendment thereto, by Developer with any other Person, Contractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers.

Contract Documents means the Agreement, the Technical Requirements, including all Appendices and exhibits to the Agreement and the Technical Requirements (and any executed originals of Appendices and exhibits), Issued for Construction Documents, and the other documents listed in Section 1.4.1 of the Agreement (other than the Bond Ordinance, the General Junior Lien Bond Ordinance and the Supplemental Junior Lien Bond Ordinance), including all amendments to the foregoing.

Contract Time means, with respect to a Contract, the total number of days provided in the Contract from the date of the notice to proceed to the date of final completion of the work thereunder.

Contract Year means: (a) with respect to the first Contract Year during the Term, the period commencing on the Effective Date and continuing through the end of the Fiscal Year in which the Effective Date occurs; and (b) with respect to each Contract Year thereafter during the Term, each twelve-month period commencing on the first day of the Fiscal Year and ending on the last day of the Fiscal Year, provided that if the Term expires or the Agreement is terminated on a day other than the last day of a Contract Year, the last Contract Year will end as of the date of such expiration or termination.

Contractor means any Person with whom Developer has entered into any Contract to perform any part of the Work or provide any materials, equipment or supplies for the Project, on behalf of Developer, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

Contractor Breakage Costs means Losses that have been or will be reasonably and properly incurred by Developer under a Contract (excluding any Concession Agreement) as a direct result of the termination of the Agreement (and which shall not include lost profit or lost opportunity), but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of the Work required to be provided or carried out, including:
 - (i) Any materials or goods ordered or subcontracts placed that cannot be cancelled without such Losses being incurred;
 - (ii) Any expenditure incurred in anticipation of the provision of services or the completion of Work in the future; and
 - (iii) The cost of demobilization including the cost of any relocation of equipment used in connection with the Project;
- (b) The Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm's length basis; and
- (c) Developer and the relevant Contractor have each used their reasonable efforts to mitigate such Losses.

Controlled Area means any area within the Terminal which is not designated as a Secured Area or Sterile Area, but which is deemed sensitive and requires specific security features as detailed in Section I.5.3.4 of the Technical Requirements.

Controlling Interest means an interest held by a Person in another Person when:

- (a) Such Person holds, directly or indirectly, beneficially or of record, a majority of the voting rights in such other Person; or
- (b) Such Person possesses, directly or indirectly, the power to cause the direction of the management of such other Person, whether through voting securities, by contract, family relationship or otherwise.

Convenience Concession means a Concession whose principal Merchandise is convenience items for travelers, such as snacks, light refreshments, basic toiletries and reading materials.

Core Airport Operations means processing and transporting passengers and baggage in support of the aviation mission of the Airport.

Core O&M Limits means the lines established as such in the Project Site Model to delineate the outside limits (both horizontal and vertical) for the performance of the O&M Services, as such limits may be adjusted from time to time in accordance with the Contract Documents, and includes any storage area required by Developer for the performance of the O&M Services, the Concessions Space, and the Public Circulation Space on Level 5, as identified on the Project Site Model.

Cost to Complete means (without double-counting):

- (a) Those costs (internal and external) that the Owner reasonably and properly projects that it will incur in carrying out any process to request tenders from any parties interested in entering into a contract with the Owner to achieve Project Final Acceptance, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts; plus
- (b) Costs that the Owner reasonably and properly projects that it will incur in achieving Project Final Acceptance; plus
- (c) Any other Losses that the Owner would, but for the termination of the Agreement, not have incurred prior to Project Final Acceptance; minus
- (d) Any insurance proceeds available to the Owner for the purposes of achieving Project Final Acceptance.

Cost-Loaded Project Schedule means the cost-loaded Project Schedule to be developed by Developer in accordance with Section I.6 of the Technical Requirements.

Credit Spread Fluctuation means changes in credit spreads in respect of the Bonds during the Bond Rate Protection Period, as compared to the credit spreads reflected in the Initial Financial Model (Developer Execution).

Critical Path means the sequence of discrete work packages and planning packages in the Project Schedule that has the longest total duration through an end point where the discrete work packages and planning packages cannot be delayed without delaying the finish time of the end point effort.

Cure Period means a Temporary Cure Period or a Permanent Cure Period.

Customer Experience Element means any Element identified in Section I.1.2.11 of Appendix 1-A of the Technical Requirements, each of which creates or supports enhanced passenger experience.

D&C Contract Amount means \$650,000,000.

D&C Work means the Design Work and Construction Work, including those obligations of Developer identified in the Scope Documents.

D&C Work Value means an amount equal to the D&C Contract Amount minus the Cost to Complete and minus the amount of any Progress Payments and any Bonus Payment paid to Developer prior to the Early Termination Date.

Day or **day** means calendar day unless otherwise expressly specified as a Business Day.

Deduction Amount means, with respect to any given period, the sum of the Performance Deductions assessed with respect to performance during such period.

Defect means any Work that is not completed in accordance with the requirements of the Contract Documents or is defective in its workmanship or material; ordinary wear and tear excepted.

Deferral of Compensation means the election of the Owner, in its sole discretion, to pay Direct Costs through either of the following or a combination thereof:

- (a) Adjustment of the MASP; or
- (b) Periodic payments over the Term.

Deferred Equity Amounts means, on any date, any amount of unfunded equity that has been committed to Developer (including commitments to provide an Equity Investment or Equity Member Debt) and is shown to be available for use in the Financial Model prior to the Project Final Acceptance Date, but only to the extent that the commitment to provide such amount is supported by an irrevocable on-demand letter of credit issued by an Eligible LC Issuer for the account of an Equity Member naming Developer and/or the Collateral Agent as beneficiary and guaranteeing the provision of the committed amount by a date which is not later than the Project Final Acceptance Date.

Delay means any unanticipated event, action, force or factor during the performance of the D&C Work, which extends Developer's time of performance of any activity or work item on the critical path of the D&C Work beyond the applicable Completion Deadline after consumption of Float. The term "Delay" is intended to cover all such events, actions, forces or factors, whether styled "delay", "disruption", "interference", "impedance", "hindrance", or otherwise, which are beyond the control of and not caused by Developer or any Developer-Related Entity. The term "Delay" does not include "Extra Work."

Delay Costs has the meaning set forth in Section 1.1(g) of Appendix 11 of the Agreement.

Delay Event means any of the following events, subject to other limitations and requirements that may be set forth in the Agreement for such events:

- (a) Force Majeure Event;
- (b) Adverse Weather Event during the Project Construction Period;
- (c) Non-Compensable Non-Discriminatory O&M Change;
- (d) Delay by or failure of any Governmental Entity to provide a Key Governmental Approval by the applicable Key Governmental Approval Deadline, provided that Developer shall have diligently pursued such approval and the relevant delay could not have been mitigated by Developer through reasonable best efforts;
- (e) Any strike, lockout, or similar labor-related action generally affecting the construction, building maintenance or facilities management industry in the State, but excluding any strike, lockout or similar labor-related action specific to the Project (other than a sympathy strike), Developer or any Contractor;
- (f) The performance of work by any Governmental Entity (excluding TSA Work) that materially interferes with the performance of the Work by Developer or any Developer-Related Entity; and
- (g) Change in Law other than any Qualifying Change in Law.

Notwithstanding the foregoing, a "Delay Event" excludes any event or circumstance to the extent caused by the negligence, willful misconduct, or breach of applicable Law or contract by Developer or any Developer-Related Entity.

DEN Environmental Management System means a series of documents identifying environmental risks from Airport operations and setting forth policies and procedures to mitigate those risks.

Denver Building Code or **DBC** means the 2016 Denver Building Code, as amended, supplemented or replaced from time to time.

Department of Building Liaison means the individual identified as such in Appendix 3-H of the Agreement who meets the applicable Key Personnel criteria set forth in Appendix 8-B of the Agreement, or any successor individual approved by the Owner in accordance with Section 9.7.1 of the Agreement.

Design Analysis Report has the meaning set forth in Chapter 3 of Appendix 2 of the Technical Requirements.

Design and Construction Costs means the cost for the D&C Work of the Project as set forth in the Schedule of Values, as may be amended in accordance with the Agreement.

Design and Construction Specifications means, collectively, the Design and Construction Specifications:

- (a) Division 1, attached as Appendix 6 of the Technical Requirements; and
- (b) Divisions 2 through 33 (excluding Divisions 24, 26, 29 and 30), attached as Appendix 7 of the Technical Requirements.

Design Development has the meaning set forth in Chapter 5 of Appendix 2 of the Technical Requirements.

Design Development Package means all design development drawings, specifications and documents completed as part of the Early Design Work in accordance with the Technical Requirements.

Design Documents means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project. Design Documents include the Issued for Construction Documents.

Design Quality Manager or **DQM** means the individual identified as such in Appendix 3-H of the Agreement, who meets the applicable Key Personnel criteria set forth in Appendix 8-B of the Agreement, or any successor individual approved by the Owner in accordance with Section 9.7.1 of the Agreement.

Design Review means review by the Owner of Submittals in accordance with standards and processes set forth in Sections 1.8.3.2 and 1.8.3.3 of the Technical Requirements.

Design Standards Manuals means, collectively, the Standards and Criteria DSM, the BIM DSM and the Life and Safety Systems DSM.

Design Work means all Work related to the design, engineering or architecture for the Project.

Developer means Denver Great Hall LLC, a limited liability company organized under the laws of Delaware, and its permitted successors and assigns.

Developer Caused Material Shortfall has the meaning set forth in Section 5.3 of Appendix 5-A of the Agreement.

Developer Change Proposal means a written proposal submitted by Developer pursuant to Section 12.2 of the Agreement.

Developer Commercial Revenue means, with respect to any given period, the sum of: (a) Developer Concessions Revenue for such period; (b) one hundred percent (100%) of revenues from the Developer Marketing Fund and any common area maintenance charges for such period; and (c) Developer's twenty percent (20%) share of the Non-Concessions Revenue for such period.

Developer Commitments means certain commitments made by Developer in respect of the Project, which are attached as Appendix 3 of the Agreement.

Developer Concessions Remedial Plan has the meaning set forth in Section 5.3(b) of Appendix 5-A of the Agreement.

Developer Concessions Revenue means, with respect to any given period, Developer's twenty percent (20%) share of the Concessions Revenue.

Developer Default has the meaning set forth in Section 20.1.1 of the Agreement.

Developer Execution Date means July ____, 2017, the date on which Developer executes and delivers the Agreement to the Owner.

Developer Intellectual Property means all Intellectual Property developed by Developer or its Affiliates or Contractors independently of the PDA and the Contract Documents and incorporated into the Proposal or the Project.

Developer Losses means the total paid losses including reserves, with respect to the Owner-Provided Insurance Policies described in Section 1(a) of Appendix 18 of the Agreement, which shall be developed using the selected OCIP insurer's pre-determined loss development factors, including all claims administration fees whether paid by a loss conversion factor or per claim charge.

Developer Marketing Fund has the meaning set forth in Section 2.8.3 of Appendix 5-A of the Agreement.

Developer Premium Value Concessions Program or **Developer PVC Program** has the meaning set forth in Section 2.4 of Appendix 5-A of the Agreement.

Developer-Provided Insurance Policies means the insurance policies identified in Section 18.1 and Appendix 18 of the Agreement to be procured and maintained by Developer, including any replacement policy for the Owner-Provided Property Policy to the extent Developer is required to procure and maintain such policy pursuant to Section 18.1.1.2 of the Agreement; and “Developer-Provided Insurance Policy” means any of them.

Developer Rating Agency Adjustment means (a) any Construction Risk Rating Agency Adjustment and (b) Developer’s twenty-five percent (25%) share of the Shared Rating Agency Adjustment.

Developer-Related Entity(ies) means (a) Qualified Investors; (b) Contractors (including Suppliers); (c) any other Persons performing any of the Work (except pursuant to the Owner’s step-in rights under the Agreement); (d) any other Persons for whom Developer may be legally or contractually responsible; and (e) the employees, agents, officers, directors, shareholders (but excluding shareholders of publicly traded companies), representatives, consultants, successors, assigns and invitees (excluding, for the avoidance of doubt, any members of the public, any passengers or any other Person with whom Developer or the Contractor does not have a contractual relationship) of Developer or any of the foregoing.

Developer Release of Contaminated Materials means any Release of Contaminated Materials by Developer or any other Developer-Related Entity, provided that any Contaminated Materials Management undertaken by Developer with respect to Pre-Existing Contaminated Materials in accordance with all applicable Law, Governmental Approvals and the Contract Documents is excluded from this definition.

Developer Secured Personnel means any individual described in clause (e) of the definition of Developer-Related Entity that performs any Work on the Work Site or otherwise in any secured area of the Airport.

Developer TSA Screening Area Handover Date means the date on which Developer shall hand over the TSA Screening Area to the Owner in accordance with Section 1.2.4 of the Technical Requirements for the performance of the TSA Work, which date shall be not later than the Scheduled Developer TSA Screening Area Handover Date.

Developer’s Interest means all right, title, interest and property, of Developer in, to, under or derived from: (a) the Contract Documents, , including Developer’s right, title and/or interest in and to the Project, the Work Site, the Terminal Improvements, the Developer Commercial Revenue and Supplemental Payments earned, Principal Developer Documents, Contracts, Submittals, Claims and Intellectual Property; and (b) the Bond Ordinance, the General Junior Lien Bond Ordinance and the Supplemental Junior Lien Bond Ordinance.

Deviation has the meaning set forth in Section 12.3 of the Agreement.

Direct Agreement means the agreement in the form attached as Appendix 14 of the Agreement by and among the Owner, Developer, and the Collateral Agent, on behalf of the Lenders, respecting the Collateral Agent's rights to notice, step-in and cure Developer Defaults.

Direct Costs has the meaning given to such term in Appendix 11 of the Agreement.

Disadvantaged Business Enterprise (DBE) has the meaning given in 49 C.F.R. Part 26.

Discriminatory Change in Law means a Change in Law that applies to (a) the Project or substantially similar airport projects, or (b) Developer or a Key Contractor, and in any event does not apply to other projects or Persons.

Discriminatory O&M Change means any change or addition to, or replacement of, requirements in the Technical Requirements relating to the O&M Services (including revisions to the Manuals and Guidelines, adoption of new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other technical provisions) of:

- (a) Materially more onerous application to Developer or the Project than the application thereof to other comparable Owner projects; or
- (b) Selective application to Developer or the Project and not to other comparable Owner projects.

Dispute means any dispute, disagreement or controversy between the Owner and Developer concerning their respective rights and obligations under the Contract Documents, including concerning any Claim, alleged breach or failure to perform and remedies.

Dispute Resolution Panel means a panel constituted in accordance with Section 4 of Appendix 20 of the Agreement.

Dispute Resolution Procedures means the procedures for resolving Disputes set forth in Article 26 and Appendix 20 of the Agreement.

Distribution means (a) whether in cash or in kind, any (i) dividend or other distribution in respect to share capital, (ii) reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital, (iii) payments under Equity Members Funding Agreements (whether of principal, interest, breakage costs or otherwise), (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms, (v) the receipt of any other benefit which is not received in the ordinary course of business and not on commercially reasonable terms, or (b) the early release of any contingent debt or equity

funding liabilities to Developer, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

Division of Small Business Opportunity (DSBO) means the division responsible under City ordinance to undertake specific activities to prevent discrimination and its effects against business enterprises which have been certified as MBEs, WBEs and/or DBEs (for federally funded projects) in the areas of construction, reconstruction and remodeling, and professional design and construction services.

Draft DBC Administrative Modification means the draft administration modification to the DBC with respect to the existing Terminal for the Project attached as Appendix 7-B-2 of the Agreement.

Early Design Work means the Design Work described in Section I.8.3.3.2 of the Technical Requirements. “Early Design Work” excludes any design work completed by Developer pursuant to the PDA.

Early Design Work Payments has the meaning set forth in Section 2.3.2.1 of the Agreement; and “Early Design Work Payment” means any of them.

Early Termination Date means the effective date of termination of the Agreement for any reason prior to the stated expiration of the Term, as specified in the relevant provisions of Article 21 of the Agreement.

Earthquake means all land movement due to seismic activity, including shocks, tremors, volcanic action, tsunami and earth rising or shifting, including any aftershocks or other Earthquakes for a period of 168 hours after the initial event, which directly impacts the physical improvements of the Project, provided that direct physical loss or damage by fire or explosion resulting from any of the foregoing will not be considered loss by Earthquake.

EDR Area/Element has the meaning set forth in Section I.8.3.2 of the Technical Requirements.

Effective Date means the date on which the Commercial Close Conditions have been satisfied, which date shall be evidenced in writing by the Parties promptly upon occurrence of the same.

Element means an individual component, system or subsystem of the Project.

Eligible Investments means any security, obligation, bond, fund, instrument or other investment permitted under DRMC § 2.5.3.

Eligible LC Issuer means a financial institution with long term unsecured debt ratings of at least the following, from at least one (1) of the listed major rating agencies: (i) BBB+ by Standard & Poor’s Ratings Services; (ii) Baa1 by Moody’s Investor Service, Inc.; or (iii) BBB+ by Fitch Ratings.

Emergency means: (a) an Incident; or (b) any unplanned event within the Project (both natural or manmade events, such as tornadoes, blizzards, civil strife, labor disputes, or fire) that (i) presents an immediate or imminent threat to the long-term integrity of any part of the infrastructure of the Project, to the Environment, to property adjacent to the Project or to the safety of Users, (ii) has jeopardized the safety of Users, (iii) is recognized by the Colorado Department of Public Safety as an emergency, or (iv) is recognized or declared by the Governor of the State, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

Emergency Management and Disaster Recovery Plan or **EMDRP** means the emergency management and disaster recovery plan required to be developed and updated by Developer in accordance with Section I.10.15 of the Technical Requirements.

Emergency Repair means repair or maintenance that warrants immediate or urgent action to minimize damage to property or reduce risk to the safety, health or welfare of Users.

Emergency Service Access means all emergency access and egress required for compliance with the DBC or in order to obtain any Governmental Approval, Temporary Certificate of Occupancy or Certificate of Occupancy in connection with the Project.

Engineer(s) of Record or **EOR(s)** means one or more professional engineers or engineering firms registered in the State of Colorado that develops the criteria and concept for the Project, performs the analysis, and is responsible for the preparation of Design Documents related to MEP and structural design.

Enplaned Passenger means a person boarding at the Airport in scheduled or non-scheduled service on aircraft in intrastate, interstate or foreign air transportation.

Environment means air, soils, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and cultural, historic, archeological and paleontological resources.

Environmental Approvals means all Governmental Approvals arising from or required by any Environmental Law in connection with construction, use or operation of the Project.

Environmental Law means (a) any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the Environment, Contaminated Materials, contamination of any type whatsoever, or health and safety matters, and (b) any requirements and standards that pertain to the protection of the Environment, or to the management or Release of Contaminated Materials, contamination of any type whatsoever, or health and safety matters with respect to Contaminated Materials, set forth in any agreements, permits, licenses, approvals,

plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as each of the foregoing have been or are amended, supplemented or replaced from time to time (including any present and future amendments thereto and reauthorizations thereof), including those relating to:

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation and transportation of Contaminated Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Contaminated Materials;
- (d) Protection of wildlife, endangered, threatened, and sensitive species, wetlands, water courses and water bodies, cultural, historical, archeological, and paleontological resources and natural resources;
- (e) The operation and closure of underground or aboveground storage tanks;
- (f) Health and safety of employees and other persons with respect to Contaminated Materials; and
- (g) Notification, documentation and record keeping requirements relating to the foregoing.

Without limiting the above, the term “Environmental Laws” shall also include the following (all as amended):

- i. The National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.);
- ii. The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.) and associated Superfund Amendments and Reauthorization Act (42 U.S.C. §§ 9601 et seq.);
- iii. The Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.);
- iv. The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 et seq.);
- v. The Clean Air Act (42 U.S.C. §§ 7401 et seq.);
- vi. The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 et seq.);
- vii. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, et seq.);

- viii. The Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. §§ 6924 et seq.);
- ix. The Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.);
- x. The Hazardous Materials Transportation Act (49 U.S.C. §§ 5101 et seq.);
- xi. Section 404 of the Clean Water Act (33 U.S.C. § 1344);
- xii. The Oil Pollution Act (33 U.S.C. §§ 2701, et. seq.);
- xiii. The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.);
- xiv. The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 et seq.);
- xv. The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 et seq.);
- xvi. The Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.);
- xvii. The Endangered Species Act (16 U.S.C. §§ 1531 et seq.); and
- xviii. The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.).

Environmental Management Plan means the plan prepared and updated by Developer, and approved by the Owner (to the extent required by the Technical Requirements), in accordance with Section I.10.14 of the Technical Requirements.

Equity Investment means (a) any form of direct investment by Equity Members, including the purchase of newly issued equity shares in and/or the provision of Equity Member Debt to Developer, and (b) any draws by or on behalf of Developer of the letter(s) of credit described in the definition of Deferred Equity Amount.

Equity IRR means the nominal post-tax internal rate of return to the Equity Investment over the full Term calculated as the discount rate that, when applied to Equity Investment cash flows, gives a zero net present value. Equity IRR is reflected in the Financial Model and can change when and if the Financial Model is updated pursuant to Article 16 of the Agreement. Equity IRR is equal to the Initial Equity IRR (Developer Execution) as of the Effective Date and the Initial Equity IRR (Financial Close) as of the Financial Close Date. For purposes of this definition:

- (a) The phrase “post-tax” refers to U.S. federal, state and local income only, and excludes any foreign income tax and other tax of any kind; and
- (b) The phrase “cash flows” refers to Distributions described in clause (a) of the definition of Distributions, minus Equity Investments.

Equity Member means any Person with a direct equity interest in Developer.

Equity Member Debt means bona fide indebtedness for funds borrowed that: (a) is held by any Equity Member and (b) is subordinated in priority of payment and security to all Project Debt held by Persons who are not Equity Members.

Equity Members Funding Agreements means any Funding Agreements relating to Equity Member Debt.

Equity Transfer means any assignment, mortgage, encumbrance, conveyance, sale, or other transfer of equity interest in Developer.

Escalated Benchmark Insurance Premiums means the Starting Insurance Benchmarking Premiums, escalated in accordance with Section 18.1.2.12.4(c) of the Agreement.

Excess Deduction Amount means, with respect to any given month, any amount by which (a) the sum of the Deduction Amount for such month and any Excess Deduction Amount for the immediately preceding month exceeds (b) the sum of the Developer Commercial Revenue and the Base Monthly Supplemental Payment amounts for such month.

Excess Owner Performance Deduction Amount means, for a given month, the amount, if any, by which the Owner Performance Deduction Amount for such month exceeds the Owner Commercial Revenue for such month.

Excluded Base Direct Costs means the Base Direct Costs described in Sections 1.1(f), (g), (i) and (j) of Appendix 11 of the Agreement.

Excluded O&M Services means the O&M services described in Section III.4.1 of the Technical Requirements.

Excused FC Delay means a failure by Developer to achieve Financial Close by the Financial Close Deadline as a direct result of any of the following events:

- (a) An Owner FC Delay;
- (b) Subject to the provisions of Appendix 2-E of the Agreement, an Interim Period Financial Event;
- (c) Change in Law;
- (d) Termination by Court Ruling, temporary or permanent restraining order or other form of injunction or legal order by a court;
- (e) Force Majeure Event;
- (f) Any Compensation Event (Type 1) contemplated in clauses (a), (c), (e), (m), or (w) of the definition thereof;

- (g) Any Owner-Caused Delays contemplated in clauses (b), (c) or (e) of the definition thereof;
- (h) A failure by the Committee on Foreign Investment in the United States (CFIUS) to approve the transactions contemplated by the Agreement;
- (i) The circumstances described in Section 2.4.2.2 of the Agreement;
- (j) A failure to obtain an investment grade rating on the Project Debt, provided that, without prejudice to its rights under Appendix 2-E of the Agreement, such failure is not attributable to Developer or any Developer-Related Entity (including any failure by Developer to comply with its obligations under Section 2.2 of the Agreement and Appendices 2-C and 2-D of the Agreement); or
- (k) Any material amendment to the form of the General Junior Lien Bond Ordinance or the form of the Supplemental Junior Lien Bond Ordinance, as agreed to by the Parties as of the Developer Execution Date.

Executive Design Review means the executive design review process set forth in Section 1.8.3.2 of the Technical Requirements.

Exempt Refinancing means (a) any Refinancing that was fully taken into account in the Initial Financial Model (Financial Close) and calculation of the Supplemental Payment, (b) any amendment, modification, supplement, or consent to any Financing Document or the exercise by a Lender of rights, waivers, consents and similar actions in the ordinary course of day to day loan administration and supervision which does not provide a financial benefit to Developer, (c) any changes in taxation or Developer's accounting treatment or policies, and (d) any of the following acts by a Lender: (i) the syndication in the ordinary course of business of any such Lender's rights and interests in the Funding Agreements related to the Project Debt; (ii) the grant by such Lenders of any rights of participation, or the disposition by such Lenders of any of its rights or interests, in respect of the Funding Agreements related to the Project Debt in favor of any other Lender or any investor; or (iii) the grant by such Lender of any other form of benefit or interest in either the Funding Agreements related to the Project Debt or the revenues or assets of Developer, whether by way of security or otherwise, in favor of any other Lender or any investor.

Existing DBC Administrative Modifications means the nineteen (19) existing administrative modifications and six (6) superseded administrative modifications to the DBC with respect to the Terminal as of the Developer Execution Date, copies of which are attached as Appendix 7-B-1 of the Agreement.

Extra Work means any Work in the nature of additional work, altered work or deleted work which is directly attributable to the occurrence of a Compensation Event and absent the Compensation Event would not be required by the Contract Documents. The term "Extra Work" does not include "Delay."

F&B Concession means a Concession whose principal Merchandise is fresh food and beverages.

FAA means The Federal Aviation Administration created under the Federal Aviation Act of 1958, as amended, supplemented or replaced from time to time, and any successor agency thereto.

Fast Cure Period has the meaning set forth in Section 8.3.1.5 of the Agreement.

Federal Provisions means the federal provisions attached as Appendix 22 of the Agreement, as such provisions may be amended, supplemented or replaced from time to time.

Final Breach Notice has the meaning given to such term in Section 20.2.8.2 of the Agreement.

Final Build-Out Limits means the lines established as such in the Project Site Model to delineate the outside limits (both horizontal and vertical) for the Terminal Improvements.

Final Change Estimate has the meaning set forth in Section 1.5(a) of Appendix 12 of the Agreement.

Final Order means the final ruling of the administrative process under D.R.M.C. § 5-17(d).

Financial Close means the satisfaction or waiver of all conditions precedent to the first utilization or issuance under the Initial Funding Agreements (other than the condition as to the effectiveness of the Agreement).

Financial Close Date means the date on which Financial Close occurs.

Financial Close Deadline means the date that is 120 days following the Effective Date, as such date may be extended by written agreement of the Parties; provided that such deadline shall automatically be extended by (a) 30 days if Financial Close does not occur by such original deadline for any reasons attributable to the Conduit Issuer other than due to Developer's failure or delay in providing the necessary documentation and information to the Conduit Issuer in a timely manner, or (b) 30 days, provided that Developer has complied with and is continuing to comply with Section 2.4.1 of the Agreement.

Financial Close Provisions means all provisions of the Agreement except the Commercial Close Provisions.

Financial Close Security means two irrevocable stand-by letters of credit, each issued by an Eligible LC Issuer in favor of the Owner, as beneficiary, in an aggregate amount of \$15 million in the form attached hereto as Appendix 2-A of the Agreement, to

secure the performance of Developer's obligations under the Agreement in connection with Financial Close.

Financial Escrow has the meaning set forth in Section 16.4.1 of the Agreement.

Financial Model means the Initial Financial Model (Developer Execution), as such model may be updated from time to time in accordance with the Agreement.

Financial Model Audit Report means a report prepared by the Financial Model Auditor regarding its audit of the Initial Financial Model (Developer Execution) or a Financial Model Update, as the case may be, that includes a statement that the Initial Financial Model (Developer Execution) or Financial Model Update, as applicable, is (a) free of mechanical errors; (b) suitable for use in connection with the Termination Compensation calculations set forth in the Contract Documents; and (c) suitable for use in connection with the Relief Event procedures set forth in the Agreement.

Financial Model Auditor means a firm engaged by Developer, at its sole cost and expense, to conduct an independent audit of the Initial Financial Model (Developer Execution) or any Financial Model Update, which firm is not affiliated with Developer and is free of any conflict of interest.

Financial Model Formulas means all mathematical formulas contained in the Financial Model and each Financial Model Update for projecting revenues, expenses, the repayment of Project Debt and Distributions to Equity Members that result in achievement of the Equity IRR, without the hard-coded numerical data and information.

Financial Model Update means any update to the Financial Model prepared pursuant to Section 16.2 of the Agreement, including corresponding changes to the Financial Model Formulas.

Financing Documents means Funding Agreements and Security Documents.

Fire Marshal means the individual designated as the responsible enforcement authority for Fire Marshal regulations under the DBC with respect to this Project.

Fiscal Year means the Owner's fiscal year, which is the same as the Calendar Year.

Float means the amount of time the completion of an activity can be delayed without impacting the ability of Developer to meet a Completion Deadline.

Force Majeure Event means the occurrence of any of the following events that materially and adversely affects performance of Developer's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts, by Developer or any Developer-Related Entity: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Work, in each case occurring within the State of Colorado; (b) any act of riot, insurrection, civil

commotion or sabotage at the Airport that causes direct physical damage to the Work or material disruption to the O&M Services or the Concessions operations; (c) nuclear explosion, radioactive or chemical contamination of the Work Site, unless the source of the explosion, contamination, radiation or Contaminated Material is brought to or near the Work Site by Developer or any Developer-Related Entity; (d) fire, explosion, floods caused by natural events, tornados, gradual inundation caused by natural events, sinkholes caused by natural events or landslides caused by natural events, in each case that directly impacts the physical improvements of the Project; (e) Earthquake; (f) Terrorism that occurs at the Airport; or (g) any Emergency declared by the Governor of the State of Colorado, the City Mayor or the CEO with respect to the matters contemplated above that includes the Work Site.

Formal DBC Administrative Modification means an administrative modification to the DBC with respect to the existing Terminal for the Project comprising substantially the modifications and clarifications set forth in the Draft DBC Administrative Modification.

Functional Area means any of the functional areas listed in Section I.4.1 of the Technical Requirements and in respect of which the outside limits are delineated in the Functional Area Map.

Functional Area Map means the map attached as Appendix 4-B of the Agreement, delineating the outside limits of each Functional Area.

Functional Area Punch List means, with respect to any Functional Area, an itemized list of Construction Work which remains to be completed within ninety (90) days after Functional Area Readiness has been achieved, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the Functional Area and any applicable FF&E.

Functional Area Readiness means, with respect to any Functional Area, the occurrence of all events and satisfaction of all conditions set forth in Section 5.9.2.1 of the Agreement, as and when confirmed by the Owner's issuance of a Certificate of Functional Area Readiness in accordance with the procedures and within the time frame established in Section 5.9.2.1 of the Agreement.

Functional Area Readiness Date means, with respect to any Functional Area, the date upon which Developer achieves Functional Area Readiness of the Functional Area.

Funding Agreements means the Initial Funding Agreements and any other document jointly designated by the Parties in writing as a Funding Agreement.

Furniture, Fixtures and Equipment (FF&E) means the furniture, fixtures and equipment required for the Project to be procured, delivered and installed by Developer for the Project in accordance with the Technical Requirements and/or maintained by Developer or the Concessionaires in accordance with Section 2.10.1 of Appendix 5-A of the Agreement.

General Junior Lien Bond Ordinance means the Airport System Junior Lien General Bond Ordinance related to the terms of the Owner's ability to issue and incur junior lien indebtedness.

Good Industry Practice means the exercise of the standard of care and degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, maintenance provider, operator, concessionaire, retain concessions manager, maintenance provider, or airport provider, as applicable, who engages in the same type of undertaking in the United States under similar circumstances and conditions, including environmental conditions, and seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and Governmental Approvals, and using accepted standards and criteria with respect to design, construction, operation, maintenance, and Contaminated Materials and Undesirable Materials Management (including management, treatment, handling, storing, remediation, removal, transportation and disposal of such materials) normally used on similar projects.

Governmental Approval means any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them, provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees (including the Building Official and the Fire Marshal), which authorize or pertain to the Project or the Work.

Governmental Entity means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than the Owner.

Gross Receipts means, with respect to a Concession, all monies paid or payable to Concessionaire or due or received from customers by Concessionaire for sales made, services rendered, and customer orders fulfilled at or from the Concessions Premises, regardless of when or where the customer order is placed (including outside the Concessions Premises), and any other receipts, credits, rebates, allowances, internet sales, or revenues of any type arising out of or in connection with Concessionaire's or Concessionaire's sub concessionaires' or agents' operations at the Concessions Premises, including branding fees, marketing fees, merchandising fees, promotional allowances, performance allowances, retail display allowances, and any other type of ancillary advertising or product placement fees, other allowances and fees, and any amount charged by Concessionaire as a pass through to its customers of the Privilege Fee or any other fee or charge payable pursuant to the applicable Concession Agreement. Gross Receipts includes sales consummated through any other distribution channel (such as websites, call centers or cellular messaging services) where the Concessionaire sells any goods, services, warranty and/or insurance products via such other distribution channel but where the goods and/or services are then collected and/or

performed (as the case may be) at the Airport, whether or not payment is actually received at the Airport. Gross Receipts do not include:

- (a) Any taxes imposed by law that are separately stated to and paid by a customer and directly payable to the taxing authority by the Concessionaire;
- (b) Amounts and credits received from suppliers for Merchandise returned by the Concessionaire;
- (c) Cash and credit card refunds to customers for Merchandise returned;
- (d) Amounts and credits received in settlement of claims for loss of, or damage to, Merchandise;
- (e) Insurance proceeds received from the settlement of claims for the loss of or damages to the Concessionaire's property at or on the Concession Premises other than the proceeds from business interruption insurance;
- (f) Inter-company store transfers;
- (g) United States Postal Service stamp sales;
- (h) Uniforms or clothing purchased by employees where such uniforms or clothing are required to be worn by employees;
- (i) Reimbursements from the Concessionaire's sub concessionaires for any taxes, fees, franchise or license fees, utilities or other services paid or provided by the Concessionaire for or on behalf of its sub concessionaires; provided, however, that any reimbursement in excess of the actual cost of such taxes, fees, franchise or license fees, utilities or other services is included in Gross Receipts;
- (j) Rental, fees, and charges paid to the Concessionaire by its sub concessionaires pursuant to the provisions of the applicable Concession Agreement; provided, however, that any such payment in excess of the amounts required hereunder is included in Gross Receipts;
- (k) Gift cards sold at the Concession Premises, provided that when a gift card is redeemed or accepted as payment for a purchase at the Concession Premises, the transaction is included as part of Gross Receipts;
- (l) Amounts for coupons and other forms of discounts including complimentary customer services, such that only the amounts actually received are ultimately included in Gross Receipts; and

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

Guarantor means any Person that is the obligor under any guaranty in favor of the Owner required under the Agreement.

Handback Plan means the plan prepared in accordance with Section III.5.4 of the Technical Requirements.

Haul Routes means access roads or routes on Airport property designated as such in the Construction Staging Plan and which may be used by Developer's construction vehicles and equipment in connection with the Construction Work.

Health and Safety Plan means the plan prepared and updated by Developer, and approved by the Owner, in accordance with Section I.10.13 of the Technical Requirements.

Historical Developer Concessions Revenue means, with respect to a Concession, the Developer Concessions Revenue with respect to the Concession, as averaged over the twelve (12)-month period immediately preceding the date of occurrence of the relevant Compensation Event (or, if the Concession has been in operation for less than twelve (12) months, as averaged over the period during which it has been in operation), and adjusted for any non-recurring and extraordinary events (including any reasonably anticipated future extraordinary events).

Incident means any unplanned event within the Project that causes potential or actual disruption to the free operations of the Terminal.

Incident Commander means, in the event of an evacuation of the Terminal in the course of Irregular Operations, the Airport personnel who will assume on scene command, and who will use the call sign "Command."

Incident Response means the actions to be taken by Developer, as described in Sections I.5.7, I.10.15 and III.4.6 of the Technical Requirements, to respond to an Incident.

Increased Oversight Threshold means:

- (a) Accumulation of assessed Noncompliance Points at or above 500 points within 365 consecutive days; or
- (b) Accumulation of a number of Noncompliance Instances at or above 1000 instances within 365 consecutive days.

Indemnified Parties means the Owner-Related Governmental Entities and their respective successors, assigns, agencies, divisions, officeholders, elected officials, officers, directors, commissioners, agents, representatives, consultants and employees.

Independent CPA has the meaning set forth in ET Section 0.100.100 (Principles and Rules of Conduct) of the Conceptual Framework for AICPA Independence Standards (AICPA, Professional Standards, vol. 2).

Independent Testing Agency or **ITA** means any testing agency appointed by the Owner to support the Owner's oversight of Quality Assurance and Quality Control as provided in Section I.10.8.4 of the Technical Requirements.

Infrastructure D&C Work means all D&C Work related to Utilities infrastructure, as provided in Section I.1.2 of Appendix 1 of the Technical Requirements.

Initial Breach Notice has the meaning given to such term in Section 20.2.8.1 of the Agreement.

Initial Construction Staging Plan means the Construction Staging Plan as of the Effective Date, a copy of which is attached with the Initial Transition and Phasing Plan in Appendix 3-B of the Agreement.

Initial Environmental Management Plan means the Environmental Management Plan as of the Effective Date, a copy of which is attached as Appendix 3-E of the Agreement.

Initial Equity IRR (Developer Execution) means 10.8%, which is the Equity IRR reflected in the Initial Financial Model (Developer Execution).

Initial Equity IRR (Financial Close) means the Equity IRR reflected in the Initial Financial Model (Financial Close).

Initial Financial Model (Developer Execution) means the financial computer model, including the Financial Model Formulas and the related output, that is used to produce the financial forecasts in respect of the Project as of the Developer Execution Date, which has been audited by an independent model auditor reasonably acceptable to the Owner, is escrowed in accordance with Section 16.4 of the Agreement, and results in achievement of the Initial Equity IRR (Developer Execution).

Initial Financial Model (Financial Close) means the financial computer model, including the Financial Model Formulas and the related output, that is used to produce the financial forecasts in respect of the Project as of the Financial Close Date in accordance with the final step of the Bond Rate Protection Period Adjustment Protocol and which has been audited by an independent model auditor reasonably acceptable to the Owner, is escrowed in accordance with Section 16.4 of the Agreement, and results in achievement of the Initial Equity IRR (Financial Close).

Initial Financing Documents means the Initial Funding Agreements and the Initial Security Documents.

Initial Funding Agreements means the documents identified in Part A of Appendix 13 of the Agreement.

Initial Health and Safety Plan means the Health and Safety Plan as of the Effective Date, a copy of which is attached as Appendix 3-D of the Agreement.

Initial Key Contracts means the Key Contracts to be executed and delivered by the parties thereto on or prior to Financial Close.

Initial O&M Services Plan means the initial O&M Services Plan, a copy of which is attached as Appendix 3-G of the Agreement.

Initial Project Debt means the Project Debt incurred by Developer to originally finance the Project and Work, as evidenced and secured by the Initial Financing Documents.

Initial Project Management Plan means the initial Project Management Plan, a copy of which is attached as Appendix 3-F of the Agreement.

Initial Quality Management Plan means the Quality Management Plan as of the Effective Date, a copy of which is attached as Appendix 3-C of the Agreement.

Initial Security Documents means the documents identified in Part B of Appendix 13 of the Agreement.

Initial Transition and Phasing Plan means the Transition and Phasing Plan as of the Effective Date, a copy of which is attached as Appendix 3-B of the Agreement.

Instructions to Proposers or **ITP** means the instructions to proposers issued by the Owner as part of the RFP.

Insurance Proceeds means all proceeds from insurance payable to Developer (or that would have been payable to Developer but for Developer's breach of any obligation under the Agreement to procure or maintain said insurance) on or after the Early Termination Date.

Insurance Review Report means the report furnished in accordance with Section 18.1.2.12.1(a) of the Agreement.

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets (as defined by Defend Trade Secrets Act 18 U.S.C. § 1839(3)), designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project or Project design data. Intellectual Property includes software used in connection with the Project and software source code. Intellectual Property is distinguished from physical embodiment of, and documentation disclosing, Intellectual Property.

Intellectual Property Escrow has the meaning set forth in Section 23.6.3 of the Agreement.

Interim Office Lease Agreement means that certain interim office lease agreement between the Parties, in the form attached as Appendix 4-F of the Agreement, pursuant to which the Owner leases the Combined Office Space in WorldPort to Developer and its design-build contractor and the Reduced Office Space in WorldPort to Developer's design-build contractor), as well as designated parking spaces.

Interim Period means the period commencing on the Effective Date and ending on the earlier of (a) the Financial Close Date, and (b) the Financial Close Deadline.

Interim Period Financial Event means any of the following:

- (a) A downgrade of the Owner's credit rating that prevents satisfaction of the corresponding condition precedent of underwriters; or
- (b) The aggregate impact of any Benchmark Interest Rate Fluctuation and any Credit Spread Fluctuation based on the Bond Rate Protection Period Adjustment Protocol set forth in Appendix 2-C of the Agreement would result in an upward adjustment to the MASP of more than ten percent (10%) or the Maximum Progress Payment Amount of more than five percent (5%) or, in the reasonable opinion of the Owner, is likely to result in an upward adjustment to the MASP of more than ten percent (10%) or the Maximum Progress Payment Amount of more than five percent (5%).
- (c) The impact of any Shared Rating Agency Adjustment based on the applicable protocol set forth in Appendix 2-D of the Agreement would result in an upward adjustment to the Maximum Annual Supplemental Payment or the Maximum Progress Payment Amount of more than five percent (5%) or, in the reasonable opinion of the Owner, is likely to result in an upward adjustment to the Maximum Annual Supplemental Payment or the Maximum Progress Payment Amount of more than five percent (5%); or
- (d) The aggregate impact of any Construction Risk Rating Agency Adjustment, Developer's share of any Shared Rating Agency Adjustment and Developer's share of any Credit Spread Fluctuation results in a downward adjustment to the Initial Equity IRR (Developer Execution) of more than ten percent (10%) or an upward adjustment to the Equity Investment required to be contributed to the Developer in connection with the Project of more than ten percent (10%) or, in the reasonable opinion of the Developer, is likely to result in a downward adjustment to the Initial Equity IRR (Developer Execution) of more than ten percent (10%) or an upward adjustment to the Equity Investment required to be contributed in respect of the Project of more than ten percent (10%).

IP Escrow Agent has the meaning set forth in Section 23.6.3 of the Agreement.

IP Materials means, with respect to Intellectual Property, software, source code and other physical and electronic documentation related to the Intellectual Property, and includes all relevant commentary, explanations and instructions to compile source code, and all modifications, additions or substitutions made to such source code.

Irregular Operations means a change in the Airport's standard or daily operations, as may be triggered by a Shutdown, a failure of one or more of the Airport systems, or any other exceptional event that require actions and capabilities beyond those considered usual for daily operations.

Issued for Construction Documents means the signed and sealed plans and specifications prepared by the AOR and/or EOR, as applicable, and accepted by the Owner and stamped "Released for Construction" dated and initialed by the reviewer, including reproductions thereof, showing the location, character, dimensions, and details of the Work.

Joint Marketing Fund means the Owner's central marketing and promotional fund which, in Owner's sole discretion, will serve the promotions program for overall service, retail, and food and beverage concessions at the Airport.

Key Contract means any one, or an aggregate of more than one, of the following Contracts for Work Developer causes to be performed:

- (a) Contracts with each of the Lead Contractor, Great Hall Builders, LLC, the Lead Designer, the AOR, the EOR, and the Lead O&M Firm;
- (b) All prime design Contracts;
- (c) All prime construction Contracts;
- (d) All prime operations Contracts;
- (e) All prime project or program management services Contracts;
- (f) All prime maintenance Contracts, if any, unless with the Owner; and
- (g) All other prime Contracts with a single Contractor which individually or in the aggregate total in excess of US\$25,000,000.

For the purposes of this definition, a "prime" Contract means (i) a Contract to which Developer is a party; and (ii) for the purposes of clauses (b), (c), (d), (e) and (f) of the definition of Key Contract, any other Contract which subcontracts greater than 20% of the Design Work, the Construction Work, the operations Work, the project or program management services, or the maintenance Work, as applicable, for the Project. "Key Contract" excludes any Concession Agreement.

Key Contractor means any Contractor that is party to any Key Contract.

Key Governmental Approval Deadline means, with respect to a Key Governmental Approval, the expected time necessary to secure the Key Governmental Approval as set forth in Appendix 23 of the Agreement, commencing from the date on which a complete application and supporting documents therefor are submitted to the Owner (for any Key Governmental Approval being obtained in the Owner's name) or the applicable Governmental Entity, as applicable, in accordance with the requirements of the applicable Governmental Entity and the Contract Documents.

Key Governmental Approvals means the Governmental Approvals identified in Appendix 23 of the Agreement.

Key Personnel means the individuals identified in Appendix 3-H of the Agreement, or subsequently designated by Developer and confirmed by the Owner in accordance with Section 9.7.1 of the Agreement, to fill the following positions, or any successor individuals approved by the Owner in accordance with Section 9.7.1 of the Agreement:

- (a) Project Executive;
- (b) Project Manager (Project Operating Period);
- (c) Construction Manager;
- (d) Lead Project Architect of Record;
- (e) Lead Project Structural Engineer of Record;
- (f) Lead Project Mechanical Engineer of Record;
- (g) Department of Building Liaison;
- (h) Quality Manager;
- (i) Design Quality Manager; and
- (j) Construction Quality Manager.

Landside Area means any area within the boundaries of the Airport that is not the Airside Area.

Late Payment Rate means one percent (1%) per month (not compounded) or the maximum rate permitted by law, whichever is less.

Law or **Laws** means any statute, law, code, regulation, ordinance, by-law, rule, common law, judgment, judicial, administrative or executive order, decree, directive, or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by, or any administration of any of the foregoing by, any Governmental Entity, which is applicable to or has an

impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws, the Federal Provisions, FAA grant assurances and the Airport's operating certificate, but excluding Governmental Approvals and the Airport Rules and Regulations.

Lead Contractor means Ferrovia Agroman West, LLC, or any successor Person approved by the Owner in accordance with Section 9.3.1 of the Agreement.

Lead Designer means Ferrovia Agroman West, LLC, or any successor Person approved by the Owner in accordance with Section 9.3.1 of the Agreement.

Lead O&M Firm means any Person approved by the Owner in accordance with Section 9.3.1 of the Agreement.

Lead Project Architect of Record means the individual identified as such in Appendix 3-H of the Agreement who meets the applicable Key Personnel criteria set forth in Appendix 8-B of the Agreement, or any successor individual approved by the Owner in accordance with Section 9.7.1 of the Agreement.

Lead Project Mechanical Engineer of Record means the individual identified as such in Appendix 3-H of the Agreement who meets the applicable Key Personnel criteria set forth in Appendix 8-B of the Agreement, or any successor individual approved by the Owner in accordance with Section 9.7.1 of the Agreement.

Lead Project Structural Engineer of Record means the individual identified as such in Appendix 3-H of the Agreement who meets the applicable Key Personnel criteria set forth in Appendix 8-B of the Agreement, or any successor individual approved by the Owner in accordance with Section 9.7.1 of the Agreement.

LEED means Leadership in Energy and Environmental Design, a green building certification program administered by the Green Building Certification Institute that recognizes best-in-class building strategies and practices.

LEED Checklist means the checklist attached as Appendix 24 of the Agreement, setting forth Developer's obligations in connection with LEED certification of the Project.

Lender means any holder of a beneficial interest in a Security Document, including any financial guarantor, which is a provider of Project Debt or any guaranty or credit enhancement in respect thereof, and any participating parties, trustees and agents, including the Collateral Agent, together with their respective successors and assigns.

Lenders' Liabilities means, at the relevant time, the aggregate of (without double counting), all principal, interest (including capitalized and default interest under the Financing Documents, but with respect to default interest, only to the extent that it arises as a result of the Owner making any payment later than the date that it is due under this Agreement or any other default by the Owner under this Agreement), banking fees, premiums or reimbursement obligations with respect to financial insurance

policies, agent and trustee fees, costs and expenses properly incurred owing or outstanding to the Lenders by Developer under or pursuant to the Financing Documents on the date on which the relevant Termination Payment is received by Developer, including any prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements, that Developer must pay, or that may be payable or credited to Developer, under any Funding Agreement or Security Document or otherwise as a result of the payment, redemption or acceleration of all or any portion of the principal amount of Project Debt prior to its scheduled payment date that are determined to be reasonable by the Owner at the time the Owner reviews and approves the Funding Agreements, excluding, however, any such amounts included in the principal amount of any Refinancing in excess of the amount permitted pursuant to Section 17.3.3.1 of the Agreement and any interest, fees or other amounts to the extent that they relate to such excess principal amount.

Level means a level within the Terminal.

Level 5.5 Completion Deadline means the Baseline Level 5.5 Completion Deadline, as any such deadline may be adjusted from time to time in accordance with the Contract Documents.

Level 5.5 Project means a project to provide a baggage handling system between the ticket counters on Level 6 and the screening systems in each Terminal module on Levels 3 and 4 to enable security screening to be relocated to Level 6 of module 1.

Life and Safety Systems DSM means the Life and Safety Systems Design Standards Manual attached as Appendix 4 of the Technical Requirements.

List of Key Turnover and Delivery Dates means the list attached as Appendix 4-E of the Agreement, setting forth: (a) the Scheduled Turnover Date for each Construction Work Area; (b) the Baseline Level 5.5 Completion Deadline; (c) the Baseline Developer TSA Screening Area Handover Date; (d) Baseline Owner TSA Screening Area Handback Deadline; (e) each Baseline Functional Area Readiness Date; and (f) the Baseline Project Substantial Completion Date; provided that the dates described in clauses (b) through (f) shall be updated to reflect the dates therefor set forth in the Baseline Project Schedule as of the Effective Date, then as of the Financial Close Date.

Logged Failure Time means, with respect to: (a) a Performance Failure, the time at which the Performance Failure is notified to the STOP in accordance with Section 1.1 of Appendix 9-B of the Agreement; (b) a Commercial Noncompliance, the time at which the Commercial Noncompliance is notified in writing to the other Party; and (c) an Owner Performance Failure, the time at which the Owner Performance Failure is notified in writing to the other Party.

Logged Permanent Cure Time means, with respect to: (a) a Performance Failure, the time when Developer has effected, and recorded in the STOP (or alternative system agreed by the Parties), a Permanent Cure for a Noncompliance; (b) a Commercial Noncompliance, the time at which the Permanent Cure of the Commercial Noncompliance is notified in writing by Developer to the Owner; or (c) an Owner Performance Failure, the time at which the Permanent Cure of the Owner Performance Failure is notified in writing by the Owner to Developer.

Logged Temporary Cure Time means, with respect to: (a) a Performance Failure, the time when Developer has effected, and recorded in the STOP (or alternative system agreed by the Parties), a Temporary Cure for a Noncompliance; (b) a Commercial Noncompliance, the time at which the Temporary Cure of the Commercial Noncompliance is notified in writing by Developer to the Owner; or (c) an Owner Performance Failure, the time at which the Temporary Cure of the Owner Performance Failure is notified in writing by the Owner to Developer.

Loss Fund means a fund established by the selected OCIP insurer funded by the Owner as of the Effective Date, and supplemented from time to time, to pay for claims filed under the OCIP with respect to the Owner-Provided Insurance Policies described in Section 1(a) of Appendix 18 of the Agreement.

Loss Fund Amount means the amount paid into the Loss Fund by the Owner before the Project Substantial Completion Date.

Losses means any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), fee, charge, judgment, penalty, or fine. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Maintenance Manual means a manual prepared by Developer in accordance with Section III.5.2 of the Technical Requirements, setting forth the maintenance procedures for the Project.

Maintenance Rectification Costs means, in respect of any termination of the Agreement that occurs after Project Substantial Completion, all Losses that the Owner determines it is reasonably likely to incur as a direct result of the termination of the Agreement, including (without double counting):

- (a) Those costs (internal and external) that the Owner is reasonably likely to incur as a direct result of carrying out any process to request tenders from any parties interested in entering into a contract with the Owner to carry out the O&M Services, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation, and execution of relevant contracts; and

- (b) Those costs reasonably projected to be incurred by the Owner in relation to:
- (i) Remediation or, if remediation is not possible or would cost more than renewal, renewal of any defective D&C Work or O&M Services;
 - (ii) Rectification or cure of any breach of the Agreement by Developer; and
 - (iii) Carrying out of all other matters necessary in order to ensure that within a reasonable period of the Early Termination Date, the Project complies with the requirements of the Contract Documents, and has a reasonable prospect of continuing to perform to the same standard and cost that it would have continued to perform at had the Agreement not been terminated and the Project been in compliance with all of the requirements of the Contract Documents.

Maintenance Work means all Routine Maintenance and Renewal Work.

Mandatory Provisions means the provisions set forth in Appendix 5-B of the Agreement, to be included in each Concession Agreement in substantially the same terms and substance in accordance with Section 1.4.4 of Appendix 5-A of the Agreement.

Manuals and Guidelines means the codes, specifications, standards, manuals and guidelines identified in Appendix 13 of the Technical Requirements, as amended, supplemented or replaced from time to time.

Manuals and Guidelines (Type 1) means: the DEN Architectural Design Standards Manual; the DEN Structural Design Standards Manual; the DEN Electrical Design Standards Manual; the DEN Mechanical Design Standards Manual; and Technologies Capabilities and Associated Standards.

Manuals and Guidelines (Type 2) means the Manuals and Guidelines other than the Manuals and Guidelines (Type 1).

Material Amendment has the meaning set forth in Section 1.4.6 of Appendix 5-A of the Agreement.

Material Shortfall has the meaning set forth in Section 5.2.1 of Appendix 5-A of the Agreement.

Maximum Annual Supplemental Payment or **MASP** means the maximum Supplemental Payment that Developer can earn in a given Fiscal Year during the Project Operating Period, as calculated in accordance with Appendix 10 of the Agreement, and as may be further adjusted in accordance with the Contract Documents.

Maximum Early Design Work Value means \$28,000,000, representing the maximum aggregate amount payable by the Owner to Developer by way of Early Design Work Payments for the performance of the Early Design Work during the Interim Period.

Maximum Progress Payment Amount means \$479,245,000, representing the maximum amount of the D&C Contract Amount to be paid by the Owner to Developer by way of Progress Payments, as such amount may be adjusted in accordance with the Agreement.

Mayor means the City Mayor.

Merchandise means any retail goods, food or beverage items, or services offered for sale within the Concessions Space.

Minimum Annual Privilege Fee or **MAPF** means, with respect to a Concession, such fee as set in the applicable Concession Agreement, which shall not be lower than: (a) for the first year of operations, 75% of the Privilege Fee included in the final agreed business plan proposed by the Concessionaire; and (b) for every year thereafter until the end of the term of the Concession, 85% of the actual Privilege Fee in the immediately preceding year.

Minority/Women Business Enterprise or **M/WBE** means an entity certified as such by the Denver Office of Economic Development in accordance with Chapter 28 of the DRMC.

Minority Business Enterprise or **MBE** has the meaning given in DRMC § 28-54(34).

Month or **month** means calendar month unless otherwise expressly specified.

Monthly Supplemental Payment or **MSP** means the Base Monthly Supplemental Payment, adjusted in accordance with Appendix 10 of the Agreement.

Net Lenders' Liabilities means the amount (without double counting) as follows:

- (a) Lenders' Liabilities; minus
- (b) Account Balances; minus
- (c) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

Non-Compensable Non-Discriminatory O&M Change means any Non-Discriminatory O&M Change other than a Compensable Non-Discriminatory O&M Change.

Non-Compensable O&M Change means any Non-Discriminatory O&M Change other than a Compensable Non-Discriminatory O&M Change.

Non-Competing Activities means the following commercial activities within Levels 5 and 6 of the Terminal: ground transportation services; credit union services; the post office; TSA Pre-check; the money exchange; the business center; banking or automated teller machines; gym; airline ticket counters; airline baggage services; Airport customer service or information services; and any commercial activity that the Owner is permitted to pursue pursuant to Section 6.1.1.3 of the Agreement.

Non-Concessions Revenue means any rent received by Developer for use of commercial storage within the Project Site (O&M) during the applicable O&M Segment Operating Period.

Non-Discriminatory O&M Change means any change or addition to, or replacement of, requirements in the Technical Requirements relating to the O&M Services (including revisions to the Manuals and Guidelines, adoption of new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other technical provisions) of general application to comparable Owner projects.

Non-O&M Segments means the Terminal Improvements outside of the O&M Limits following the applicable Functional Area Readiness Date and the Project Substantial Completion Date; and “Non-O&M Segment” means any of them.

Noncompliance has the meaning set forth in Section 8.1 of the Agreement.

Noncompliance Instances means instances of Noncompliance, irrespective of whether: (a) the Noncompliance is subsequently cured; or (b) Noncompliance Points are actually assessed.

Noncompliance Points means the points that may be assessed for certain Noncompliance by Developer, as set forth in Appendix 9 of the Agreement.

Nonconformance Report means any report issued by the Quality Manager or its staff, or by the Owner, in its oversight role, regarding Nonconforming Work.

Nonconforming Work means any Work that does not conform with the applicable requirements of the Contract Documents, as identified by the Quality Manager or its staff, or by the Owner, in its oversight role, pursuant to Quality Control or Quality Assurance.

Notice of Conditional Termination has the meaning set forth in Section 21.3.1 of the Agreement.

Notice of Termination for Convenience means written notice issued by the Owner to Developer terminating the Agreement for convenience under Section 21.2.1 of the Agreement.

NTP 1 means the written notice issued by the Owner to Developer authorizing Developer to proceed with Design Work (other than the Early Design Work).

NTP 2 means the written notice issued by the Owner to Developer authorizing Developer to proceed with Construction Work for the Project Construction Period.

O&D Enplanement means persons boarding at the Airport at the first or last point of a one-way itinerary in scheduled or non-scheduled service on aircraft in intrastate, interstate, or foreign air transportation.

O&M Annual Report has the meaning set forth in Section III.4.11.2 of the Technical Requirements.

O&M Interface Obligations means all coordination and other obligations of Developer in connection with the interface of the O&M Services, on the one hand, and the Owner O&M Obligations and/or the Excluded O&M Services, on the other hand, as set forth in Section III.4 of the Technical Requirements.

O&M Limits means the lines established as such on the Project Site Model to delineate the outside limits (both horizontal and vertical) for performance of the O&M Services, comprising the Core O&M Limits and the Systems O&M Limits as such limits may be adjusted from time to time in accordance with the Contract Documents.

O&M Monthly Report has the meaning set forth in Section III.4.11.1 of the Technical Requirements.

O&M Payment means the O&M component of the Supplemental Payment.

O&M Segment Operating Period means, with respect to an O&M Segment, the period (a) commencing on the earlier of the applicable Functional Area Readiness Date and the Project Substantial Completion Date; and (b) ending on the Termination Date.

O&M Segments means (a) the Terminal Improvements within the O&M Limits following the earlier of the applicable Functional Area Readiness Date and the Project Substantial Completion Date, and (b) the remaining portions of the Terminal within the O&M Limits following the Project Substantial Completion Date.

O&M Services means all Work related to the operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the O&M Segments (or any portion thereof), including Renewal Work, Compliance Work, Planned Maintenance and Developer's O&M Interface Obligations, but excluding the Owner O&M Obligations and the Excluded O&M Services.

O&M Services Plan means the Initial O&M Services Plan, as developed, implemented, and updated from time to time, by Developer in accordance with Section III.5.1 of the Technical Requirements.

OCIP Project Insurance Manual means the manual attached as Appendix 18-A of the Agreement, setting forth terms and conditions of the Owner-Provided Insurance Policies under the Owner-Controlled Insurance Program.

OCIP Shared Savings means the savings realized by the Owner with respect to the Owner-Provided Insurance Policies described in Section 1(a) of Appendix 18 of the Agreement, as calculated in accordance with Section 1 of Appendix 18-B of the Agreement.

Open Records Act means the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., as amended, supplemented or replaced from time to time.

Operations and Maintenance Plan means the plan prepared by Developer describing the plan, systems, approach, staffing and schedule to operate and maintain the O&M Segments during the applicable O&M Segment Operating Periods in accordance with the Contract Documents, as further described in Section III.5.1 of the Technical Requirements.

Operations Manual has the meaning set forth in Section III.5.2 of the Technical Requirements.

Oversight means monitoring, inspecting, sampling, measuring, auditing, attending, observing, testing, investigating and conducting any other oversight respecting any part or aspect of the Project or the Work, including all the activities described in Sections 7.3.1 and 8.5 of the Agreement.

Owner means the City and County of Denver, a municipal corporation of the State of Colorado, through and on behalf of its Department of Aviation, in its capacity as owner of the Project and the Terminal Improvements, and any entity succeeding to the powers, authorities and responsibilities of the Owner invoked by or under the Contract Documents. "Owner" excludes the Building Official and the Fire Marshal.

Owner Additional Insureds means the Indemnified Parties.

Owner Change has the meaning set forth in Section 12.1.1 of the Agreement.

Owner Commercial Revenue means the sum of the Owner's eighty percent (80%) share of: (a) the Concessions Revenue; and (b) the Non-Concessions Revenue.

Owner Default has the meaning set forth in Section 20.3.1 of the Agreement.

Owner FC Delay means:

- (a) Failure by the Owner to deliver any Owner Financial Close Document or otherwise comply with its obligations as required under this Agreement so as to prevent the achievement of Financial Close by the Financial Close Deadline, in any such case except to the extent caused by Developer and

provided that Developer has complied with all of its obligations under this Agreement in connection with the achievement of Financial Close;

- (b) Failure of any of the Owner's representations and warranties set forth in Section 19.2 of the Agreement to be true and correct in any material respect so as to prevent the achievement of Financial Close by the Financial Close Deadline; or
- (c) Failure by the Owner to approve the deliverables under Section 2.2.3.4(a), (b) or (c) of the Agreement so as to prevent the achievement of Financial Close by the Financial Close Deadline, provided that Developer shall have complied with all of its obligations under this Agreement in connection with such deliverables.

Owner Financial Close Documents means, collectively:

- (a) A copy of the General Junior Lien Bond Ordinance and the Supplemental Junior Lien Bond Ordinance, which shall be in full force and effect and legally binding and enforceable against the Owner;
- (b) Legal opinion of (i) the City Attorney substantially in the form attached as Appendix 2-B-2 of the Agreement, and (ii) the Owner's external bond counsel in a form agreed to by the parties, acting reasonably, with respect to the Junior Lien Bond Ordinance and any supplemental ordinance related thereto in respect of the Project;
- (c) A continuing disclosure agreement substantially in the form attached as Appendix 2-B-3 of the Agreement, executed by the Chief Executive Officer of the Owner, on behalf of the Owner;
- (d) A counterpart to the Direct Agreement, executed by the Chief Executive Officer of the Owner, on behalf of the Owner;
- (e) A 15c2(12) certificate, executed by the Chief Financial Officer of the Owner, regarding the Bonds official statements;
- (f) Owner Letter of Representation as attached to the Bond Purchase Agreement;
- (g) Bring-down certificate in the form attached to the Bond Purchase Agreement;
- (h) Customary Closing Certificate (to include 10b-5 language, certification of any Owner approval resolution and other customary provisions);
- (i) Resolution from Denver City Council approving the Agreement and (if necessary) the issuance of the Bonds;

- (j) If a TEFRA hearing is required in connection with the issuance of the Bonds, an approval letter from the Owner in connection therewith,

and “Owner Financial Close Document” means any of them.

Owner O&M Obligations means the O&M work for which the Owner is responsible, as specified in Section III.4.2 of the Technical Requirements.

Owner Performance Deduction means a financial deduction resulting from a failure by the Owner to perform the Owner O&M Obligations in accordance with the Owner Performance Standards, as calculated in accordance with Appendix 10-A of the Agreement.

Owner Performance Deduction Amount means, with respect to any given month, the sum of the Owner Performance Deductions assessed with respect to performance of the Owner O&M Obligations during such month.

Owner Performance Failure means a failure by the Owner to perform the Owner O&M Obligations in accordance with the Owner Performance Standards, except to the extent any such failure is caused by planned maintenance or emergencies.

Owner Performance Standards means the performance standards applicable to the Owner O&M Obligations, as set forth in Appendix 10-A of the Agreement.

Owner Uses means use in connection with the Work, the Project, or the Terminal Improvements, including any Routine Maintenance, Renewal Work and Renovations thereof prior to or following the Termination Date.

Owner-Caused Compensation Events means the Compensation Events described in the following clauses of the definition of Compensation Event (Type 1): (a), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (u) or (v); and “Owner-Caused Compensation Event” means any of them.

Owner-Caused Delays means Delays directly attributable to the following matters and no others, but only to the extent that they (1) cannot be avoided by a work around, and (2) are not due to the negligence, willful misconduct, breach of contract or violation of Law or Governmental Approval by Developer or any Developer-Related Entity:

- (a) Failure of the Owner to issue:
 - i. NTP 1 within fifteen (15) days after Developer satisfies the requirements in Section 5.6 of the Agreement;
 - ii. NTP 2 within fifteen (15) days after Developer satisfies the requirements in Section 5.7 of the Agreement;

- iii. With respect to any Functional Area, a Certificate of Functional Area Readiness or notify Developer in writing of the reasons why Functional Area Readiness has not been achieved, in either case within the 21-day period set forth in Section 5.9.2.4 of the Agreement; or
 - iv. A Certificate of Project Substantial Completion or notify Developer in writing of the reasons why Project Substantial Completion has not been achieved, in either case within the 21-day period set forth in Section 5.10.2.4 of the Agreement;
- (b) Failure or inability of the Owner to provide to Developer the Project Right of Entry as of the later of (i) the effective date of NTP 2 and (ii) the applicable Turnover Date of a Construction Work Area;
- (c) (i) Failure of the Owner to provide responses to proposed schedules, plans, Design Documents, and other Submittals (including Submittals Type 1) and matters for which a response is required as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the Contract Documents, or if no time period is indicated, within a reasonable time, taking into consideration (A) the nature, importance, complexity, completeness and quality of the Submittal or matter and (B) the number of Submittals then pending for the Owner's response, following delivery of written notice from Developer requesting such action in accordance with the terms and requirements of the Contract Documents, (ii) failure by the Owner to respond to a request for Required Design Exceptions/Deviations within the time period specified in Section 12.3.2.2 of the Agreement, or (iii) failure by the Owner to approve a design with respect to an EDR Area/Element by the end of day 15 of the Executive Design Review;
- (d) Suspension of Work and/or Project Right of Entry orders issued by the Owner pursuant to Section 20.2.7.1 of the Agreement, to the extent that such suspension was not justified under the bases set forth in such Section;
- (e) Suspension of Work and/or Project Right of Entry orders issued by the Owner pursuant to Section 20.2.7.2 of the Agreement;
- (f) Request by the Owner to remove or uncover portions of finished D&C Work pursuant to Section 5.15.1.2 under the Agreement, to the extent the D&C Work and materials thus exposed are determined to be in accordance with the requirements of the Contract Documents; and
- (g) The Owner taking control and possession of the Project pursuant to Section 20.2.2 of the Agreement on the basis of a mistaken belief in the occurrence of a Developer Default.

Owner-Controlled Insurance Program or **OCIP** means the Owner's Owner-Controlled Insurance Program for the Project.

Owner-Provided Insurance Policies means the insurance policies identified in Sections 1(a) and 2(a) of Appendix 18 of the Agreement to be procured and maintained by the Owner; and "Owner-Provided Insurance Policy" means any of them.

Owner-Provided Property Policy means the property policy to be procured and maintained by the Owner during the Project Operating Period, as described in Section 2(a) of Appendix 18 of the Agreement.

Owner-Related Governmental Entities means the Owner and the City.

Owner's Authorized Representative means the individual in charge of the Project on behalf of the Owner, acting directly or through duly authorized representatives, such representatives acting within the scope of the duties and authority assigned to them.

Owner's Recoverable Costs means:

- (a) The reasonably required costs of any assistance, action, activity or Work undertaken by the Owner which Developer is liable for or is obligated to reimburse the Owner for under the terms of the Contract Documents, including the charges of third-party contractors and reasonably allocated wages, salaries, compensation and overhead of the Owner staff and employees performing such action, activity or Work; plus
- (b) Reasonably required out of pocket costs the Owner incurs to publicly procure any such third-party contractors; plus
- (c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of the City Attorney's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third-party contractors; plus
- (d) Interest on all the foregoing sums at the Late Payment Rate, commencing on the date due under the applicable terms of the Contract Documents and continuing until paid.

Party means Developer or the Owner, as the context may require, and "Parties" means Developer and the Owner, collectively.

Passenger Capacity Threshold means 27.7 million annual originating passengers at the Airport.

Passenger Growth Ratio means, as of a given calculation date, the actual number of O&D passengers (rounded to the nearest million) for the immediately preceding 12 months, divided by the weighted average of the number of O&D Passengers assumed at the tab “sqft ratios by Concession Type” in the Financial Model for the applicable months.

Passenger Services Concession means a Concession whose principal Merchandise is passenger services.

Payment Bond means a payment bond in place as a condition to the commencement of Design Work and the Owner’s issuance of NTP 1, as set forth in Section 18.2.2 of the Agreement.

Payments means the Early Design Work Payments, the Progress Payments, any Bonus Payment, and the Supplemental Payments.

PDA has the meaning set forth in Recital E of the Agreement.

PDA Termination Amount means the amount of the Termination Payment, as defined in the PDA.

Percentage Fee means, with respect to a Concession, an amount equal to the Gross Receipts for the applicable month multiplied by the applicable Percentage Fee Rate.

Percentage Fee Rate means, with respect to a Concession, the rate stated in the applicable Concession Agreement by which the monthly Gross Receipts shall be multiplied in determining the Percentage Fee, and which rate shall be within the band specified therefor in the CDMP.

Performance Bond means the performance bond in place as a condition to the commencement of Design Work and the Owner’s issuance of NTP 1, as set forth in Section 18.2.1 of the Agreement.

Performance Deduction means a financial deduction resulting from a Performance Failure, as calculated in accordance with Section 3 of Appendix 10 of the Agreement.

Performance Failure means a failure by Developer to provide the O&M Services in accordance with the Performance Standards, except to the extent any such failure is caused by Planned Maintenance.

Performance Standards means the performance standards applicable to the O&M Services, as set forth in Appendix 9-A of the Agreement.

Permanent Cure means, with respect to (a) a Noncompliance, completion of rectification measures such that the relevant Noncompliance has been fully cured (and, with respect to a Performance Failure, the O&M Services for the relevant Element are

being performed to the applicable Performance Standards and in accordance with the Contract Documents), and (b) an Owner Performance Failure, the Owner O&M Obligations for the relevant Element are being performed to the applicable Owner Performance Standards; and “Permanently Cured” has a corresponding meaning.

Permanent Cure Period means, with respect to: (a) a Noncompliance, the period set out in Appendix 9 of the Agreement during which Developer must effect a Permanent Cure in order to avoid assessment of Noncompliance Points and incurring a corresponding Performance Deduction; or (b) an Owner Performance Failure, the period set out in Appendix 10-A of the Agreement during which the Owner must effect a Permanent Cure in order to avoid incurring a corresponding Owner Performance Deduction.

Permitted Shutdown means any Shutdown approved by the Owner in accordance with the Shutdown Policies and Procedures and, in respect of O&M Services, as further permitted under Section III.4.5 of the Technical Requirements.

Permitted Use Policy means a policy to be developed and maintained by Developer in accordance with Section 4.2 of Appendix 5-A.

Persistent Developer Breach means a breach for which a Final Breach Notice has been issued, which has continued for more than thirty (30) consecutive days or recurred in three (3) or more months within the six (6) month period after the date on which such Final Breach Notice is served on Developer.

Persistent Developer Noncompliance means the accumulation of: (a) Noncompliance Points equal to or exceeding the threshold set forth in Section 20.2.6.2.1 of the Agreement; or (b) Noncompliance Instances equal to or exceeding the threshold set forth in Section 20.2.6.2.2 of the Agreement.

Person means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

Physical Project Plan means the physical project plan attached as Appendix 3-J of the Agreement.

Planned Maintenance means O&M Services required to be, and that have been, properly scheduled and executed in accordance with Section III.4.5 of the Technical Requirements.

Planned Maintenance Schedule means a schedule, prepared annually and updated by Developer and approved by the Owner, showing the times during which Planned Maintenance will be performed and the Area(s) in which such Planned Maintenance will be performed.

Point of Sale means the time and place where a customer makes a payment in exchange for the provision of Merchandise.

Post-Refinancing Financial Model has the meaning set forth in Section 2 of Appendix 15 of the Agreement.

Pre-Commissioning Plan means a pre-commissioning plan developed and updated by Developer, and approved by the Owner, in accordance with Section I.10.19 of the Technical Requirements.

Pre-Existing Contaminated Materials means Contaminated Materials that exist in, on, under or near the Work Site prior to the Effective Date.

Pre-Existing Terminal Structure means a Terminal structure that exists within the Project Site prior to the Effective Date.

Pre-Refinancing Equity IRR has the meaning set forth in Section 2 of Appendix 15 of the Agreement.

Pre-Refinancing Financial Model has the meaning set forth in Section 2 of Appendix 15 of the Agreement.

Preliminary Change Estimate has the meaning set forth in Section 1.3 of Appendix 12 of the Agreement.

Prevailing Wage Rate Schedule means the prevailing wage rates, fringe benefits and classifications established pursuant to DRMC §20-76, as such rates and classifications may be amended from time to time. A copy of the Prevailing Wage Rate Schedule as of the Developer Execution Date is attached as Appendix 8-C of the Agreement.

Pricing Policy means a policy to be developed, implemented and maintained by Developer in accordance with Section 2.8.8 of Appendix 5-A of the Agreement, addressing the pricing principles that apply to all Merchandise and services offered for sale by Developer.

Principal Developer Documents means the Key Contract with each of the Lead Contractor, Lead Designer and the Lead O&M Firm, and the Financing Documents, each of which shall be approved by the Owner as to form and substance.

Privilege Fee means, with respect to a Concession, the monthly fee paid by the Concessionaire to Developer as consideration for the privilege of concession rights within the applicable Concession Premises, equal to the greater of (a) the MAPF divided by 12, and (b) the Percentage Fee for the applicable month.

Progress Payment Application has the meaning set forth in Section 13.1.3 of the Agreement.

Progress Payment Percentage means 73.73%, representing the Maximum Progress Payment Amount divided by the D&C Contract Amount.

Progress Payments has the meaning set forth in Section 13.1.1 of the Agreement; and “Progress Payment” means any of them.

Project means the Great Hall Project, which is described in more detail in the Technical Requirements. “Project” includes any Upgrades thereto.

Project Construction Period means the period commencing on the Financial Close Date and ending on the Project Substantial Completion Date.

Project Debt means all amounts outstanding from time to time pursuant to the Financing Documents.

Project Enhancement means any extensions of, additions to, modifications or improvements to the Project that is not part of the Work.

Project Executive means the individual identified as such in Appendix 3-H of the Agreement who meets the applicable Key Personnel criteria set forth in Appendix 8-B of the Agreement, or any successor individual approved by the Owner in accordance with Section 9.7.1 of the Agreement.

Project Final Acceptance means the occurrence of all the events and satisfaction of all the conditions set forth in Section 5.10.3 of the Agreement, as and when confirmed by the Owner’s issuance of a certificate in accordance with the procedures and within the time frame established in Section 5.10.3 of the Agreement.

Project Final Acceptance Date means the date upon which Developer achieves Project Final Acceptance.

Project Final Acceptance Deadline means the date by which Developer must achieve Project Final Acceptance, which is 90 days after the Project Substantial Completion Date.

Project Intellectual Property means all Developer Intellectual Property, Third Party Intellectual Property and Subject Intellectual Property incorporated into the Project.

Project Management Plan means, collectively, the Initial Project Management Plan, as developed and updated by Developer and approved by the Owner (to the extent required by the Technical Requirements) in accordance with Section I.10 of the Technical Requirements.

Project Manager (Project Construction Period) means the individual identified as such in Appendix 3-H of the Agreement who meets the applicable Key Personnel criteria set forth in Appendix 8-B of the Agreement, or any successor individual approved by the Owner in accordance with Section 9.7.1 of the Agreement.

Project Manager (Project Operating Period) means the individual identified as such in Appendix 3-H of the Agreement who meets the applicable Key Personnel criteria set forth in Appendix 8-B of the Agreement, or any successor individual approved by the Owner in accordance with Section 9.7.1 of the Agreement.

Project Office Lease Agreement means a lease agreement between the Parties, substantially in the form attached as Appendix 4-G of the Agreement, pursuant to which the Owner leases the Project Office Space to Developer from the effective date of such agreement until the Termination Date.

Project Office Space means office space on the AOB Corridor (or such other location as the Parties may agree in writing) designated for Developer's use as its Project office from the effective date of the Project Office Lease Agreement until the Termination Date.

Project Operating Period means the period starting on the Project Substantial Completion Date and ending on the Termination Date.

Project Punch List means an itemized list of Construction Work (including any such work identified in Functional Area Punch Lists) that remains to be completed within ninety (90) days after Project Substantial Completion has been achieved, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the Project.

Project Records has the meaning set forth in Section 23.1.1 of the Agreement.

Project Right of Entry has the meaning set forth in Section 3.2.1 of the Agreement.

Project Schedule means the logic-based critical path schedule for all D&C Work, as such schedule is prepared, revised, updated and submitted by Developer, and accepted (to the extent required by the Technical Requirements) by the Owner, in accordance with the Contract Documents.

Project Site means the Project Site (Construction) and the Project Site (O&M).

Project Site (Construction) means the real property (which term is inclusive of all estates, easements, leases and other interests in real property, whether temporary or permanent), improvements and fixtures within the Construction Limits, but excluding any real property, improvements and fixtures within: (a) any Construction Work Area prior to the applicable Turnover Date; (b) any Functional Area in respect of which Functional Area Readiness has been achieved, together with any area within any Systems O&M Limits associated with such Functional Area; and (c) any other area within the Construction Limits on or following the Project Substantial Completion Date. The term includes all air space within the applicable vertical limits and all surface rights within the applicable horizontal limits, but excludes all other air space and all subsurface rights within the applicable horizontal limits.

Project Site (O&M) means the real property (which term is inclusive of all estates, easements, leases and other interests in real property, whether temporary or permanent), improvements and fixtures within the O&M Limits, provided that such real property, improvements and fixtures are within: (a) any Functional Area in respect of which Functional Area Readiness has been achieved, or any area within any Systems O&M Limits associated with such Functional Area; or (b) any other area within the O&M Limits on or after the Project Substantial Completion Date. The term includes all air space within the applicable vertical limits and all surface rights within the applicable horizontal limits, but excludes all other air space and all subsurface rights within the applicable horizontal limits.

Project Site Model means the three-dimensional model attached as Appendix 4-A of the Agreement, delineating (both horizontally and vertically) the Construction Limits and the Core O&M Limits.

Project Substantial Completion means the occurrence of all events and satisfaction of all conditions set forth in Section 5.10.2 of the Agreement, as and when confirmed by the Owner's issuance of a Certificate of Project Substantial Completion in accordance with the procedures and within the time frame established in Section 5.10.2 of the Agreement.

Project Substantial Completion Date means the date upon which Developer achieves Project Substantial Completion.

Project Substantial Completion Long Stop Date means the date by which Developer must achieve Project Substantial Completion, which is 365 days after the Scheduled Project Substantial Completion Date.

Project Utilities Services means, collectively, electrical, data services, domestic water, sanitary, natural gas and heating and cooling Utilities services.

Project Utility Services Costs means the costs of Project Utilities Services, including deposits, installation costs, connection charges, usage, service charges, and applicable taxes.

Proposal means the proposal, dated May 12, 2016, submitted by Developer in response to the Request for Proposals.

Proposal Due Date means May 18, 2016.

Protection in Place means any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of the Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Public Circulation Space means any space within the Project Site required by Law to be generally accessible to the public without restriction, including spaces for access and circulation, passenger meet and greet, and public amenities.

Punch List means a Functional Area Punch List or the Project Punch List.

Qualified Investor means any Equity Member, Ferrovial Airports International, Limited, and S/JLC, LLC.

Qualifying Base Direct Costs means the Base Direct Costs described in Section 1.1 of Appendix 11 of the Agreement other than the Excluded Base Direct Costs.

Qualifying Change in Law means: (a) a Discriminatory Change in Law; or (b) any other Change in Law that requires additional capital expenditures by Developer in excess of \$10,000 in order to comply (but excludes any such Change in Law that results in a Non-Compensable Non-Discriminatory O&M Change).

Quality Assurance means monitoring the quality of the Quality Control process in accordance with the applicable provisions of Section I.10.8 of the Technical Requirements.

Quality Control means monitoring and managing the quality of the Work on a day-to-day basis in accordance with the applicable provisions of Section I.10.8 of the Technical Requirements.

Quality Management means the quality management-related obligations and requirements set forth in Section I.10.8 of the Technical Requirements.

Quality Management Plan means the plan developed and updated by Developer, and approved by the Owner, for quality assurance and quality control of the Work in accordance with Section I.10.8 of the Technical Requirements.

Quality Manager means the individual identified as such in Appendix 3-H of the Agreement who meets the applicable Key Personnel criteria set forth in Appendix 8-B of the Agreement, or any successor individual approved by the Owner in accordance with Section 9.7.1 of the Agreement.

Rating Agency means Moody's Investor Service, Inc., Standard & Poor's Rating Service, a division of The McGraw-Hill Companies Inc., or Fitch Investors Service, Inc.

Rating Agency Adjustment means any change to the terms set forth in the Agreement, the Initial Financial Model (Developer Execution) or any Initial Key Contract that is required by two Rating Agencies mutually selected by the Parties that provide a rating of the Project Debt during the Interim Period to achieve an investment grade rating for the Project Debt.

Record Document BIM means the aggregate of files used to record the building information for the Project that is developed in accordance with the BIM DSM.

Recurrence Period means, as applicable:

- (a) With respect to any Noncompliance, a period of time specified in the far right column of the table set forth in Appendix 9 of the Agreement, commencing when Developer has failed to cure the Noncompliance within the applicable full cure period or Permanent Cure Period, as applicable, or prior to the expiry of the immediately preceding Recurrence Period, as applicable, and such Noncompliance will be deemed to have occurred anew; provided however, that there shall be no cure period for such new Noncompliance; or
- (b) With respect to an Owner Performance Failure, the period specified in Appendix 10-A of the Agreement, commencing when the Owner has failed to Permanently Cure the Owner Performance Failure within the applicable Permanent Cure Period or prior to the expiry of the immediately preceding Recurrence Period, as applicable, and such Owner Performance Failure will be deemed to have occurred anew; provided, however, that there shall be no cure period for such new Owner Performance Failure.

Reduced Office Space has the meaning set forth in the Interim Office Lease Agreement.

Redundancy Payments means the payment of all wages earned, accrued unused vacation time, and any other payments required to be made by Developer to its employees under law, or under the terms and conditions of Developer's employment agreements with its employees, as a direct result of termination of the Agreement pursuant to Section 21.2 or 21.3 of the Agreement, as applicable.

Reference Documents means the collection of information, data, documents and other materials that the Owner has provided to Developer (including those contained in the RFP documents and those provided during the PDA phase) for general or reference information only and without any warranty as to their accuracy, completeness or fitness for any particular purpose. A list of the Reference Documents is attached as Appendix 26 of the Agreement. The Reference Documents are not Contract Documents.

Refinancing means:

- (a) Any amendment, variation, novation or supplement of any Project Debt, Financing Documents, including the Initial Project Debt, and the Initial Financing Documents, that results in a reduced interest rate, an increase of such Project Debt, or a tangible financial benefit to Developer;
- (b) The issuance by Developer of any Project Debt other than the Initial Project Debt, secured or unsecured;

- (c) The disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Project Debt of the Financing Documents, or the creation or granting of any other form of benefit or interest in either the Financing Documents or Developer's Interest, whether by way of security or otherwise, by Developer; or
- (d) Any other arrangement put in place by Developer or another Person which has an effect similar to the arrangements discussed in clauses (a) through (c) above.

The term Refinancing excludes (i) Equity Transfer or (ii) any sale or transfer of any Equity Member Debt or Equity Members' existing rights and/or interest under the Equity Members Funding Agreements.

Refinancing Gain has the meaning set forth in Section 2 of Appendix 15 of the Agreement.

Release of Contaminated Materials means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Contaminated Materials into the soil, air, surface water, groundwater or indoor or outdoor environment, including any exacerbation of an existing release or condition of Contaminated Materials contamination.

Relief Event means a Compensation Event or a Delay Event, as applicable.

Relief Event Claim has the meaning set forth in Section 11.2.4 of the Agreement.

Relief Event Delay means a Delay that is solely and directly attributable to a Relief Event (other than Compensation Event (Type 3)) and is not concurrent with any other delay which is not caused by a Relief Event.

Relief Event Notice has the meaning given to such term in Section 11.2.1 of the Agreement.

Renewal Work means maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element of a type which is not normally included as an annually recurring cost in facility maintenance and repair budgets, that requires a significant amount of time to accomplish and therefore must be coordinated, scheduled and planned well in advance of the work effort.

Renewal Work Plan means a plan developed and implemented by Developer in accordance with Section III.5.3 of the Technical Requirements.

Renewal Work Reports has the meaning set forth in Section III.4.11.3 of the Technical Requirements.

Renewal Work Reserve Account has the meaning set forth in Section 7.6.1.1 of the Agreement.

Renewal Work Schedule means the schedule for Renewal Work to be prepared and updated by Developer in accordance with Section 7.5 of the Agreement and Section III.5.3.1 of the Technical Requirements.

Renovation means an alteration, addition, re-construction or demolition of any portion of any Terminal Improvements, other than Renewal Work, undertaken at any time after the Project Substantial Completion Date.

Request for Information or **RFI** means a procedure used by Developer, Lead Contractor or the Owner in cases where it is necessary to confirm the interpretation or get clarification of a detail, specification, or note on Construction Documents, or to secure a documented directive or clarification from the AOR or the Owner that is needed to continue work.

Request for Proposals or **RFP** has the meaning set forth in Recital C of the Agreement.

Request for Qualifications or **RFQ** has the meaning set forth in Recital B of the Agreement.

Required Design Exception/Deviation means any change, deviation, modification, alteration or exception to the Manuals and Guidelines that is necessary (after making all reasonable best efforts to comply therewith) to permit Developer to perform the impacted portion of the D&C Work without incurring any additional cost or schedule delay, but solely to the extent the necessity of such change, deviation, alteration or exception (a) becomes known pursuant to the design development process contemplated in the Technical Requirements, (b) was not known by Developer or any Developer-Related Entity as of the Developer Execution Date, and (c) could not have reasonably been known by Developer or any Developer-Related Entity as of the Developer Execution Date with the exercise of reasonable due diligence.

Required Minimum Developer-Provided Insurance Policies has the meaning set forth in Section 18.1.2.12.1(a)(i) of the Agreement.

Rescue Refinancing means any Refinancing that:

- (a) Occurs due to the failure or imminent failure of Developer to comply with any material financial obligation under any Funding Agreement or Security Document;
- (b) Results in the cure of such failure or imminent failure;
- (c) Does not result in an increase in the Equity IRR beyond the Initial Equity IRR; and

- (d) Does not result in an actual or potential increase of Lenders' Liabilities by more than 10%.

Retail Concession means a Concession whose principal Merchandise is retail goods, including duty free goods.

Revenue Forecast has the meaning set forth in Section 3.2 of Appendix 5-A of the Agreement.

Routine Maintenance means all Work necessary to preserve the current condition of assets, including any inspection, that is routine in nature and limited in scope, can be scheduled in advance, occur on a regular basis, and includes matters that are typically included as an annually or bi-annual recurring in facility maintenance and repair budgets.

Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition of the Project that the Owner or a Governmental Entity has reasonably determined to exist by investigation or analysis, if the condition exists despite compliance with Safety Standards.

Safety Compliance Order means a written order or directive from the Owner to Developer to implement Safety Compliance.

Safety Standards means those provisions of the Technical Requirements that the Owner considers, in its good faith discretion, to be important measures to protect public safety or worker safety. As a matter of clarification, provisions of the Technical Requirements primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

Schedule of Gross Receipts has the meaning set forth in Section 4.3.1 of Appendix 5-A of the Agreement.

Schedule of Values means the design and construction schedule of values attached as Appendix 3-I of the Agreement, which allocates values for the various components of the D&C Work by Functional Area and building component and shall be used as the basis for Progress Payment and Project control activities.

Scheduled Developer TSA Screening Area Handover Date means the Baseline Developer TSA Screening Area Handover Date, as such date may be adjusted from time to time in accordance with the Contract Documents.

Scheduled Functional Area Readiness Date means, with respect to a Functional Area, the applicable Baseline Functional Area Readiness Date, as such date may be adjusted from time to time in accordance with the Contract Documents.

Scheduled Owner TSA Screening Area Handback Deadline means the Baseline Owner TSA Screening Area Handback Deadline, as such date may be adjusted from time to time in accordance with the Contract Documents.

Scheduled Project Substantial Completion Date means the Baseline Project Substantial Completion Date, as such date may be adjusted from time to time in accordance with the Contract Documents.

Scheduled Turnover Date means, with respect to any Construction Work Area, the date specified in the List of Key Turnover and Delivery Dates as the earliest date by which the Owner must make the Construction Work Area available to Developer in the condition specified in Section I.2.2 of the Technical Requirements for commencement of the applicable Construction Work.

Schematic Design has the meaning set forth in Chapter 4 of Appendix 2 of the Technical Requirements.

Scope Documents means the documents attached as Appendix 1 of the Technical Requirements regarding the scope of the D&C Work.

Secured Area means any area within the Airport that is regulated by TSA under Part 1542 and includes facilities and airfield areas beyond security badge readers.

Security Documents means the Initial Security Documents and any other document jointly designated by the Parties in writing as a Security Document.

Security Level means, as it relates to a Construction Work Area, one of the following levels of security approved by the Owner in accordance with Section I.5.2 of the Technical Requirements and the requirements for which are set forth in Sections I.5.3.1 through I.5.3.4 of the Technical Requirements:

- (a) Public Space;
- (b) Secured Area;
- (c) Sterile Area; or
- (d) Controlled Area.

Security Screening Area means passenger and carry-on screening area within the Project Site and operated by the TSA.

Service Line means (a) a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, or (b) any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize the Owner's or a local agency's lighting and electrical systems and/or communications systems.

Service Task Order or **STO** has the meaning set forth in Section III.4.4 of the Technical Requirements.

Service Task Order Program or **STOP** has the meaning set forth in Section III.4.4 of the Technical Requirements.

Shared Rating Agency Adjustment means any Rating Agency Adjustment other than a Construction Risk Rating Agency Adjustment.

Shutdown means: (a) any Shutdown, as defined in the Shutdown Policies and Procedures; or (b) all or part of any O&M Segment is closed, blocked, or the use thereof or access thereto is otherwise restricted for any reason, in each case during the applicable O&M Segment Operating Period.

Shutdown Policies and Procedures means the Shutdown policies and procedures attached as Appendix 10 of the Technical Requirements.

Small Business Enterprise Compliance Plan means a plan developed by Developer, and approved by DBSO and the Owner, a copy of which is attached as Appendix 8-A-1 of the Agreement.

Special Event means any event described in Section I.5.5 of the Technical Requirements.

Staging Area means a continuous, Developer-secured and enclosed space located inside or outside the Terminal used for general staging, storage or temporary facilities in accordance with the Contract Documents.

Standards and Criteria DSM means the Standards and Criteria Design Standards Manual attached as Appendix 2 of the Technical Requirements.

Starting Insurance Benchmarking Premiums means those insurance premiums corresponding to the Required Minimum Developer-Provided Insurance Policies, determined on the first Benchmarking Date, used for the insurance premium benchmarking set forth in Section 18.1.2.12 of the Agreement.

State means the State of Colorado.

Statement of Special Inspection means the statement submitted by Developer during the permit application process and which lists special inspection requirements, in compliance with the International Building Code Chapter 17 (Special Inspections), the Denver Building Code, and the Construction Documents.

Sterile Area has the meaning set forth in Section I.5.3.3 of the Technical Requirements.

Store Hours means the period starting at least 30 minutes prior to opening of the Security Screening Area and ending at least 30 minutes after the last scheduled arriving flight, seven days per week, 365 days per year.

Street Price means the price of an item of Merchandise or a service as determined in accordance with the procedures established in Appendix 5-A of the Agreement and the CDMP.

Structural Latent Defect means a latent defect in a Pre-Existing Terminal Structure that: (a) is caused by design or construction errors based on codes, standards and specifications in effect at the time of the original design and construction of the structure; and (b) negatively impacts the use of the structure from that intended at the time of original design and construction.

Subcontracted Contractor means, as between parties to a Contract (excluding any Contract to which Developer is a party), the lower-tiered Contractor that will perform the specified work thereunder.

Subcontracting Contractor means, as between parties to a Contract (excluding any Contract to which Developer is a party), the higher-tiered Contractor that is subcontracting the specified work thereunder to another Contractor.

Subject Intellectual Property means all Intellectual Property created, authored, invented and/or put into practice under or for the purposes of the Proposal, the PDA, the Contract Documents and/or the Project.

Submittal means any document, work product or other written or electronic end product or item required under the Contract Documents to be delivered or submitted by Developer to the Owner. Notwithstanding the foregoing, the following is not a Submittal: (a) any invoice submitted by Developer seeking payments pursuant to the Agreement is not a Submittal; and (b) any Construction Submittal except those identified in Section I.8.3 of the Technical Requirements.

Submittals Type 1 means those Submittals identified as such in the Technical Requirements in respect of which Developer cannot proceed (even at its election and risk) without the Owner's prior written approval.

Submittals Type 2 means all Submittals, other than Submittals Type 1 and those Submittals contemplated in Section 4.4.2 of the Agreement, in respect of which Developer may proceed at its election and risk without the Owner's prior written approval.

Supplemental Junior Lien Bond Ordinance means the Airport System Supplemental Junior Lien Bond Ordinance related to the obligations of the Owner to make Supplemental Payments.

Supplemental Payment means the amount earned in each given year by Developer as determined in accordance with Section 2 of Appendix 10 of the Agreement, comprising the sum of the Capital Payment and the O&M Payment.

Supplier means any Person not performing work at or on the Work Site that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to Developer or to any Contractor in connection with the performance of the Work. Persons who merely transport or deliver materials, parts or equipment or any other items or persons to or from the Work Site shall not be deemed to be performing Work at the Work Site.

Support Spaces means those areas within and adjacent to the Concessions Space that are inaccessible to the public and serve as spaces for supporting the operations and administration of the Concessions, including employee amenities, offices, storage spaces, food and goods preparation spaces and access corridors.

Surety means any surety company or insurance company that meets the requirements of Sections 18.2.1.2 and 18.2.2.2 of the Agreement and issues any Payment Bond or Performance Bond.

System means a Building System or a Utility.

Systems O&M Limits means, with respect to a System, the limits (both horizontal and vertical) of the space occupied by that System, including any associated cable or conduit, anchors and appurtenance of such System, between the applicable Building System Demarcation Point or Utility Demarcation Point, as the case may be, and the Core O&M Limits.

Taxes means federal, State, local or foreign income, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the performance of the Work or act, business, status or transaction of Developer, including any interest, penalty or addition thereto, in all cases whether disputed or undisputed.

Technical Design Review means the technical design review process contemplated by Section I.8.3.3 of the Technical Requirements.

Technical Requirements means Volume II of the Contract Documents, as such provisions may be changed, added to or replaced pursuant to the Agreement.

Technology Enhancements means modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to or in place of any

computer systems or other technology used for the operation of the Project, or to any related documentation, that accomplish incidental, performance, structural, or functional improvements. The term specifically includes modifications, updates, revisions, replacements and upgrades made to or in place of software or any related documentation that correct errors or safety hazards or support new models of computer hardware with which the software is designed to operate. Technology Enhancements also include such new models of computer hardware.

Temporary Certificate of Occupancy or **TCO** means, with respect to any Functional Area, a certificate issued by the Building Official pursuant to section 142.6 of the DBC with respect to such Functional Area.

Temporary Concessions Plan means a plan, a copy of which is attached as Appendix 6-B of the Agreement, for temporary concessions during the Project Construction Period which was developed by the Owner, with input from Developer, and takes into account the Initial Transition and Phasing Plan.

Temporary Cure means completion of rectification measures sufficient to (a) bring an area affected by a Performance Failure into compliance with the applicable Performance Standards or an Owner Performance Failure into compliance with the applicable Owner Performance Standards, as applicable, and (b) ensure that the applicable area can be used without risk to the health and safety of Users; and “Temporarily Cured” has a corresponding meaning.

Temporary Cure Period means the period from the relevant Logged Failure Time, as set out in (a) Appendix 9-A of the Agreement, within which Developer must effect a Temporary Cure in order to avoid assessment of Noncompliance Points and incurring a corresponding Performance Deduction, or (b) Appendix 10-A of the Agreement, within which the Owner must effect a Temporary Cure in order to avoid incurring a corresponding Owner Performance Deduction.

Term means the period commencing on the Financial Close Date and ending on the 34th anniversary thereof.

Terminal means the Jeppesen terminal building at the Airport, which is the landside terminal for passenger processing and encompasses the Great Hall, and includes the Terminal Improvements as completed.

Terminal Area Forecast means the traffic forecast for the Airport published by FAA or any successor entity, or such other substantially similar traffic forecast published by FAA or any successor entity, provided that if FAA or any such successor entity ceases to publish any such forecast at least every 18 months, the Parties shall negotiate in good faith to find an alternative, independent, published traffic forecast.

Terminal Improvements means all assets and improvements to the Terminal to be designed, constructed, maintained, repaired, reconstructed, rehabilitated, restored, renewed, replaced and/or installed by Developer in accordance with the Contract Documents.

Termination by Court Ruling has the meaning set forth in Section 21.5.3 of the Agreement.

Termination Compensation means the measure of compensation owing from the Owner to Developer upon termination of the Agreement prior to the stated expiration of the Term, as set forth in Article 21 of the Agreement.

Termination Date means: (a) the date of expiration of the Term; or (b) if applicable, the Early Termination Date.

Termination for Convenience has the meaning set forth in Section 21.2.1 of the Agreement.

Termination for Convenience Discount Rates mean, in respect of any amounts contemplated in clause (a) of Section 21.2.2.1 of the Agreement, the following discount rates, as applicable, for each relevant period: (a) 10.8% if such amounts are reflected in the Financial Model from the Financial Close Date through the Project Substantial Completion Date; (b) 9.0% if such amounts are reflected in the Financial Model following the Project Substantial Completion Date through the 4th anniversary thereof; (c) 8.5% if such amounts are reflected in the Financial Model following the 4th anniversary of the Project Substantial Completion Date through the 15th anniversary thereof; and (d) 7.5% if such amounts are reflected in the Financial Model following the 15th anniversary of the Project Substantial Completion Date through the end of the Term.

Terrorism means activities against Persons or property of any nature:

- (a) That involve the following or preparation for the following:
 - i. Use or threat of force or violence; or
 - ii. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
- (b) When one or both of the following applies:
 - i. The effect is to intimidate or coerce a Governmental Entity, the Owner or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - ii. It appears that the intent is to intimidate or coerce a Governmental Entity or the Owner, or to further a political, ideological, religious, social or economic objective or to express (or express opposition to) a philosophy or ideology.

Third Party Intellectual Property means any Intellectual Property owned by any Person unrelated to Developer or its Affiliates or Contractors, and which is incorporated into the Project.

Total Enplanement means the total number of persons boarding at the Airport in scheduled or non-scheduled service on aircraft in intrastate, interstate, or foreign air transportation, measured over a defined period.

Transaction has the meaning set forth in Section 15.2.1 of the Agreement.

Transit Center means the public space used for Regional Transportation District's and other transportation services on level 1 of the Airport Westin Hotel.

Transition and Phasing Plan means, collectively, a graphic representation, accompanying narrative, and schedule submitted by Developer as part of the Project Management Plan, showing the phasing of the Construction Work, including the applicable Construction Work Limits and Construction Work Areas for each phase of the Construction Work.

Transportation Security Administration or **TSA** means the agency of the U.S. Department of Homeland Security responsible for airport passenger screening and security, and any successor agency.

TRIPRA 2015 means the Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297, 116 Stat. 2322), as extended and reauthorized from time to time, including pursuant to the Terrorism Risk Insurance Program Reauthorization Act of 2015 (Pub. L. 114-1, 129 Stat. 3).

TSA Change/Delay means (a) any change required by TSA in the design of the TSA Screening Area, the equipment to be used therein or the certification requirements related thereto that is inconsistent with the Scope Documents, and (b) any Delay by the Owner in handing back the TSA Screening Area to Developer in accordance with Section I.2.4 of the Technical Requirements beyond the Scheduled Owner TSA Screening Area Handback Deadline.

TSA Handback Deadline Extension means:

- (a) From the first day through the 12th day of any Developer TSA Handover Delay, a corresponding extension of the Scheduled Owner TSA Area Handback Deadline by one day for each day of such delay;
- (b) From the 13th day through the 30th day of any Developer TSA Handover Delay, a corresponding extension of the Scheduled Owner TSA Area Handback Deadline by 30 days in the aggregate (inclusive of the extension under clause (a));
- (c) From the 31st day through the 60th day of any Developer TSA Handover Delay, a corresponding extension of the Scheduled Owner TSA Area Handback Deadline by 1.5 days for each such day of delay (inclusive of the extension under clause (b)); and

- (d) From the 61st day or more of any Developer TSA Handover Delay, a corresponding extension of the Scheduled Owner TSA Area Handback Deadline by one day for each such day of delay (in addition to the extension under clause (c)),

provided that Developer shall have provided to the Owner not less than 45 days' prior written notice of any anticipated Developer TSA Handover Delay, failing which the TSA Handback Deadline Extension shall be not less than the actual period of delay incurred by the Owner in handing back the TSA Screening Area due to the Developer TSA Handover Delay.

TSA Screening Area means the area identified as such on the Functional Area Map.

TSA Work means the procurement and installation of screening lane equipment within the TSA Screening Area, including all testing and calibration of such equipment.

Turnover Date means, with respect to any Construction Work Area, the date that is 60 days following the date on which Developer provides written notice to the Owner in accordance with Section 3.2.4 of the Agreement, which date shall not be earlier than the corresponding Scheduled Turnover Date unless otherwise mutually agreed by the Parties.

Unavoidable O&M Costs means, in connection with a Delay Event, any O&M and Concessions-related costs and expenses incurred by Developer (to the extent such costs and expenses would have been paid for by the Supplemental Payment) that Developer cannot avoid through the exercise of reasonable diligence and would otherwise have incurred during the relevant period had the Delay Event not occurred.

Undesirable Materials means any materials that are not Contaminated Materials but which due to the lack of engineering or other desirable properties, have no inherent value, cannot be utilized or sold, and must be handled, transported, and disposed. Undesirable Materials include garbage, trash, or other discarded items, grease, muck or organic material that are not Contaminated Materials. The term "Undesirable Materials" excludes archeological, paleontological or cultural resources.

Undesirable Materials Management means procedures and requirements to address Undesirable Materials conditions encountered, impacted, caused by or occurring in connection with the Project, Work Site or the Work, as well as investigation and removal of such Undesirable Materials where required. Undesirable Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, removal, transportation and/or off-site disposal of Undesirable Materials, whichever approach is effective, most cost-efficient and authorized under applicable Law and Governmental Approvals.

Unknown Structural Conditions means: (a) any deviation in the actual construction or condition of the superstructure of the Terminal from the as-built construction and condition reflected in the Baseline Structural Documents, to the extent

that such deviation materially adversely affects the D&C Work; or (b) any Structural Latent Defect.

Unknown Utilities means any Utilities) located outside of the Terminal but within the Project Site that are not identified in the Baseline Utilities Documents, or the location of which are misidentified in the Baseline Utilities Documents by more than ten (10) feet.

Upgrades means alterations, improvements, modifications, Technology Enhancements or changes that Developer makes to the Project, as originally designed and constructed, at any time after the Project Substantial Completion Date, including as part of the Renewal Work.

User(s) means any user of the Terminal, including (a) members of the general public, (b) members of the traveling public, (c) the Owner, (d) TSA, (e) FAA, (f) the Airlines, (g) Concessionaires, (h) employees, contractors and/or service providers, as applicable, of any User identified in clauses (c) through (g) of this definition of "User," (h) Concessions customers, (i) any security and emergency personnel using the Terminal, and (j) any other Person who can be reasonably be expected to use the Terminal from time to time, but excluding Developer and any Developer-Related Entity.

Utility(ies) or **utility(ies)** means a privately, publicly, or cooperatively owned line, facility, or system for supplying, transmitting, distributing, handling, collecting or storing communications, power, electricity, light, air, heat, gas, oil, crude products, water, steam, waste, storm water, and other similar commodities, including wired and wireless telecommunications, television transmission signals and publicly owned fire and police signal systems, which directly or indirectly serve the public. The necessary appurtenances to each Utility facility shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

Utility Adjustment means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project or the Work.

Utility Adjustment Work means all efforts necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection and maintenance of records.

Utility Demarcation Point means, with respect to a Project Utility Service, the applicable demarcation point specified in Tables III.1 of the Technical Requirements, as such demarcation point may be adjusted in accordance with the Contract Documents.

Utility Owner means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies), but excluding the Owner.

Warranty Period means, with respect to the Terminal Improvements or any portion thereof, the period specified therefor in the Technical Requirements or one year, whichever is greater, in each case commencing on the earlier of the applicable Functional Area Readiness Date and the Project Substantial Completion Date.

Warranty Work means all work necessary to correct a Defect, including repair or replacement of the defective Work and any adjacent Work that may have been damaged or displaced in the course of such work.

Women Business Enterprise or **WBE** has the meaning given in DRMC § 28-54(51).

Work means all of the work, services and obligations required to be furnished, performed, provided or discharged by Developer under the Contract Documents, including all administrative, design, engineering, construction, financing, payment to third parties, support services, operations, maintenance and management services, and all work, operations, services and obligations related to the Concessions Program, in any case except for those obligations which such Contract Documents expressly specify will be performed by Persons other than Developer or the Developer-Related Entities.

Work Breakdown Structure or **WBS** means a coded, detailed, hierarchical configuration of the D&C Work, providing the basic framework to plan, manage, and execute the Project.

Work Site means: (a) the Project Site; and (b) from the date of issuance of NTP 2 until surrender thereof by Developer in accordance with Section 5.3.3 of the Agreement, the Ancillary Site.

[END OF DEFINITIONS]